

Editorial Standards Findings

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

18 July and 12 September 2013 issued September 2013

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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

BBC guidance to journalists on the status of settlements, the Gaza Strip, and East Jerusalem

The complaint concerns alleged inaccuracies and a lack of impartiality in the guidance available to BBC journalists about three issues relating to the Israel/Palestinian conflict: the status of settlements, the Gaza Strip, and East Jerusalem. It relates to the Internal Guidance that BBC journalists use when reporting issues concerning Israel and the Occupied Palestinian Territories and also to a shorter version, which is described in this finding as the Abbreviated Guide, and which is available on the BBC website.

The Committee concluded:

- that, as a general rule, it tends to consider output i.e. something that has been broadcast on BBC radio or television or published on a BBC website. It does not normally consider Internal Guidance.
- that the circumstances of this appeal were exceptional and that each appeal must be considered on a case by case basis. On this occasion, Trustees agreed that it was appropriate to take this appeal.
- that although the Committee is comprised of Trustees who are professional decision makers who are accustomed to dealing with complex appeals, they are not experts on the Middle East or in International Law. To the extent that there are divergent points of view as between the complainant and the BBC (or as between academics and commentators in this area), it is not the role of the Trustees to resolve these disputes or to reach a definitive conclusion as to who is right or wrong. Rather, the role of the Trustees is to assess whether the Internal Guidance (and, where appropriate, the Abbreviated Guide), complies with the Guidelines relating to Accuracy and Impartiality, bearing in mind the controversial subject-matter they cover and lack of agreed factual position between the various parties to the debate. As with all appeals, their role is to test the content against the Editorial Guidelines and to form a view as to whether these have been complied with.
- that it was not its role to look behind decisions made by its predecessors on the Board of Governors or to look behind the conclusions of the report that Noam Lubell authored.
- that it would not therefore address (in relation to the issues which are the subject of this appeal) those arguments that were considered by the BBC Governors in 2006, including the interpretation of international law and the applicability of the Fourth Geneva Convention to the West Bank, East Jerusalem and the Gaza Strip.
- that, although it would not look behind the conclusions of the Lubell report or the decisions of the Board of Governors back in 2006, it would consider whether the landscape has changed to such an extent that it is no longer accurate to use the phrases complained of.
- that the documents considered in this appeal deal with a "controversial subject" under the guidelines.

- that, having regard to signposting, audience expectation, the manner in which the statement is qualified so as not to be presented as a categorical statement of fact and the lack of substantive changes on the ground since 2006, the phrase that “settlements are illegal under international law” (which features in both the Abbreviated Guide and the Internal Guidance) is duly accurate.
- that there had been no breach of the Impartiality Guidelines in relation to the guidance on settlements taking into account the signposting, audience expectation and the additional context contained in the Internal Guidance.
- that, taking into account signposting, audience expectation, changes on the ground since 2006 (that are now addressed in the Internal Guidance), the way in which the phrase is presented in the Internal Guidance and the wider context of the document, the statement that “under international law, Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there” did not breach the Accuracy Guidelines.
- that there had not been a breach of the Impartiality Guidelines in relation to this aspect of the appeal taking into account signposting, the qualification of the statement, and wider context in the Internal Guidance and the fact that the views of the principal parties were reflected.
- that, having regard to signposting, audience expectation, the way in which the phrase is nuanced by the words “considered to be” and the lack of substantive changes on the ground, there had been no breach of the Accuracy Guidelines in relation to the statement that “under international law, East Jerusalem is considered to be occupied territory”.
- that, in light of the wider context of the document, the way in which the phrase is nuanced, signposting and audience expectation, there had not been a breach of the Impartiality Guidelines in relation to this aspect of the appeal.

The complaint was not upheld.

For the finding in full see pages 7 to 41.

Thought For The Day, BBC Radio 4, 14 February 2012

The complaint was about an edition of Thought for the Day (TFTD) which was inspired by a High Court decision on the contested legality of councillors saying prayers as part of formal council meetings. The complaint was made on behalf of the National Secular Society (NSS). The complainant said this edition of TFTD was a biased commentary on a topical and controversial subject, with no attempt to provide due impartiality. The complainant also questioned the accuracy of an anecdote contained within the broadcast and the description of when prayers would not be allowed to be said.

The Committee concluded:

- that the recent High Court ruling was a controversial subject under the Editorial Guidelines and that the guidelines on controversial subjects did apply.

- that TFTD had acknowledged that a range of views existed and that it was controversial.
- that listeners would be in no doubt that they would be hearing a personal view and the expression of a single view was clearly signposted.
- that the Today programme in which TFTD had been broadcast fulfilled the impartiality requirements by featuring an extensive discussion with Richard Dawkins and an interview with Baroness Warsi.
- that across BBC output a wide range of significant views and perspectives had been given to the controversial subject of the High Court ruling.
- that there was no reason to doubt what Lord Singh had said and it saw no evidence from the complainant to suggest that the anecdote was not well-sourced, based on sound evidence and duly accurate.
- that references to the timing of prayers in relation to meetings were duly accurate.

The complaint was not upheld.

For the finding in full see pages 42 to 51.

PM, BBC Radio 4, 26 February 2013

The complaint concerned the translation of the Arabic word "Al-Yahoud" in an item about Hebrew being taught in Hamas-run schools in Gaza. The complainant said that the term translates literally into English as "the Jews" and it was inaccurate for the programme to have translated this as "an Israeli" in the English voice over. The complainant alleged that this was a mistranslation which was materially misleading. The complainant also alleged that the programme should have included the information that Arabic had been taught in Israeli schools for decades and that not mentioning this fact demonstrated a lack of due impartiality.

The Committee concluded:

- that it was not the case that only a literal translation would have met audience expectation for due accuracy.
- that no interpretation of the editorial guidelines requires content producers to make direct word-for-word translations without also taking account of relevant context.
- that the programme makers had demonstrated they had taken care to reach a considered view on the appropriate translation, taking into account the circumstances in which the contributor was discussing interaction.
- that the decision to translate the contributor's words as "*an Israeli*" was an appropriate exercise of editorial judgement.
- that, in the light of the programme team's explanation of why it felt the decision not to use the literal translation was the right one, the translation employed by the

programme was well sourced and based on sound evidence.

- that the programme had taken account of sensitivities in this area and that it had borne these in mind when reaching its decision to translate the content in the way it had.
- that the programme team had demonstrated that it had weighed all the relevant facts, and taken into account the context in which the girl was speaking, and to whom she was most likely to be referring, in reaching its decision to translate the words she used as it did.
- that the chosen translation did not dilute the contributor's hostility or soften the impact of her words. The Committee therefore concluded that the programme had achieved due accuracy as required by the editorial guidelines.
- that the situations in Gaza and Israel were not analogous and it was a legitimate exercise of editorial judgement not to include the information regarding the teaching of Arabic in Israeli schools in this report.
- that, as well as meeting the requirements of due accuracy, the programme had achieved due impartiality as required by the Editorial Guidelines.

The complaint was not upheld.

For the finding in full see pages 52 to 58.

PM, BBC Radio 4, 12 November 2012

The complainant said that a reference to the Golan Heights in a report about Israeli shelling of Syria should have clarified the status of the Golan Heights as Israeli-occupied and that not to do so was a breach of the guidelines on Accuracy and Impartiality.

The Committee concluded:

- the brevity of the item and the likely knowledge of the Radio 4 PM audience mitigated the requirement for a reference to Israel's occupation of the Golan Heights on this occasion.
- that, having regard to the subject and nature of the content, Israel's occupation of the Golan Heights was not essential to the understanding of the story and this report was duly accurate.
- that, as the content was duly accurate, the BBC had not "knowingly and materially" misled the audience.
- that, as the report was duly accurate, there was no evidence to support a breach of the guidelines on Impartiality.

The complaint was not upheld.

For the finding in full see pages 59 to 62.

Appeal Findings

BBC guidance to journalists on the status of settlements, the Gaza Strip, and East Jerusalem

1. Background

This appeal concerns alleged inaccuracies and lack of impartiality in the guidance available to BBC journalists about three issues in the Israel/Palestinian conflict: the status of settlements, the Gaza Strip, and East Jerusalem.

It relates to the Internal Guidance that BBC journalists use when reporting issues concerning Israel and the Occupied Palestinian Territories. The Internal Guidance is partly a style guide suggesting terminology which may be appropriate in certain circumstances, and also a quick reference on historical background and important facts.

The Internal Guidance was last updated in February 2013 and is not published by the BBC but a shorter version, which was updated at the same time and which is known as the Abbreviated Guide, is available on the BBC website; where relevant, the Committee's findings in this appeal apply also to the Abbreviated Guide.

2. The complaint

The complainant made the following allegations in relation to the Internal Guidance:

- A. in relation to settlements, the BBC is wrong to state decisively they are illegal under international law and that by doing so, the BBC is showing a lack of impartiality;
- B. the description in the guidance that "Israel is still the occupying power in Gaza, although it no longer has a military presence there" is factually wrong and lacks impartiality; and
- C. the description in the guidance relating to East Jerusalem that "under international law, East Jerusalem is considered to be occupied territory" is misleading and lacks impartiality.

Stages 1 and 2

Throughout the course of the correspondence, the complainant has presented each point as a distinct complaint. Although he received individual responses to each of the issues at Stage 1, at Stage 2 the Head of Compliance and Accountability for BBC News amalgamated the three allegations and consolidated them into a single response. Although all three phrases have been dealt with in this one appeal, they have all been given separate and substantive consideration.

As noted in the Background section above, the Internal Guidance was updated in February 2013. While the issues which are the subject of this appeal were first raised in October 2011 in the case of settlements and in December 2011 for both the Gaza Strip and East Jerusalem, the allegations still stand. In relation to settlements and East Jerusalem, the phrases that the complainant took issue with appear in almost identical form in the updated Internal Guidance and in the Abbreviated Guide. The relevant phrase in the Gaza Strip section, "Israel is the occupying power in Gaza although it no longer has

a military presence there” is also in the updated Internal Guidance (although it no longer appears in the Abbreviated Guide).

The complainant confirmed that the arguments he raised throughout the course of the complaints apply also to the updated Internal Guidance. The arguments made at Stages 1 and 2 by both the complainant and Executive are outlined in this summary. To the extent that the Committee considered that any of the revisions in the updated Internal Guidance were relevant to their determination, this is discussed in the section of this document entitled The Committee’s Decision.

Settlements – Correspondence at Stage 1

The complainant contacted the BBC on 7 October 2011 stating that the BBC’s internal guidance to reporters on the status of settlements was misleading and “in all probability completely wrong”. He gave an example from the BBC News website of an article which had employed the terminology which states: “The settlements are illegal under international law, though Israel disputes this.”

The implication was, said the complainant, that Israel was the only relevant authority to disagree that the settlements were illegal, whereas the US also disagreed. He provided what he believed was evidence on the US position.

The complainant said he knew that the BBC guidance was based on a 2006 report by Noam Lubell for the then BBC Governors. The selection of that particular author had displayed a lack of impartiality by the then Governors, claimed the complainant, who said Mr Lubell was an active campaigner against settlements. The complainant pointed to what he considered to be mistakes in Mr Lubell’s report regarding this issue and set out in detail what he considered those mistakes to be.

The complainant chased the BBC for a response on 25 October 2011 and 7 November 2011, and corresponded further with BBC Audience Services on 11 November 2011.

The BBC News website’s Middle East Editor replied on 30 January 2012 apologising for the delay and explaining why he considered the BBC’s description of the settlements was fair and accurate:

“The UK government, the International Court of Justice and the current Secretary General of the UN say simply that the settlements are illegal under international law. This is the position of the vast majority of governments and international organisations.”

The Middle East Editor said that the description of the settlements as being illegal under international law was not based on Mr Lubell’s report but had pre-dated it. The position of the US government was important but not decisive, he added, pointing to the disinclination by recent administrations to address directly the question of legality because of the domestic political sensitivities in the US regarding Israel.

On 1 February 2012, the complainant wrote further to the Middle East Editor. He said the position of the UK Government and of most other governments on the matter was determined by foreign policy considerations, rather than by an examination of the law. He explained why he thought the ruling of the International Court of Justice in this matter was flawed and pointed to evidence that he said demonstrated that the US position was, in fact, based on law.

At the very least, concluded the complainant:

“...the statement that the settlements are illegal is just an assertion and not a fact and given the position of the US government on purely legal grounds, it is misleading to state it as fact and state that Israel disputes this without mentioning that the USA disputes it too”.

The complainant followed up the lack of response and on 1 May 2012, the Middle East Editor wrote to apologise for the delay, saying he had not realised one had been required. He said he had explained the position as clearly as possible in his January 2012 response and had nothing further to add. On 2 May 2012 it was explained to the complainant by the BBC Trust how he could, if he wished, pursue the complaint.

Settlements – Correspondence at Stage 2

The complainant wrote to the Head of Editorial Compliance and Accountability for BBC News on 6 May 2012. He said the arguments he had made had not been refuted or answered by the Middle East website editor.

The complainant said that because some other organisations agree with the viewpoint that settlements are illegal should not be sufficient for the BBC to take a decisive position on the matter, particularly when the US government takes what he called a firm stand to the contrary.

He asked that his arguments at Stage 1 also be taken into account.

The Gaza Strip – Correspondence at Stage 1

The complainant wrote to BBC Audience Services on 3 December 2011 to complain that its internal guidance to journalists on references to the Gaza Strip was incorrect. The guidance said that “under international law, Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there”.

The complainant said the Gaza Strip was not the territory of a recognised state, nor was it under the authority of the Israeli army. Israel no longer had a military presence there, the territory was under the authority of Hamas; Israel did not control vehicular access at the Rafah crossing point and, in any case, if it did have control of access, it would be in the context of on-going hostilities with the regime in Gaza, not in the context of an occupation.

On 8 December 2011, BBC Audience Services contacted the complainant requesting more detail on the internal guidance referred to. The complainant replied the same day with the web reference to the Abbreviated Guide.

The complainant said the Abbreviated Guide on the website was consistent with BBC reports by journalists from the Gaza Strip on the TV, Radio and Online.

The complainant said his complaint was specifically about the accuracy of the guide itself and not the accuracy with which the BBC website relates the guidance.

Following telephone calls to the BBC Trust, the Trust Unit wrote to the complainant on 2 May 2012 advising him that the correct route to escalate this complaint (and that relating to settlements above) would be to the Head of Editorial Compliance and Accountability for BBC News.

The Gaza Strip – Correspondence at Stage 2

On 6 May 2012, the complainant wrote to the Head of Editorial Compliance and Accountability for BBC News attaching his original complaint.

The complainant said he had received no response to his email of 8 December 2011, nor any form of argument against his complaint.

The complainant said the fact that Israel no longer occupied the Gaza Strip was acknowledged by the BBC in its guidance and that, "Even Hamas no longer claims that the Gaza Strip is still occupied by Israel."

East Jerusalem – Correspondence at Stage 1

The complainant wrote to Audience Services on 3 December 2011 about internal BBC guidance to journalists on terminology relating to East Jerusalem. He said that the guidance stated that "under international law, East Jerusalem is considered to be occupied territory", when, in fact, that was not so, unless the BBC meant that "some people considered it to be illegal under international law". If the expression "considered to be" was used, the BBC should say by whom, otherwise it implied in this context that agreement was universal, which was not the case.

On 8 December 2011, BBC Audience Services responded, explaining that the guidance referred to followed on from an independent report on BBC coverage of the Israeli-Palestinian conflict. The report had recommended that the BBC publish an abbreviated version of its journalists' guide to fact and terminology.

The complainant replied the same day, saying he knew that the guidance was based on Noam Lubell's report of 2006 for the then BBC Governors. He made the same point that he had made at Stage 1 of the Settlements complaint, that the selection of that particular author had displayed a lack of impartiality by the then Governors.

In support of a contrary view to the statement on East Jerusalem, the complainant made reference to an extract from a book by a former World Court president. It should also be noted, he said, that Jews were the largest ethnic group in what the BBC calls East Jerusalem for hundreds of years until the 20th century.

East Jerusalem - Correspondence at Stage 2

The complainant wrote to the Head of Editorial Compliance and Accountability for BBC News on 6 May 2012 stating he had received no response to his Stage 1 follow-up nor any rebuttal to the arguments he had raised in his original complaint.

He said that he was appealing the guidance on this and the other two issues because he believed that the guidance was wrong and therefore many BBC reports that follow that guidance were also wrong. He stated that

"...one reason that I am appealing the guidance in the first place, is that elements of previous appeals to the ECU on the three issues that are the subject of these appeals have been rejected on the grounds that the BBC journalists were following BBC guidance on these issues. The other reason is, of course, that I believe, for the reasons given, that the guidance is wrong and therefore many BBC reports that follow that guidance are also wrong, and the only way that I can appeal reports that follow the guidance (on the grounds of what they said that was

following that guidance was in error or lacking impartiality) is by complaining about the guidance itself. I will not repeat this statement in the other two appeals, even though this applies to them too.”

Stage 2 Outcome – settlements, the Gaza Strip and East Jerusalem

The Head of Editorial Compliance and Accountability for BBC News responded on 7 June 2012. She noted that all three complaints relate to BBC guidance on terminology and to avoid repetition she intended to deal with them together.

The Head of Editorial Compliance and Accountability advised the complainant that the key terms and facts that he had seen in the abbreviated guidance on the BBC website are far less detailed than the internal guidance that is made available to staff. The Head of Editorial Compliance and Accountability said she would therefore aim to reassure the complainant by giving him a sense of the more detailed document in her response.

On the issue of settlements, the Head of Editorial Compliance and Accountability said that she understood the complainant would like the BBC to “take a decisive position on the matter” but she said the BBC’s duty is simply to report accurately and impartially.

The complainant was advised that the fuller guidance states that many governments hold that Israeli settlements contravene the Fourth Geneva Convention, to the effect that “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

The fuller guidance, said the Head of Editorial Compliance and Accountability, also advises BBC journalists that Israel has rejected this argument and says that Jewish settlement in the West Bank and Gaza Strip territory “has existed from time immemorial”.

With regards to the Gaza Strip, the Head of Editorial Compliance and Accountability said the fuller guidance drew an important distinction between the legal position and how the reality on the ground should be described. Under international law, Israel was, strictly speaking, the occupying power in Gaza, even though it no longer had a permanent military presence there. In practice, it would be misleading to suggest the military occupation was continuing, and the BBC would not do so.

However, given the fact that Israel controlled most of the movements into Gaza, it would be wrong not to allow for this in the way the BBC described the position.

On East Jerusalem, the Head of Editorial Compliance and Accountability confirmed the information provided at Stage 1 that the terminology predated Noam Lubell’s February 2006 Report for the Impartiality Review.

The response noted that the fuller guidance includes the information that the status of Jerusalem is to be resolved by so-called “permanent status” negotiations between the two parties and that Israel and the PLO signed up to that position.

The Head of Editorial Compliance and Accountability concluded her Stage 2 response:

“We are satisfied with the robustness of our guidance to journalists on the three points you raise, and with the wider document which was endorsed by the then BBC Governors. In the Middle East, as is well known, language as well as territory is fought over by both sides, and the BBC has spent considerable time and effort in deciding which form of words it should use in the interests of impartiality. It

does not do so in anticipation that supporters of either or both sides will agree with each or all its decisions, and you clearly do not, but to ensure that it has considered the various arguments and adopted a consistent approach to its reporting the Middle East, which it believes it has.

“Our journalism must be judged on its own merits, however, and if the Editorial Complaints Unit or the BBC Trust were to uphold a complaint about any reporting that you might hear or see, they can require that we revise our guidance, as they did in fact in April 2009 on the specific issue of the US position.”

Appeal to the Trust

The complainant submitted separate appeals to the BBC Trust, one on each of the three complaints.

Settlements

On 29 June 2012, the complainant appealed to the BBC Trust. He made it clear that he objected to the combining of his three complaints and stated that a limit of 1,000 words at the appeal stage would not allow him to make his points clearly. Consequently the complainant set out his arguments at some length but also provided a summary.

The summary included the following points:

- the complainant did not want the BBC to take a “decisive position”, as was alleged at the previous stage. Instead, he had stated that the BBC, having taken a decisive position, had not had sufficient grounds for doing so;
- Article 49(6) of the Geneva Convention did not, in the complainant’s view, make the settlements illegal. He set out complex legal and historical arguments to support his case;
- the World Court advisory opinion was not, in the complainant’s view, “worth the paper it was written on”, but UN rules meant that the UN Secretary General was bound by it;
- the complainant disagreed with the BBC’s reading of the US position, and set out evidence in support of his view; and
- overall, the statement that “the settlements are illegal under international law” remained an opinion, rather than a fact, maintained the complainant, and its use was evidence of the BBC’s lack of impartiality.

On 9 July 2012 the complainant wrote, further to his appeal to the Trust, that the conclusions of a report by three international lawyers had just been published. He said the report had come to the firm conclusion that the settlements were legal.

The complainant said this was additional evidence that this was a controversial area where opinion should not be presented as fact. In any event, concluded the complainant, international law was determined by international treaty, not by UN resolution.

The Gaza Strip

The complainant wrote to the BBC Trust on 30 June 2012 restating the points he made in

his original complaint.

He rejected as “having no basis in fact” the assertion in the Stage 2 finding that Israel is still, strictly speaking, the occupying power in Gaza.

The complainant said that Israel did have military control of the skies and of the sea well beyond the Gaza coast because that reflected the state of play in the conflict. But it did not occupy any part of the Gaza Strip, have any control of land borders with Egypt, or control vehicular access to Gaza.

As well as being factually wrong in saying that Israel was “still the occupying power in Gaza”, the complainant said that the guidance also lacked impartiality because it withdrew all credit to Israel for the risk that it took and the harm that the people of southern Israel have suffered, as a consequence of Israel’s withdrawal from a still hostile Gaza.

East Jerusalem

On 30 June 2012 the complainant contacted the BBC Trust, saying he wished to appeal against the decision made by the Head of Editorial Compliance and Accountability, BBC News. He said that many of the points he would be raising were also relevant to his appeals on settlements and the Gaza Strip.

The complainant stated that the issues related to international law and history and it was impossible to do justice to the matter in 1,000 words. The complainant set out his arguments at some length but also attached a summary which he said included the most important parts of his appeal, which are summarised here.

He reiterated the argument he had made at Stage 1, saying that the BBC’s guidance that “under international law, East Jerusalem is considered to be occupied territory” was inaccurate and lacked impartiality. The form of words was misleading and should not be used, he said, because the implication in this context was that everyone agreed it was occupied territory, which was far from the case.

In support of his case the complainant pointed to aspects of international law, citing the 1907 Hague Convention and the 1949 4th Geneva Convention, as well as an extract from a book by a former president of the International Court of Justice.

The appeal concluded:

“The guidance clearly gives the Palestinian point of view, which is the opposite from the Israeli point of view. The guidance clearly lacks impartiality.”

Stage 3 – Pre-Appeal Correspondence

The Senior Editorial Strategy Adviser for the BBC Trust wrote to the complainant on behalf of the Head of Editorial Standards on 23 August 2012 and advised that, in the opinion of the Head of Editorial Standards, none of the complaints would have a reasonable prospect of success and therefore should not proceed to appeal.

The Senior Editorial Strategy Adviser noted that the BBC’s Editorial Guidelines had not been directly engaged and the complaints had not been about any specific item of BBC output. The response noted the complainant’s acknowledgement of this and noted too why the complainant felt compelled to raise the issues in the way that he had.

The Senior Editorial Strategy Adviser said that the complainant had not suggested that the published guidance was in any way out of line with the conclusions or recommendations of the independent review commissioned by the BBC Governors.

She concluded that the issues raised therefore related to the review itself and in particular, to Annex D of the review, "Key issues in the Israeli-Palestinian conflict from the viewpoint of international law"

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/govs/lubell_law_report.pdf

The Senior Editorial Strategy Adviser said that the Head of Editorial Standards had considered the arguments and advised that she considered it unlikely that the ESC would consider it to be its role to debate the aspects of international law referred to by the complainant, or wish to overrule the findings of expert contributors to the 2006 independent review on those particular matters.

The response noted that the review panel called witnesses and consulted fully at the time, inviting written submissions from anyone who wanted to comment on the BBC's coverage of the Israeli-Palestinian conflict. The Senior Editorial Strategy Adviser said the various perspectives would have been thoroughly considered and taken into account then.

She concluded that the Trustees would be unlikely, as a result of the issues raised in these appeals, to commission a further independent study at this time.

The complainant was given the opportunity to challenge the Head of Editorial Standards' recommendation prior to its ratification by the Trust at its meeting on 19 September 2012.

The complainant proceeded to challenge the recommendation. Both the recommendation and the complainant's challenge were considered by the Editorial Standards Committee on 19 September 2012.

In his challenge to the decision of the Head of Editorial Standards not to proceed with his complaint, the complainant included additional information in support of his allegations. The Committee took account of this additional information when considering the appeal.

The Committee decided to consider the three issues raised by the complainant as outlined under the heading "The complaint", above.

3. The Committee's decision

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

Unusual circumstances in this appeal

As a preliminary point, the Committee noted that this appeal does not relate to output in the traditional sense but concerns Internal Guidance, which is not available to the public and an Abbreviated Guide which is wholly derived from the Internal Guidance and which is published on the BBC website.

The Committee noted that the introduction to the Internal Guidance explicitly states that this document is not a prescriptive guide against which the impartiality of output should

be measured:

ISRAEL & THE PALESTINIANS
An A to Z of some key points
Updated February 2013

The Middle East is one of the most complex and controversial areas of the world for journalists to cover.

This guide aims to help give both historical background and information on key recent developments in the conflict between Israel and the Palestinians. There is a brief summary of some of the key players and issues, and an understanding of the terminology that is used.

This is not a prescriptive guide against which the impartiality of our output should be measured. Nor is it intended to limit the search for objective and accurate language to describe any given situation which might face us. But it does aim to help you understand some of the background to the conflict, identify some of the journalistic dangers, and to highlight the language in which we might choose to report it.

The Committee noted that, as a general rule, it tends to consider output i.e. something that has been broadcast on BBC radio or television or published on a BBC website. It does not normally consider Internal Guidance. The Committee agreed that the following factors were influential in its decision to take this appeal:

- the Abbreviated Guide (which is wholly derived from the fuller Internal Guidance) is published on the BBC website;
- the Executive referred to the Internal Guidance in detail during the course of correspondence with the complainant and relied on it in making decisions about the points that were raised; and
- previous complaints in which the complainant had referred to specific items of output had been unsuccessful on the basis that the specific items of output had been in line with the Internal Guidance (and so the complainant may have been left with no route of complaint if this appeal had not been taken).

The Committee agreed that the circumstances of this appeal were exceptional and that each appeal must be considered on a case by case basis. On this occasion, Trustees agreed that it was appropriate to take this appeal, particularly as the Executive had quoted at length from the Internal Guidance when seeking to reassure the complainant about the content of the Abbreviated Guide published on the BBC website. The Committee also noted that the nature of the Internal Guidance was such that it was likely to have a direct impact on the content of items of output. However, the Committee stressed that the nature of the Internal Guidance was not in itself determinative in its decision to take this appeal and that it reached the decision to take this appeal as a result of the combination of factors outlined above. The Committee emphasised that the decision as to whether or not to take an appeal must be judged on its merits and that it would only consider internal guidance in the most exceptional circumstances.

Role of the Committee

The Committee noted that the Middle East remains one of the most difficult areas for

journalists to cover, given the complexity of the subject area and the divergence of opinions on a wide range of issues relating to the Middle East. It recognised that there was a lack of agreement on many key issues concerning the conflict in the Middle East and that this was a highly sensitive area. The members of the Committee noted that as a body they comprise Trustees who are professional decision makers and are accustomed to dealing with complex appeals, but they are not experts on the Middle East or in International Law. To the extent that there are divergent points of view as between the complainant and the BBC (or as between academics and commentators in this area), it is not the role of the Trustees to resolve these disputes or to reach a definitive conclusion as to who is right or wrong. Rather, the role of the Trustees is to assess whether the Internal Guidance (and, where appropriate, the Abbreviated Guide) complies with the Guidelines relating to Accuracy and Impartiality, bearing in mind the controversial subject matter they cover, and lack of agreed factual position between the various parties to the debate. It is not necessary for the Internal Guidance and the Abbreviated Guide to cite every opposing view or to list every argument in the debate in order for the Guidelines to be complied with: the question is whether these documents are "duly" accurate. "Due" accuracy does not require the totality of every conceivable position or interpretation of every issue to be reflected or included on every occasion. The Trustees agreed that, as with all appeals, their role was to test the content against the Editorial Guidelines and to form a view as to whether these had been complied with.

The approach to be taken in this appeal regarding the endorsement of the phrases in 2006

The Committee noted that the terminology employed in the Internal Guidance that is the subject of this appeal in relation to the status of settlements, the Gaza Strip and East Jerusalem also featured in the older version of the Internal Guidance. The Committee noted that the language had been endorsed by the Board of Governors following the report from Noam Lubell that was prepared as part of the impartiality review which was commissioned by the Governors into the BBC's coverage of the Israeli-Palestinian conflict.

The Committee noted that in the course of the correspondence (and in the presentation of the three issues raised in this appeal) the complainant challenged the findings of the 2006 independent review commissioned by the BBC Governors into the BBC's coverage of the Israeli-Palestinian conflict. The Committee noted too that the complainant questioned the selection of Noam Lubell to prepare a report about the main issues, alleging he had neither the credentials nor the ability to comment on the relevant issues and that he could not be considered impartial.

The Committee also noted that the panel appointed by the BBC Governors for the 2006 review called witnesses and consulted fully at the time, inviting written submissions from anyone who wanted to comment on the BBC's coverage of the Israeli-Palestinian conflict and therefore it was reasonable to assume that the various perspectives would have been thoroughly considered and taken into account then.

The Committee agreed (as outlined above) that it was not its role to look behind decisions made by its predecessors on the Board of Governors, nor that body's decision that Noam Lubell was an appropriately qualified person to advise them on the matters under consideration. Nor did the Committee consider that it was appropriate or necessary to look behind the conclusions of the report that Noam Lubell authored, which was annexed to the report issued by the Governors following the independent review. The Committee emphasised that it would not therefore address (in relation to the issues which are the subject of this appeal) those arguments that were considered by the BBC Governors in 2006, including the interpretation of international law and the applicability of the Fourth

Geneva Convention to the West Bank, East Jerusalem and the Gaza Strip.

The approach to be taken in this appeal regarding new events on the ground since 2006

The Committee noted that guidance (unlike an item of editorial output) has continuing application. The Committee noted that, in the course of this appeal, the complainant had raised arguments to the effect that the situation on the ground has changed to such an extent that it is no longer appropriate to continue to use the terminology complained of. The Committee agreed that, for the purposes of determining this appeal, it was appropriate for it to consider whether it is no longer duly accurate or duly impartial for the Internal Guidance to say that "settlements are illegal under international law", "East Jerusalem is considered to be occupied territory" and "Israel is still the occupying power in Gaza, although it no longer has a military presence there" in light of new events on the ground. Thus, although the Committee would not look behind the conclusions of the Lubell report or the decisions of the Board of Governors back in 2006, it would consider whether the landscape has changed to such an extent that it is no longer accurate to use the phrases complained of.

The Committee moved on to consider each phrase in turn in order to assess whether there had been a breach of the Editorial Guidelines.

Point (A) – regarding the complainant’s allegation that, in relation to settlements, the BBC is wrong to state decisively they are illegal under international law and that by doing so, the BBC is showing a distinct lack of impartiality

Extracts from the Internal Guidance and Abbreviated Guide

The Committee noted the relevant content in the Abbreviated Guide. The phrase that the complainant takes issue with has been highlighted for ease of reference:

Settlements

The presence of settlements is one of the most contentious issues of the Israeli/Palestinian conflict and is considered a 'final status issue'. Settlements are residential areas built by the Israeli government in the territories occupied by Israel following the June 1967 war. **They are illegal under international law** – that is the position of the UN Security Council. Israel rejects this assertion.

When writing a story about settlements, BBC journalists can aim, where relevant, to include context to the effect that 'all settlements in the West Bank, including East Jerusalem, are considered illegal under international law, though Israel disputes this'.

It is normally best to talk about 'Jewish settlers' rather than 'Israeli settlers' – some settlers are not Israeli citizens. Settler motivations vary from financial to ideological reasons. Many Palestinians see the settlements as one of the most damaging aspects of the occupation and a way to prevent the creation of a viable future Palestinian state.

There are approximately 501,856 Jewish settlers living in the West Bank: 190,425 in neighbourhoods in East Jerusalem and 311,431 in the rest of the West Bank (source: Israel Central Bureau of Statistic, the Jerusalem Institute for Israel Studies, 2010). A further 20,000-odd are living in the Golan Heights.

Israel unilaterally withdrew from all of its settlements in the Gaza Strip and four in the northern West Bank in 2005. It is best wherever possible to be precise about geography when putting a figure to the number of settlers because of disputes and sensitivity over the status of East Jerusalem.

The Committee noted the relevant content in the fuller Internal Guidance (on which the published Abbreviated Guide is based) including the phrase that the complainant takes issue with (which has been highlighted in this finding for ease of reference):

February 2013 updated version

SETTLEMENTS

The presence of settlements is one of the most contentious issues of the Israeli/Palestinian conflict and it is considered a 'final status issue'. Settlements are residential areas built by the Israeli government in the territories occupied by Israel following the June 1967 war. **They are illegal under international law** – that is the position of the UN Security Council. Israel rejects this assertion.

In 2009 Israel agreed, at President Obama's insistence, to a temporary and limited 'freeze' on settlement construction in the West Bank (but not East Jerusalem). Israel has refused to extend this. Continued settlement building is one of the reasons why direct negotiations between Israel and the Palestinians have broken down. The Palestinian delegation wants a freeze on settlement building during talks.

In November 2012 Israel announced plans to build 3,000 new settlement units in East Jerusalem and other parts of the West Bank, including reported preliminary planning in the 'E-1 envelope' which risks cutting East Jerusalem off from the rest of the West Bank. This would have implications for any future Palestinian state. The announcement was immediately criticised by the UN, US and European states including the UK, Germany and France.

When writing a story about settlements we can aim, where relevant, to include context to the effect that:

All settlements in the West Bank, including East Jerusalem, are considered illegal under international law. (But note US position, below).

Israel has occupied Gaza, and has continued to occupy the West Bank, including East Jerusalem since 1967.

It is normally best to talk about "Jewish settlers" rather than "Israeli settlers" – some settlers are not Israeli citizens.

Palestinians see the settlements as one of the most damaging aspects of occupation and many believe they reflect an Israeli desire never to give up their hold on land and to prevent the creation of a Palestinian state.

Many settlers, however, are motivated by their belief in Eretz Israel and their belief that the West Bank (Judea and Samaria) rightfully belongs to them and not to the Palestinians.

Israel disputes that the settlements are illegal.

Settlements vary in size but some have developed into sizeable towns. The size of a settlement is also much larger than simply the number of houses in it, as surrounding land is expropriated for 'security' and roads built purely for settler-use.

SETTLEMENTS – LEGAL POSITION

The UN believes that settlements have no legal validity and obstruct the peace process (e.g. Security Council Resolution 446, 22 March 1979).

Many governments also hold that Israeli settlements contravene the Fourth Geneva Convention, which states that 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.' Its primary goal was to protect local populations and to ensure that their territory's demographic and cultural character would remain intact until its status was finally determined.

Israel has vigorously rejected this argument – saying the Fourth Geneva Convention does not apply to the West Bank and Gaza. It has argued that "the Jewish right of settlement in the area is equivalent in every way to the right of the local population to live there" on the basis that "Jewish settlement in West Bank and Gaza Strip territory has existed from time immemorial."

SETTLEMENTS – US POSITION

The US position on the legality of Israeli settlements has been one of studied ambiguity.

While it is opposed to settlement expansion, frequently describing it as "an obstacle to peace", for the past 30 years the US has largely avoided expressing a public position on the legality of settlements.

On one hand, the US is a member of the UN, which holds that settlements have no legal validity and obstruct the peace process. It voted for UN Security Council resolution 465 (1980) which says: "...that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East."

The US is also a signatory to the Fourth Geneva Convention. This states that 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.'

For the past 30 years, however, the US has been reluctant to take a public position on this legal issue, preferring to focus on the policy aspect.

Under the first phase of the Road Map (2003), Israel is required to halt all settlement expansion, including 'natural growth.' But President George W Bush wrote to then Prime Minister Ariel Sharon in April 2004 to say that:

"In light of new realities on the ground, including already existing major Israeli

population centers, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949..."

After an edition of From Our Own Correspondent, the BBC Trust ruled (April 2009) that "there was no evidence" to suggest that it was the official position of the US that the settlement of Har Homa (which featured in the programme) was illegal under international law "whatever its private position".

The State Department told the BBC in June 2009 that settlement activity – "both actions and announcements" – damages the atmosphere for negotiations and is inconsistent with commitments previously made by Israel".

In his Cairo speech of 4 June 2009, President Obama said: "The United States does not accept the legitimacy of continued Israeli settlements" and "It is time for these settlements to stop".

Ten days later, on 15 June, President Obama said:

"I think the parties on the ground understand that if you have a continuation of settlements that, in past agreements, have been categorized as illegal, that's going to be an impediment to progress"

Question 1: Has there been a breach of the Accuracy Guidelines?

Points raised by the complainant

The Committee noted how the complainant summarised the allegation in his appeal that the BBC has insufficient grounds on which to take what he views as a decisive position on the legality of the settlements:

"The statement that 'The settlements are illegal under international law' is far too definite to state as an objective fact, given all the evidence to the contrary. When qualified by the observation that Israel refutes it, it is stating it as a fact, and implying that Israel is lying about that fact. The effect is similar when you say 'the settlements are considered to be illegal under international law'. It does not say by whom, and implies that international lawyers are generally agreed on the matter, when I could list many that consider the settlements to be legal, foremost of whom is a former president of the World Court."

The Committee noted further correspondence subsequent to the lodging of his appeal in which the complainant wrote:

"The alternative version of the statement, that the settlements are considered illegal under international law, begs the question 'By whom?'. Israel certainly does not deny that some people consider the settlements to be illegal; they just consider those people to be wrong. If that is a justification on grounds of accuracy for the statement, it renders the statement totally without purpose except to mislead the listener/viewer/reader."

And the Committee noted the complainant's argument that:

"By stating as fact what is just an opinion, and one taken forcefully by one side in the Israel Palestine dispute and opposed equally forcefully by the other side, the BBC is showing a distinct lack of impartiality."

The Committee noted the complainant's assertion that the statement, "The settlements are illegal under international law, though Israel disputes this", implies that Israel is the only relevant authority that disputes this, whereas in fact the USA does too.

The Committee noted the complainant's assertion that the US has consistently vetoed any UN Security Council resolution that referred to the settlements as illegal since well before the Oslo Accords, including as recently as 2011 and that "It is clear the USA considers the settlements to be legal and acts accordingly."

The Committee noted the complainant's citation of a media briefing by Susan Rice, the US Ambassador to the UN in February 2011 in support of his assertion. The briefing followed the US veto of a UN resolution stating that settlements are illegal. In the briefing Ambassador Rice is quoted as saying, "The United States has not characterised settlement activity as illegal since, I believe, 1980."

The Committee noted the content of correspondence from the complainant on 9 July 2012, further to his appeal to the Trust, which referred to the conclusions of a report by three international lawyers which had just been published and the complainant's assertion that the report had come to the firm conclusion that the settlements were legal.

The Committee noted his assertion that the report was additional evidence that this was a controversial area where opinion should not be presented as fact and the complainant's claim that international law was determined by international treaty, not by UN resolution.

In accordance with its decision not to revisit matters for this appeal which had previously been considered by the BBC Governors in 2006, the Committee did not reach a view on the remaining evidence cited by the complainant which would also have been available to the independent review team appointed by the BBC Governors in 2006.

The wording in the Accuracy Guidelines

In reaching its decision as to whether the statement is duly accurate the Committee considered this extract from the Accuracy Guidelines:

"3.1 The BBC is committed to achieving due accuracy... The term 'due' means that the accuracy must be adequate and appropriate to the output taking into account the subject matter and nature of the content, the likely audience expectation and any signposting that may influence that expectation."

"Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should be weighed to get at the truth."

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

Whilst the Committee noted that the Internal Guidance is not output in the traditional sense, it nevertheless considered that the themes and principles outlined in 3.1 and 3.2.2 can be applied to the Abbreviated Guide and Internal Guidance such that it can test whether the statement that "settlements are illegal under international law" is duly accurate taking into account:

- the subject matter and nature of the content;
- the likely audience expectation;
- any signposting that may influence audience expectation;
- (if the issue is controversial) whether relevant opinions as well as facts were considered and whether they were weighed to get at the truth;
- whether the relevant phrase in the Internal Guidance (and Abbreviated Guide) is well sourced; and
- whether the relevant phrase in the Internal Guidance (and Abbreviated Guide) is based on sound evidence.

The Committee noted that the wording that is the subject of this appeal is not editorial content in the traditional sense – its stated intention as signposted in the introduction to the Internal Guidance is to equip journalists with adequate information to “help you understand some of the background to the conflict, identify some of the journalistic dangers, and to highlight the language in which we might choose to report it”.

The audience for the Internal Guidance consists of journalists working for the BBC who would be expected to have an appreciation of how the Internal Guidance sits alongside the Editorial Guidelines within the overall framework of editorial standards. The audience for the Abbreviated Guide consists of the users of the BBC website who are informed that the content they are viewing is an abbreviated document and that the intended audience for the fuller document are BBC journalists.

The Committee agreed that the Abbreviated Guide and the Internal Guidance undoubtedly deal with a controversial subject in accordance with the definition set out in the Guidelines.

Is the phrase complained of presented as a categorical statement of fact?

The Committee noted that the status of settlements is a contentious issue. It agreed that, in order to assess whether the statement that “settlements are illegal under international law” was in breach of the Accuracy Guidelines, it would be helpful to form a view as to whether that statement was presented as a categorical statement of fact (thereby implying that there is absolutely no dispute regarding the status of settlements – which is not the case).

The Committee noted that the statement complained of is immediately followed by the words “that is the position of the UN Security Council”. Ascribing the view that settlements are “illegal under international law” to the UN Security Council qualifies the statement and suggests that it is not necessarily a universally held view.

The Committee also noted that the phrase that “settlements are illegal under international law” was one sentence in a much longer section, which includes a series of sub-sections. Taken as a whole, the Internal Guidance on settlements explains in considerable detail where the principal parties stand on the issue of settlements; the basis on which settlements are considered illegal under international law; the reasons why Israel rejects the assertion; and that the US has chosen a different form of wording to explain its position. To the extent that these points are not covered as fully in the Abbreviated Guide, the Committee judged that an audience could not reasonably expect a summary document to contain as much detail as fuller guidance.

The position taken by the US

The Committee noted the assertion made by the complainant that the position of the US

is that settlements are legal, as well as the evidence raised by the complainant to support this view.

In particular, the Committee noted that the complainant cited a statement made in a media briefing in February 2011 by Ambassador Rice following her country's veto of a resolution which would have characterised settlements as illegal in which the Ambassador stated that "the United States has not characterized settlement activity as illegal since, I believe 1980".

However, the Committee noted the further context in the media briefing whereby Ambassador Rice went on to say "the difficulty from our point of view is that a resolution on that issue at this time, which was unbalanced and one sided, was most likely to harden the position and leave the two parties more entrenched and less willing to return promptly and constructively to the only vehicle that can achieve the goal of a two state solution, and that's direct negotiations".

The Committee also noted that further wider context for the decision by the US to veto the resolution was provided in a statement to the UN Security Council where the Ambassador said:

"Our opposition to the resolution before this Council today should therefore not be misunderstood to mean we support settlement activity. For more than four decades, Israeli settlement activity in territories occupied in 1967 has undermined Israel's security and corroded hopes for peace and stability in the region. Continued settlement activity violates Israel's international commitments, devastates trust between the parties and threatens the prospects for peace."

The Committee did not agree with the complainant's interpretation of the stance taken by the US in relation to settlements. The Committee acknowledged that, in Ambassador Rice's words, the US "has not characterized settlement activity as illegal" in recent years but it regarded this as far from being an assertion that the US believed the settlements to be legal. Furthermore, even if it was the case that the US firmly believed they were legal, the Committee did not consider that due accuracy necessitated mentioning the stance taken by the US.

New events on the ground

The Committee then moved on to consider new events on the ground. The Committee did not consider that there were any relevant changes on the ground since 2006 which mean that the wording is no longer appropriate. The Committee noted that the complainant made reference to a recent legal opinion that came to the conclusion that settlements were legal and that the conclusion that the three Israeli lawyers came to was that "Israelis have the legal right to settle in Judea and Samaria and the establishment of settlements cannot, in and of itself, be considered illegal". The Committee noted that the opinion seemed to base its conclusion on evidence that would have been available to the Independent Panel in 2006 (given that it based its conclusion on the applicability of the Fourth Geneva Convention) and, accordingly, was not dealing with issues that would not have been before the Board of Governors in 2006.

Conclusion of the Committee regarding the Accuracy Guidelines

In light of the factors referred to above regarding signposting, audience expectation, the manner in which the statement is qualified so as not to be presented as a categorical statement of fact and the lack of substantive changes on the ground, the Committee

agreed that the phrase that “settlements are illegal under international law” (which features in both the Abbreviated Guide and the Internal Guidance) is duly accurate.

Additional point raised by the complainant regarding International Law

The Committee noted that throughout the course of this appeal there have been discussions as to what constitutes “international law” and that the complainant has asserted that international law is determined by international treaty and not by UN resolution.

The Committee noted that a section on international law had been added to the Internal Guidance in February 2013. The wording of this section is outlined below:

INTERNATIONAL LAW

There are many sources of law, not all of which are consistent, and in the absence of regular clarification through the courts (which does not occur) it can be difficult to determine the precise content of international law at any given time.

It is generally accepted, however, that Article 38 of the 1946 International Court of Justice statute accurately lists the sources of international law – which are treaties, state practice or custom, the general principles of civilised nations and judicial decisions and juristical writing. (It is, however, also argued by some that United Nations resolutions are an additional source of international law, because Article 38 is based on the 1920 Statute of the Permanent Court of International Justice, which was obviously written before today’s international organisations had been created.)

The Committee did not consider that it needed to reach a view on the answer to this question for the purpose of determining any of the issues in this appeal. However, the Committee expressed the view that the addition to the Internal Guidance regarding international law was helpful in so far as it reflects that there is not complete agreement within the international community as to what constitutes “international law”. Furthermore, the inclusion of this text seems to indicate a desire to keep the Internal Guidance up to date and this was welcomed by the Committee.

Question 2: Has there been a breach of the Impartiality Guidelines?

The wording of the Impartiality Guidelines

The Committee then considered the Impartiality Guidelines. They noted the following aspects of the Impartiality Guidelines:

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

“The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy.”

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

"4.4.1 Across our output as a whole, we must be inclusive, reflecting a breadth and diversity of opinion. We must be fair and open-minded when examining the evidence and weighing material facts. We must give due weight to the many and diverse areas of an argument."

"4.4.5 We must apply due impartiality to our subject matter. However, there are particular requirements for 'controversial subjects', whenever they occur in any output ... a 'controversial subject' may be a matter of public policy or political or industrial controversy. It may also be a controversy within religion, science, finance, culture, ethics and other matters entirely."

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

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

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

"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."

Whilst the Committee noted that the Internal Guidance is not output in the traditional sense, it nevertheless considered that the themes and principles outlined in the extracts above can be applied to the Internal Guidance such that it can test whether the statement that "settlements are illegal under international law" is duly impartial.

The Committee considered the following questions:

- is the impartiality adequate and appropriate taking into account the subject matter and nature of the content, likely audience expectation and any signposting that may influence the expectation?

- do the Internal Guidance and the Abbreviated Guide deal with a controversial subject?
- if so, are a broad range of views reflected in the Internal Guidance and are a wide range of significant views and perspectives given due weight and prominence?
- is fact distinguished from opinion?

In reaching its view as to whether the phrase meets the guideline tests for Impartiality in so far as they have been deemed to apply in this appeal, the Committee considered that the following factors were relevant:

- the wording that is the subject of this appeal is not editorial content in the traditional sense – its stated intention as signposted in the introduction to the Internal Guidance is to equip journalists with adequate information to

“help you understand some of the background to the conflict, identify some of the journalistic dangers, and to highlight the language in which we might choose to report it.”
- the audience for the Internal Guidance consists of journalists working for the BBC who would be expected to have an appreciation of how the Internal Guidance sits alongside the Editorial Guidelines within the overall framework of editorial standards
- the audience for the Abbreviated Guide consists of the users of the BBC website who are informed that the content they are viewing is an abbreviated document and that the intended audience for the fuller document are BBC journalists
- the intention of the document is signposted to the audience in the introduction: journalists are explicitly advised that the Internal Guidance is intended as a starting point and is not intended to be

“a prescriptive guide against which the impartiality of our output should be measured. Nor is it intended to limit the search for objective and accurate language to describe any given situation...”
- the Abbreviated Guide and the Internal Guidance undoubtedly deal with a controversial subject
- the section on settlements reflects the views of the principal parties (i.e. it sets out views from both the Palestinian and the Israeli perspective)
- the statement that “settlements are illegal under international law” is qualified by what immediately follows it
- it is also qualified by the wider context in the remainder of the section dealing with settlements. For example, the Internal Guidance relating to settlements contains additional context as to the Palestinian perspective (Palestinians are described as seeing the “settlements as one of the most damaging aspects of occupation”) and the perspective of many of the settlers (who are described as being “motivated in their belief in Eretz Israel and the belief that the West Bank ... rightfully belongs to them”)
- whilst additional context explaining the background to the Palestinian and Israeli views on settlements does not appear in the Abbreviated Guide, that Guide is

signposted as being an abbreviated version of a fuller document thus managing audience expectation as to the extent to which a range of views might be reflected.

Conclusion regarding the Impartiality Guidelines

In light of the factors outlined above, the Committee concluded that there had been no breach of the Impartiality Guidelines in relation to this aspect of the complaint.

Finding: Not upheld.

Point (B) – regarding the complainant’s allegation that it is factually wrong to state that “under international law, Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there” and that it lacks impartiality.

The phrase that the complainant takes issue with in relation to the Gaza Strip does not appear in the updated version of the Abbreviated Guide which was published in February 2013 and hence the Trustees moved on to consider the Internal Guidance.

Relevant extracts from the Internal Guidance

These are the relevant extracts from the Internal Guidance (the phrase that the complainant takes issue with is in bold and underlined for ease of reference):

February 2013 updated version

GAZA STRIP

The Gaza Strip was occupied by Israel when it captured it during the 1967 Six Day war. See War – 1967.

Under the Oslo Accords approximately 80% of Gaza was handed over to the Palestinian Authority to administer. Its permanent status is to be determined through negotiation between the two parties.

In 2012 the UN said that the Gaza Strip would become “unliveable by 2020” if worsening economic, sanitation and humanitarian issues were not tackled.

GAZA STRIP – BLOCKADE

Restrictions on access to Gaza were extensively tightened by Israel in June 2007, after Hamas violently forced out rival Fatah from the running of the Gaza Strip.

The Israeli cabinet designated Gaza as ‘hostile territory’ and imposed economic sanctions including the restriction of movement and goods. Israel says this is in response to rockets fired from Gaza towards Israel. The restrictions came to be known as the blockade. When referring to the blockade the word ‘tightened’ rather than ‘introduced’ is an appropriate phrase for the events in 2007 because the blockade existed before it was extended in that year.

In 2010 the Israeli government eased some of its 2007 restrictions after international criticism against the developing humanitarian crisis in Gaza, due to lack of food, water, basic medical and daily necessities.

The Quartet, the diplomatic grouping of the US, the UN, Russia and the EU has criticised the blockade. The UN Office for the Co-ordination of Humanitarian Affairs says the blockade "is a denial of basic human rights in contravention of international law and amounts to collective punishment".

In November 2012 Israel launched Operation Pillar of Defence, an aerial and naval offensive, to damage Hamas military infrastructure and stop rocket fire from Gaza into Israel. A ceasefire deal was later reached. One of the terms of the ceasefire related to an easing of the blockade. Hamas and Israel are still negotiating exact terms through Egypt. Since the ceasefire, there has been a slight easing of restrictions on the blockade.

When reporting on any conflict over Gaza we should try to explain some of the immediate context – for example the stated reason for Israeli military action might be to stop rocket fire from Gaza. We should also try to explain why Palestinian fighters say they fire rockets – for example, their demand for freedom.

GAZA STRIP – DISENGAGEMENT

In 2005, Israel completed the withdrawal of all its troops and settlers from the Gaza Strip. It retains control of the airspace, seafront and all vehicle access – including deliveries of food and other goods. All movement in and out of the Gaza Strip is controlled by Israeli authorities, except the pedestrian-only Rafah crossing between Gaza and Egypt.

To circumvent these restrictions as many as 1,000 tunnels have been constructed under the Egypt/Gaza border. The tunnels are used to smuggle goods, including construction material, creating an alternative economy. The Egyptian authorities have intermittently cracked down on the tunnel industry.

Under international law, Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there and disputes this analysis. We need to be careful with our language so as not to give the impression that the BBC is favouring one side's position. In BBC programmes it is more accurate to talk about an "end to Israel's military presence" rather than the end of occupation.

Under international law, only the High Contracting Parties to the Geneva Convention (with advice from the UN Security Council) can formally declare an end to occupation.

The bureau's advice on the language to use to describe Israel's pull-out from the Gaza strip is to refer to it as a "pull-out", "withdrawal" or "evacuation". If the official Israeli term for the move, "disengagement", is used it is usually better to attribute it.

Question 1: Has there been a breach of the Accuracy Guidelines?

Allegations made by the complainant

The Committee noted the way in which the complainant framed the allegation for this appeal:

“Under international law Israel is very definitely NOT still the occupying power in Gaza. The guidance is factually wrong and also lacks impartiality, because the guidance is prejudicial to Israel and withdraws all credit to Israel for the risk that it took, and the harm that the people of southern Israel have suffered (from rocket attacks from Gaza) as a consequence of Israel’s total withdrawal from a still hostile Gaza.”

The Committee noted that the complainant’s starting point is that Gaza has never been occupied territory under international law. It agreed that this particular point will not be considered in this appeal (as it relates to material considered by the Independent Panel reviewing the impartiality of coverage of the conflict in 2006 and endorsed by the BBC Governors).

The Committee noted that the complainant referred to the particular circumstances which have prevailed since 2005 when Israel vacated the Gaza Strip settlements and withdrew all of its troops:

“The Gaza Strip ... is not even partially occupied now. Occupation is determined under international law by whether the facts on the ground fit the legal definition of occupation. It has nothing to do with any declaration. The Security Council is a political body and can express an opinion but that opinion makes no difference to the facts as to whether a territory is occupied or not under international law.”

The Committee noted the complainant’s argument that the territory is under the control of Hamas, a “hostile power”, and that any control Israel exercises is not because it is in occupation of the territory but rather is in the context of ongoing hostilities with Hamas:

“The Hamas regime in the Gaza Strip is, by its own choice, in a state of war with Israel. Israel does have military control of the skies and of the sea well beyond the Gaza Coast. That just reflects the state of play in the conflict. Israel does not occupy any part of the Gaza Strip nor does it have any control of Gaza’s land border with Egypt. Israel certainly does NOT control all vehicular access to Gaza. There are tunnels into Egypt which cars can and do drive through and so many new cars have been driven through those tunnels that there is (or was recently) a glut of new cars for sale within the Gaza Strip. Of course Israel controls vehicular access across its own border; that is normal and does not indicate any form of occupation. The Gaza regime also controls what passes across that border and does not indicate any form of occupation of Israel.”

The Committee noted the complainant’s assertion that the situation in the Gaza Strip has undergone considerable changes since the Lubell report was written in 2006 and his assertion that there are now about 1200 tunnels, some of which are effectively concrete lined single carriageway tunnels providing vehicular access to and from Egypt. The Committee noted a link provided by the complainant to an online article quoting the Palestinian website *Palestine Today* as the source for his information that there was recently a glut of new cars for sale in the Gaza Strip and his assertion:

“It is very clear now that the relationship between Israel and the regime in Gaza is that of combatants, not of occupier and occupied.”

The Committee noted the complainant’s assertion that “even Hamas no longer claims that the Gaza Strip is still occupied by Israel”. It noted too the evidence he cited in support of his assertion, an article on the Palestinian Ma’an News Agency website featuring an article from 3 January 2012 in which a Hamas leader, Mahmoud Zahhar, is quoted as talking of

Israel's occupation of Gaza in the past tense.

The Committee noted the complainant's assertion that changes on the ground meant that Israel could no longer be considered the occupying power in the Gaza Strip and his view that the only international legal determination of what constitutes occupation is in Section 3, Article 42 of the 1907 Hague Convention:

"Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

The wording of the Accuracy Guidelines

Whilst the Committee noted that the Internal Guidance is not output in the traditional sense it nevertheless considered that the themes and principles outlined in 3.1 and 3.2.2 can be applied to the Internal Guidance such that it can test whether the statement that "Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there" is duly accurate taking into account:

- the subject matter and nature of the content;
- the likely audience expectation;
- any signposting that may influence audience expectation;
- (as the issue is controversial) whether relevant opinions as well as facts were considered and whether they were weighed to get at the truth;
- whether the relevant phrase in the Internal Guidance is well sourced; and whether the relevant phrase in the Internal Guidance is based on sound evidence.

The Committee noted that the wording that is the subject of this appeal is not output in the traditional sense. Its stated intention as signposted in the introduction to the Internal Guidance is to equip journalists with adequate information to "help you understand some of the background to the conflict, identify some of the journalistic dangers, and to highlight the language in which we might choose to report it". The Committee also noted that the audience for the Internal Guidance consists of journalists working for the BBC who would be expected to have an appreciation of how the Internal Guidance sits alongside the Editorial Guidelines within the overall framework of editorial standards.

The Committee noted that the phrase which is the subject of this appeal has already been assessed and approved by a panel of experts appointed by the BBC Governors and that relevant opinions as well as facts were weighed in endorsing the wording.

The previous endorsement of the wording in 2006

The Committee noted that when the original Internal Guidance on the Gaza Strip was endorsed by the BBC Governors in 2006, Israel had only recently completed its withdrawal of settlers and troops from the Gaza Strip. At that time, Noam Lubell's report to the Independent Panel addressed the status of the Gaza Strip in the chapter titled Occupation:

"Questions ... arise with regard to areas from which Israeli troops have pulled out, e.g. ... the recent withdrawal of troops from the Gaza strip. It is beyond the scope of this paper to analyse whether in these particular situations Israel remains an occupying power, and whether perhaps its responsibilities as an occupier are reduced or even eliminated. The answers to this depend amongst other matters, on the level of control nevertheless retained by Israel (e.g. the borders of Gaza);

the legal understanding of the connection between Gaza and the West Bank; the international status of the Palestinian Authority. The answers to all these are highly debatable.

"...as of the time of writing, the military disengagement from Gaza is probably too recent for there to have been sufficient development of opinion (through court opinions, commentators and established factual evidence), and the question will, for the time being, remain open to debate. Notwithstanding the possible debates over the new situation and the status of the occupation and Israeli responsibilities in Gaza – which are yet to be determined – overall Israel is still regarded as the occupying power. It should however be noted that ... there are open questions on the links between the responsibilities of the occupying power to exercise of effective control and/or the potential ability to establish control; the actual control of an area and the responsibilities as an occupying power are linked both in practical and legal terms."

Having noted the above, the Committee moved on to consider the extent to which things had changed on the ground since 2006 in relation to the Gaza Strip.

Changes on the ground since 2006 and additional context in the Internal Guidance

The Committee moved on to consider whether changes on the ground since the language used in the older Internal Guidance was approved meant that it was no longer duly accurate to state, "Under international law, Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there."

The Committee noted that, since Mr Lubell wrote his report, Hamas has taken over the running of the Gaza Strip from Fatah and there have been changes of regime in Egypt each of which have had a number of consequences in relation to the situation on the ground. The Committee also noted that in December 2012, Egypt allowed a convoy of trucks carrying construction materials into the Gaza Strip through the Rafah Crossing, the first time Egypt has allowed construction materials to enter the Gaza Strip from its territory since Hamas came to power there in 2007.

The Committee noted that many of the issues which the complainant raised at previous stages in his appeal in support of his argument that the Gaza Strip can no longer be considered occupied, are now discussed in the updated Internal Guidance of February 2013 (whereas they were not considered in the older version of the Internal Guidance). The Committee noted in particular that the following factors were now mentioned in the newer Internal Guidance that is the subject of this appeal:

- the ousting of Fatah by Hamas and Israel's designation of the Gaza Strip as "hostile territory";
- reference to the tunnels used by Gazans to circumvent the blockade and to smuggle goods into the Strip;
- the fact that there is a pedestrian route into the Gaza Strip from Egypt at the Rafah Crossing;
- reference to the rockets fired from Gaza which Israel claims as justification for maintaining restrictions on movements and goods; the guidance notes this and advises that reports should aim to include some of this immediate context, (the

advice also notes content should try to explain why Palestinian fighters say they fire rockets); and

- the easing by Israel of some movement and goods restrictions in 2010 and again in 2012.

The Committee agreed that the fact that the above changes on the ground had been covered in the Internal Guidance was helpful and resulted in the Internal Guidance being more up to date than was previously the case.

Lack of consensus on this issue

The Committee noted again the comments made by the complainant (and referred to above) to the effect that even Hamas no longer claims that the Gaza Strip is occupied. However, the Committee also noted that public statements had also been made to the effect that the Gaza Strip is occupied.

The Committee noted this was confirmed in January 2012 by Martin Nesirky, the UN Secretary General's spokesperson. At a press briefing, Martin Nesirky stated that the UN still considers Gaza to be part of what it calls the Occupied Palestinian Territory.

The Committee noted the content of the relevant exchange:

Question: Where does the UN stand on this question? Is Gaza occupied or not, according to the UN?

Spokesperson: Well, under resolutions adopted by both the Security Council and the General Assembly on the Middle East peace process, the Gaza Strip continues to be regarded as part of the Occupied Palestinian Territory. The United Nations will accordingly continue to refer to the Gaza Strip as part of the Occupied Palestinian Territory until such time as either the General Assembly or the Security Council take a different view.

Question: Can I follow up on that? It is the legal definition of occupation and why is Gaza considered occupied?

Spokesperson: Well, as I have just said, there are Security Council and General Assembly resolutions that cover this. For example, there was a Security Council resolution adopted on 8 January 2009 – 1860 – and that stressed that the Gaza Strip constitutes an integral part of the territory occupied in 1967. And as you know, Security Council resolutions do have force in international law. Furthermore, there is a resolution from the General Assembly from 20 December 2010, and while it noted the Israeli withdrawal from the Gaza Strip and parts of the northern West Bank, it also stressed, in quotes, "the need for respect and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem". So just to repeat that the United Nations will continue to refer to the Gaza Strip as part of the Occupied Palestinian Territory until either the General Assembly or the Security Council take a different

view on the matter.

The Committee agreed, as demonstrated above, there is a divergence of opinions and lack of agreement as to whether the Gaza Strip is occupied. As outlined earlier in this document, it is not the role of the Committee, who are not experts in the Middle East, to decide categorically which side of the debate is right or wrong. Rather, it is the role of the Committee to ensure that the Internal Guidance is duly accurate against the backdrop of a conflict of opinion on this controversial subject of the Middle East.

The Committee agreed that part of testing the Internal Guidance against the Guidelines involved ascertaining whether the Internal Guidance reflected that there were divergent views in this particular area or, alternatively, whether the statement that "Israel is still the occupying power in Gaza" was presented as a categorical statement of fact in circumstances where the factual position is not agreed.

Extent to which the phrase is qualified in the Internal Guidance

In weighing up whether the statement that the complainant takes issue with is presented as a categorical statement of fact, the Committee looked closely at the wording in the updated Internal Guidance. It reads as follows:

Under international law, Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there and disputes this analysis. We need to be careful with our language so as not to give the impression that the BBC is favouring one side's position. In BBC programmes it is more accurate to talk about an "end to Israel's military presence" rather than the end of occupation.

Under international law, only the High Contracting Parties to the Geneva Convention (with advice from the UN Security Council) can formally declare an end to occupation.

The Committee noted that the phrase "Israel is still the occupying power in Gaza" is immediately followed by the words "although it no longer has a military presence there and disputes this analysis". It also noted that journalists were urged to be careful with their language and to avoid giving the impression that the BBC is favouring one side's position over the other and that it is more accurate, in BBC programmes, to talk about an end to Israel's military presence rather than the end of occupation. The Committee agreed that this additional context indicated that the statement that the complainant takes issue with is not being presented as a categorical statement of fact. Rather, the Committee agreed that the wider context in the Internal Guidance reflected that there was a lack of factual agreement in this area.

Conclusion of the Committee in relation to the Accuracy Guidelines

In light of the factors referred to above relating to signposting, audience expectation, changes on the ground since 2006 that are now addressed in the Internal Guidance, the way in which the phrase is presented and the wider context of the document, the Committee concluded that there had not been a breach of the Accuracy Guidelines in relation to this aspect of the appeal.

Question 2: Has there been a breach of the Impartiality Guidelines?

The wording of the Impartiality Guidelines

In reaching its decision as to whether the statement is duly impartial the Committee considered the Impartiality Guidelines and noted the following extracts:

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

"The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy."

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

"4.4.1 Across our output as a whole, we must be inclusive, reflecting a breadth and diversity of opinion. We must be fair and open-minded when examining the evidence and weighing material facts. We must give due weight to the many and diverse areas of an argument."

"4.4.5 We must apply due impartiality to our subject matter. However, there are particular requirements for 'controversial subjects', whenever they occur in any output ... a 'controversial subject' may be a matter of public policy or political or industrial controversy. It may also be a controversy within religion science, finance, culture, ethics and other matters entirely."

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

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

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

"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."

Whilst the Committee noted that the Internal Guidance is not output in the traditional sense, it nevertheless considered that the themes and principles outlined in the extracts above can be applied to the Internal Guidance such that it can test whether the statement that "Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there" is duly impartial.

The Committee considered the following questions:

- is the impartiality adequate and appropriate taking into account the subject matter and nature of the content, likely audience expectation and any signposting that may influence the expectation?
- given the Committee's finding that the documents involve a controversial subject, are a broad range of views reflected in the Internal Guidance and are a wide range of significant views and perspectives given due weight and prominence?
- is fact distinguished from opinion?
- are a broad range of views reflected in the Internal Guidance?
- given the Committee's view that the document deals with a controversial subject, are a wide range of significant views and perspectives given due weight and prominence?

Relevant factors

In assessing whether the phrase meets the guideline tests for Impartiality in so far as they have been deemed to apply in this appeal, the Committee considered the following factors relevant:

- the section on the Gaza Strip reflects the views of the principal parties;
- the statement that "Israel is still the occupying power in Gaza, although it no longer has a permanent military presence there" is qualified by what immediately follows it; by the wider context in the remainder of the section;
- the intention of the document is signposted to the audience in the introduction: journalists are explicitly advised that the Internal Guidance is intended as a starting point and is not intended to be "a prescriptive guide against which the impartiality of our output should be measured. Nor is it intended to limit the search for objective and accurate language to describe any given situation..."

Conclusion of the Committee regarding the Impartiality Guidelines

In light of the factors referred to above, the Committee agreed that there had not been a breach of the Impartiality Guidelines in relation to this aspect of the appeal.

Concluding point

In reaching its decision that the relevant content complies with the requirements of the Editorial Guidelines, the Committee nevertheless reflected that the character of the Gaza Strip eight years after Israel's unilateral disengagement remains unsettled, that the February 2013 update to the Internal Guidance was timely, and that the situation in Gaza was fluid. The Committee noted that it would expect the Internal Guidance to continue to

keep pace with any substantive shifts that might affect the due accuracy and due impartiality of the Internal Guidance, 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 Internal Guidance had evolved already (as evidenced by the updates) and commented that it hoped it would continue to do so as and when this became necessary.

Finding: Not upheld.

Point (C) – regarding the description in the guidance relating to East Jerusalem that “under international law, East Jerusalem is considered to be occupied territory” is misleading and lacks impartiality.

The subject of the complaint

The Committee noted the relevant content in the Abbreviated Guide. The phrase that the complainant takes issue with has been highlighted for ease of reference:

East Jerusalem

Israel occupied East Jerusalem in 1967. A law in 1980 formalised an administrative measure tantamount to the annexation of land taken as a result of the 1967 War. The claim to East Jerusalem is not recognised internationally. Instead, **under international law, East Jerusalem is considered to be occupied territory.**

BBC journalists should seek out words that factually describe the reality on the ground and which are not politically loaded. Avoid saying East Jerusalem ‘is part’ of Israel or suggesting anything like it. Avoid the phrase ‘Arab East Jerusalem’, too, unless you also have space to explain that Israel has annexed the area and claims it as part of its capital (East Jerusalem is sometimes referred as Arab East Jerusalem, partly because it was under Jordanian control between 1949 and 1967). Palestinians want East Jerusalem as the capital of a future state of Palestine.

The BBC should say East Jerusalem is ‘occupied’ if it is relevant to the context of the story. For example: “Israel has occupied East Jerusalem since 1967. It annexed the area in 1980 and sees it as its exclusive domain. Under international law the area is considered to be occupied territory.”

Do not call East Jerusalem the Palestinians’ capital. You can say that Ramallah is their administrative capital and that East Jerusalem is their intended capital of any future independent state. This position was endorsed by the findings of a BBC Trust complaints hearing published in February 2013. See Jerusalem, Ramallah.

The Committee noted the relevant content in the fuller Internal Guidance (on which the published Abbreviated Guide is based). The phrase that the complainant takes issue with has been highlighted for ease of reference:

February 2013 updated version

EAST JERUSALEM

Israel occupied East Jerusalem in 1967. A law in 1980 formalised an administrative measure tantamount to the annexation of land taken on 28 June 1967. It applied

to the formerly Jordanian-controlled sector of the city, around 6 sq. km and also to 65 sq. km of the West Bank that included 28 Palestinian villages which had never been part of Jerusalem. This claim to East Jerusalem is not recognised internationally. Instead, **under international law, East Jerusalem is considered to be occupied territory.**

For example, the Foreign Office states "Although we accept de facto Israeli control of West Jerusalem, we consider East Jerusalem to be occupied territory. Attempts by Israel to alter the character or demography of East Jerusalem are therefore unacceptable and extremely provocative."

We should seek out words that factually describe the reality on the ground and which are not politically loaded. Avoid saying East Jerusalem "is part" of Israel or suggesting anything like it. Avoid the phrase "Arab East Jerusalem", too, unless you also have space to explain that Israel has annexed the area and claims it as part of its capital (East Jerusalem is sometimes referred as Arab East Jerusalem, partly because it was under Jordanian control between 1949 and 1967.) Palestinians want East Jerusalem as the capital of a future state of Palestine. The BBC should say East Jerusalem is 'occupied' if it is relevant to the context of the story. For example: "Israel has occupied East Jerusalem since 1967. It annexed the area in 1980 and sees it as its exclusive domain. Under international law the area is considered to be occupied territory."

Do not call East Jerusalem the Palestinians' capital. You can say that Ramallah is their administrative capital and that East Jerusalem is their intended capital of any future independent state. This position was endorsed by the findings of a BBC Trust complaints hearing published in February 2013.

Question 1: Has there been a breach of the Accuracy Guidelines?

The wording of the Accuracy Guidelines

In reaching its decision as to whether the statement is duly accurate the Committee considered that the following extracts from the Accuracy Guidelines were relevant:

"3.1 The BBC is committed to achieving due accuracy... The term 'due' means that the accuracy must be adequate and appropriate to the output taking into account the subject matter and nature of the content, the likely audience expectation and any signposting that may influence that expectation."

"Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should be weighed to get at the truth."

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

Whilst the Committee noted that the Internal Guidance is not output in the traditional sense, it nevertheless considered that the themes and principles outlined in 3.1 and 3.2.2 can be applied to the Internal Guidance such that it can test whether the statement that "East Jerusalem is considered to be occupied territory" is duly accurate taking into account:

- the subject matter and nature of the content;
- the likely audience expectation;
- any signposting that may influence audience expectation;
- (as the issue is controversial) whether relevant opinions as well as facts were considered and whether they were weighed to get at the truth;
- whether the relevant phrase in the Internal Guidance (and Abbreviated Guide) is well sourced; and
- whether the relevant phrase in the Internal Guidance (Abbreviated Guide) is based on sound evidence.

In accordance with its decision not to revisit matters for this appeal which had previously been considered by the BBC Governors in 2006, the Committee did not form a view on evidence cited by the complainant in support of his appeal which would also have been available to the independent review team appointed by the BBC Governors in 2006.

The Committee noted the complainant did not offer any arguments relating to issues raised in this appeal that would not already have been considered by the independent panel in 2006.

In assessing whether the phrase meets the guideline tests for Accuracy in so far as they have been deemed to apply in this appeal, the Committee considered that the following factors were relevant:

- the wording that is the subject of this appeal is not editorial content in the traditional sense; its stated intention as signposted in the introduction to the Internal Guidance is to equip journalists with adequate information to

“help you understand some of the background to the conflict, identify some of the journalistic dangers, and to highlight the language in which we might choose to report it.”
- the audience for the Internal Guidance consists of journalists working for the BBC who would be expected to have an appreciation of how the Internal Guidance sits alongside the Editorial Guidelines within the overall framework of editorial standards;
- the audience for the Abbreviated Guide consists of the users of the BBC website who are informed that the content they are viewing is an abbreviated document and that the intended audience for the fuller document are BBC journalists;
- that the phrase which is the subject of this appeal has already been assessed and approved by a panel of experts appointed by the BBC Governors and that relevant opinions as well as facts were weighed in endorsing the wording;
- the use of the words “considered to be” indicates that this is not being presented as a categorical statement of fact; and
- the Committee was not aware of any changes on the ground since 2006 which would have meant the terminology approved by the BBC Governors was no longer appropriate and required to be reconsidered in the light of events.

The Committee agreed that as a result of the factors above in relation to signposting, audience expectation, the way in which the phrase is nuanced by the words “considered to be” and the lack of substantive changes on the ground, there had been no breach of

the Accuracy Guidelines.

Question 2: Has there been a breach of the Impartiality Guidelines?

The wording of the Impartiality Guidelines

In reaching its decision as to whether the statement is duly impartial the Committee considered the Impartiality Guidelines and noted the following extracts:

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

"The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy."

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

"4.4.1 Across our output as a whole, we must be inclusive, reflecting a breadth and diversity of opinion. We must be fair and open-minded when examining the evidence and weighing material facts. We must give due weight to the many and diverse areas of an argument."

"4.4.5 We must apply due impartiality to our subject matter. However, there are particular requirements for 'controversial subjects', whenever they occur in any output ... a 'controversial subject' may be a matter of public policy or political or industrial controversy. It may also be a controversy within religion, science, finance, culture, ethics and other matters entirely."

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

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

"4.4.7 When dealing with controversial subjects, we must ensure a wide range of

significant views and perspectives are given due weight and prominence, particularly where the controversy is active. Opinion should be clearly distinguished from fact.”

“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.”

Whilst the Committee noted that the Internal Guidance is not output in the traditional sense it nevertheless considered that the themes and principles outlined in the extracts above can be applied to the Internal Guidance such that it can test whether the statement that “East Jerusalem is considered to be occupied territory” is duly impartial.

The Committee considered the following questions:

- is the impartiality adequate and appropriate taking into account the subject matter and nature of the content, likely audience expectation and any signposting that may influence the expectation?
- do the Internal Guidance and the Abbreviated Guide deal with a controversial subject?
- if so, are a broad range of views reflected in the Internal Guidance and are a wide range of significant views and perspectives given due weight and prominence?
- is fact distinguished from opinion?

Relevant factors

In reaching its decision that the phrase meets the guideline tests for Impartiality in so far as they have been deemed to apply in this appeal, the Committee considered the following factors relevant:

- the section on East Jerusalem reflects the views of the principal parties;
- the statement that “East Jerusalem is considered to be occupied territory” is qualified by the preceding clause explaining Israel’s position and by the wider context in the remainder of the section;
- the intention of the document is signposted to the audience in the introduction: journalists are explicitly advised that the Internal Guidance is intended as a starting point and is not intended to be

“a prescriptive guide against which the impartiality of our output should be measured. Nor is it intended to limit the search for objective and accurate language to describe any given situation...”

- whilst additional context explaining the background to the Palestinian and Israeli views on settlements does not appear in the Abbreviated Guide, that Guide is signposted as being an abbreviated version of a fuller document thus managing audience expectation as to the extent to which a range of views might be reflected.

The Committee agreed that, in light of the wider context of the document, the way in which the phrase is nuanced, signposting and audience expectation, there had not been a

breach of the Impartiality Guidelines.

Finding: Not upheld

Thought for the Day, BBC Radio 4, 14 February 2012

1. Background

Thought for the Day, a reflection from a faith perspective on topical issues and news events, is broadcast at around 0748 Monday to Saturday within the *Today* programme. This edition, written and presented by Lord Singh on a Monday, was inspired by a High Court decision the preceding Friday on the contested legality of councillors saying prayers as part of formal council meetings. The judge had decided that it was not legal to hold prayers as part of the agenda of a council meeting.

2. The complaint

The complainant said that this edition of *Thought for the Day* (TFTD) was not impartial because it was a biased commentary on a topical and controversial subject – the publication of the judge’s decision on a judicial review – with no right to reply or other attempt to provide due impartiality.

Stages 1 & 2

The complainant said the TFTD broadcast was not impartial overall and attached an annotated transcript of the broadcast marking specific points at issue. He cited a previous finding by the Editorial Standards Committee (http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2009/tftd.pdf) and said this finding had concluded that the BBC Trust would consider particular TFTD items individually, as they arose, to see if they breached the Editorial Guidelines, which, he said, this TFTD did.

The BBC did not uphold the complaint at stage 1. The response contained an extensive reply from the Head of Radio, BBC Religion & Ethics in which she considered many of the points made in the original complaint but concluded that the TFTD was “balanced and fair”. She said this TFTD should be considered in its totality.

The complainant raised two specific points in response. The first doubted the factual accuracy of an anecdote recounted by Lord Singh in his broadcast that recalled a council referring to “all that bowing and chanting” in reference to the giving of local authority grants. The second said it was “inaccurate and tendentious” of Lord Singh to have inferred that prayers would not be allowed before a council meeting, given that the ruling was specifically about prayers during the meeting, once the agenda had begun.

At stage 2, the complainant said it accepted that the TFTD should be considered as a whole but also raised specific breaches of the Editorial Guidelines. The complainant continued to question the “bowing and chanting” anecdote and said the BBC had not responded on the difference between holding prayers **before** a meeting and holding prayers **during** a meeting, which the complainant said was important.

The complaint was not upheld, although (after further correspondence) it was agreed that the TFTD dealt with a “controversial subject”. The Editorial Complaints Unit (ECU) said that there was no evidence to undermine Lord Singh’s anecdote, that his comments were intended to be generic rather than specific to the court case and that the difference between prayers before and during a meeting was not materially

misleading in the context of the speaker’s “broader thoughts and comments about the marginalisation of religion in society”.

Appeal to the Trust

The complainant appealed to the BBC Trust. The letter disputed the ECU finding that the item was primarily about the wider issue of the marginalisation of religion in public life, rather than a specific response to the High Court judgement of the previous week. The letter says that, as this was broadcast on almost the first opportunity since the judgement was announced: “It is therefore, in our opinion, indubitable that Lord Singh’s broadcast was anything other than commentary on a topical political controversy.”

The letter went on to say that the ECU had conceded that this was a “controversial subject” but the NSS contended that Lord Singh did not acknowledge that a range of views exists or communicate the weight of those views as, they argued, was required by the guideline on controversial subjects at Section 4.4.8. The complainant says that the BBC had “failed to reflect other perspectives on this issue in a way comparable to the *Thought for the Day* broadcast”.

The letter asked for these two issues to be addressed, alongside the earlier correspondence.

3. Applicable Editorial Guidelines

The full guidelines are at 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.

The Committee considered three issues before it examined the points raised on appeal:

- i. controversial subjects
- ii. the original NSS/TFTD ruling in 2009
- iii. Mr Justice Ouseley’s judgement in the High Court published the Friday before this TFTD aired.

i. Controversial subjects

The Committee noted that it was alleged by the complainant that the content breached the guideline requirements for dealing with a controversial subject.

“We struggle to see how any independent evaluation of this broadcast could find it to be anything other than biased commentary on a topical political controversy.

“The broadcast was delivered on 14 February 2012, just four days after the ruling by Mr Justice Ouseley in the High Court on 10 February...When the proximity of the broadcast to the ruling is considered, it leaves little doubt that it was specifically related to the judicial review.

“The ruling and subsequent response from senior Government figures and political commentators made the subject matter a highly topical and controversial issue.

“When the BBC Trust rejected a previous complaint in 2009 about the exclusive and discriminatory nature of *Thought for the Day*, the Editorial Standards Committee stated: ‘whilst it may be acceptable for contributors to reflect on topical issues, where a position is given on a controversial subject then it is probable that due impartiality will require that an appropriate balance is achieved’.”

The Committee noted that the ECU, in its final response to the complainant, said:

“I have to say I agree that the ruling was one which could be regarded as a ‘controversial subject’ under the BBC’s Editorial Guidelines and so the timing of Lord Singh’s broadcast would mean that the guidelines on such controversial subjects would apply.”

The Committee noted that the complainant then framed his appeal to the BBC Trust in terms of a controversial subject:

“Given that the issue clearly represented a ‘controversial subject’... we would like to highlight Lord Singh’s failure to both acknowledge that ‘a range of views exist’ on the issue, and to communicate ‘the weight of those views’, as is demanded by Section 4.4.8 of the BBC Editorial Guidelines. Moreover, Section 4.4.8 also notes that ‘consideration should be given to the appropriate timeframe for reflecting other perspectives’. Accordingly, we argue, the BBC failed to reflect other perspectives on this issue in a way comparable to the *Thought for the Day* broadcast.”

The Committee noted that “due impartiality” is an overarching value and applies across all of the BBC’s content.

ii. The ESC ruling on *Thought for the Day*, November 2009

The Committee noted that the group of complaints that was the subject of this Editorial Standards Committee (ESC) ruling in November 2009 was regarding the BBC’s editorial policy on the *Thought for the Day* slot in the *Today* programme on Radio 4 and the contention that there was a lack of BBC programming featuring participants who hold non-religious beliefs. The complaints included matters such as:

- the exclusion of non-religious contributors
- the allegation that the BBC, in TFTD, allows religious contributors an unchallenged platform to comment on news and current affairs and particularly on

potentially contentious material

- the contention that a religious slot should not be positioned within a news and current affairs programme such as *Today*
- the allegation that the exclusion of non-religious contributors from TFTD amounts to unfair treatment of non-religious contributors and/or discrimination in law.

The Committee noted that the appeal was not upheld. The most relevant parts of the findings of that case to this particular complaint are reproduced below:

3.7

The ESC found that the *Thought for the Day* slot is religious content and that its stated remit is not a breach in itself of the guideline on impartiality. The ESC considered the distinctive nature of the slot and the content featured in it. The ESC noted that some appellants had questioned the positioning of the *Thought for the Day* slot. The ESC decided that, although featured within a news programme and engaged with topical issues, *Thought for the Day* is a stand-alone strand and a reflection on those issues from a faith perspective and so the approach to due impartiality had to be adequate and appropriate to such a slot. It did not require the more rigorous approach to due impartiality expected of news and current affairs.

3.8

The ESC noted that, by setting the remit of the programme so as to allow comment on an issue of the day from a faith perspective, the BBC runs the risk that a *Thought for the Day* contributor might go beyond reflection – in colloquial terms, stepping out of the pulpit and on to a soapbox. The ESC agreed that the BBC Executive had processes and systems in place as safeguards against such a circumstance occurring – specifically the work done by each contributor with a BBC programme editor to develop their *Thought for the Day* script. The ESC stated that it would consider any future content complaints as and when they arise in order to decide whether particular content breached a particular guideline.

3.9

The ESC agreed that the mere fact that a person has religious belief does not mean that all the statements that they make are necessarily a statement of religious belief and that some statements instead amount to personal opinion. The ESC accepted that the stated remit of *Thought for the Day* is to feature views on an issue of the day from a faith perspective and that views expressed in *Thought for the Day* would spring from and be rooted in the faith perspective of the individual participating. However, where content was not simply a statement of religious belief but instead a personal opinion, whether from a faith perspective or otherwise, due impartiality must be applied accordingly and that content properly signposted.

3.10

The ESC stated that, whilst it may be acceptable for contributors to reflect on topical issues, in cases where a position is given on a controversial subject then it

is probable that due impartiality will require that an appropriate balance is achieved. The ESC agreed that any content appeals submitted in future would be considered according to the ordinary editorial processes and assessed as and when they arise.

3.11

The ESC found that the *Thought for the Day* slot deals with widely disparate issues from one programme to the next linked as a strand with a common title. It noted that due impartiality on any given subject matter (and particularly controversial subject matters) should normally be achieved within each *Thought for the Day* slot or otherwise (normally explicitly) across two or three slots. The ESC accepted that in some cases it might be acceptable to meet the requirements of due impartiality on a particular subject by reference to the *Today* programme as a whole but stated that this would have to be judged on a case by case basis.

The ESC bore this finding in mind when members considered the present complaint.

iii. The judgement by Ouseley J in *R. (on the application of National Secular Society & Bone) v. Bideford Town Council* [2012] EWHC 175 (Admin)

The Committee noted that this judgement, given on 11 February 2012, following a hearing of a judicial review in the High Court on 2 December 2011, was the “peg” for the TFTD which brought about the complaint the Committee considered.

The Committee noted that the judicial review was allowed on the specific point of the prayers being on the agenda for Bideford Council’s meetings. Mr Justice Ouseley said that prayers could be said as long as councillors were not formally summoned to attend (for example just before a meeting) but held that prayers as part of the agenda for the meeting were not lawful under section 111 of the Local Government Act 1972.

Points considered on appeal

Point A: Regarding the complainant’s allegation that although this was a “controversial subject” the guideline was not adhered to given that Lord Singh did not acknowledge that a range of other views existed nor communicate the range of those views.

Point B: Regarding the complainant’s assertion that “the BBC failed to reflect other perspectives on this issue in a way comparable to the *Thought for the Day* broadcast.”

The Committee noted that the ECU had said that:

“the ruling was one which could be regarded as a ‘controversial subject’ under the BBC’s Editorial Guidelines and so the timing of Lord Singh’s broadcast would mean that the guidelines on such controversial subjects would apply.”

The Committee agreed with the ECU that this TFTD was on a “*controversial subject*” within the meaning of the Editorial Guidelines. The Committee therefore considered whether the requirements of the Editorial Guidelines dealing with controversial subjects were met. The Committee noted that Section 4.4.8 of the guidelines states:

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 TFTD team responded to the Editorial Adviser concerning the specific complaint about this being a controversial subject:

“The specific ‘controversy’ was acknowledged by Lord Singh at the very beginning of his piece when he explained that the ruling had ‘created a bit of a storm’. But the brief for TFTD is to reflect on a topical story or issue from the perspective of religious faith. That is exactly what he was doing. He drew on his experience of being a Sikh to reach a conclusion that was meant to be inclusive to anyone, secular or religious. He was not lobbying on the specific ruling: he was reflecting on something that had already happened. This is completely in line with the TFTD brief.”

The Committee noted that the Editorial Adviser had spoken to Lord Singh at some length about the process he employs to write a TFTD – a slot to which he has contributed for some 30 years. Lord Singh said:

“Everything is agreed by the producer – including the subject. They come back to say ‘this might provoke some controversy, can you change it?’. The producers say ‘don’t choose a subject until you have consulted us’. The subject is mutually agreed and always goes through a process.

“This one was totally uncontroversial at the time – the producers were not concerned. I was just trying to remind us to set aside petty considerations and think about what is good for society.”

The Committee began by considering whether the inclusion of a personal view was clearly signposted. The Committee noted that *Thought for the Day* was a long-running strand and that listeners to the *Today* programme would be familiar with this regular reflection from a faith perspective on topical issues. The Committee agreed that listeners would be in no doubt that they would be hearing a personal view of whatever topics were to be covered. The Committee was satisfied that by dint of the well-established audience expectations of TFTD and its clear remit to provide a faith perspective on topical issues, the expression of a single view was clearly signposted.

The Committee then considered whether the piece had acknowledged that a range of views exists. The Committee considered the transcript of the *Thought for the Day* piece and noted in particular that it began with the statement:

The court ruling that councils have no legal right to hold prayers at the start of meetings has certainly created a bit of a storm. The *Times* headline, ‘Christianity on the Rack’, may be a bit over the top, but there is genuine concern over what some see as a continuing marginalisation of religion in public life.

The Committee agreed that, in taking the success of the judicial review as its starting point, the TFTD piece had acknowledged that a range of views exists and that this was controversial.

The Committee also noted that Section 4.4.8 says:

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

The Committee recalled from the finding of November 2009, that TFTD stands alone as output produced by Religion & Ethics within a programme produced by News & Current Affairs. The 2009 finding said that TFTD is religious output and “its stated remit is not a breach in itself of the guideline on impartiality”.

The Committee noted the TFTD producer’s response to the concept of balancing output in this case:

“It isn’t at all clear what a ‘balancing’ TFTD would be. Lord Singh’s piece was not about the specific court ruling as would have been clear to any listener. It was about bigotry ‘whether secular or religious’ and his view that ‘we seem to be losing a spirit of live and let live’. He concluded by saying ‘it’s this that bothers me more than the actual court ruling’.”

The Committee noted that the producer also said: “The *Today* programme will of course have covered the issue but TFTD does not look to other elements of *Today* for balance. That is not how TFTD works.”

The Committee noted that there were two other subjects on that morning’s *Today* programme which dealt with subjects related to this TFTD. One was Baroness Warsi’s call for religion not to be marginalised (in response to the High Court judgement which was the “peg” for the TFTD); and the other, a considerable debate on the extent to which Britain can still be called a Christian country. The prominent atheist, Richard Dawkins, had commissioned a survey which, he said, demonstrated the decline of belief in or practice of Christianity. He appeared on the programme at 0820 – a peak slot – to discuss the matter. Among other remarks concerning how religious those people self-declaring as Christians in the census actually are, he said:

The reason it is important is that politicians, priests and influential people have long used the census figures to say Britain is a Christian country, that’s why we need bishops in the House of Lords, that’s why we need faith schools, that’s why we need the NHS to pay for chaplains. Now you can look at those decisions and say to yourself, is it any longer justified to say that Britain is a Christian country?

The Committee noted that the *Today* programme management had been asked whether the appearance of two items about Christianity and secularism in addition to TFTD was the result of accident or design. They had explained:

“We don’t coordinate in that way with *Thought*. It is the one part of the programme over which we have no editorial control – that rests with Religion &

Ethics in Manchester. They usually phone in each day to say what the speaker is talking about but it's just a short line for our prospects. That doesn't mean we don't sometimes pick up on something said on *Thought* for the next day. But if these items were on the same day it will just be a coincidence.”

The Committee decided that the relevant edition of *Today* did indeed fulfil the impartiality requirements by featuring an extensive discussion with Richard Dawkins (a vice-president of the British Humanist Association and author of *The God Delusion*), and the earlier interview with Baroness Warsi. The Committee considered that it had to judge the issue purely on the basis of the output, as heard by the listener, not by the coordination or lack of coordination between different parts of the BBC.

The Committee also had regard to its November 2009 finding, cited by the complainant, in which the ESC found that:

...the *Thought for the Day* slot deals with widely disparate issues from one programme to the next linked as a strand with a common title. It noted that due impartiality on any given subject matter (and particularly controversial subject matters) should normally be achieved within each *Thought for the Day* slot or otherwise (normally explicitly) across two or three slots. The ESC accepted that in some cases it might be acceptable to meet the requirements of due impartiality on a particular subject by reference to the *Today* programme as a whole but stated that this would have to be judged on a case by case basis.

The Committee expressed concern that this output, which the listener might think of as seamless, did not have some greater cooperation behind the scenes for the benefit of the listener when religion became a news or current affairs story in its own right. The Committee acknowledged, however, that the overall effect of the *Today* programme on the day had been one of due impartiality.

The Committee also noted Section 4.4.7 of the Guidelines on Impartiality which states:

When dealing with ‘controversial subjects’, we must ensure a wide range of significant views and perspectives are given due weight and prominence, particularly when the controversy is active.

The Trustees noted a range of output from 10 February which had covered the views of those who supported the court ruling:

- “Bideford Town Council prayers ruled unlawful” bbc.co.uk/news/uk-england-devon-16980025
- “Bideford council prayer case prompts delight and dismay” bbc.co.uk/news/uk-england-devon-16989232
- “Bideford Town Council to appeal against prayers ban” bbc.co.uk/news/uk-england-devon-17060065
- “Councils win prayer ‘rights’ as Localism Act powers fast tracked, ministers say” bbc.co.uk/news/uk-politics-17082136
- BBC One, *News at One*, 10 February 2012

- BBC One, *Six O'clock News*
- BBC One, *News at Ten*
- BBC Radio 4, *The World at One*
- BBC Radio 4, *PM*

The Committee concluded that a wide range of significant views and perspectives had been given to the controversial subject across the BBC's output as a whole and that, as a result, there had been no breach of this guideline.

Point C: Regarding the complainant's scepticism about Lord Singh's "bowing and chanting" anecdote, the Committee considered whether the Accuracy Guideline had been breached. In particular whether the anecdote was "duly accurate", well-sourced and based on sound evidence.

The Committee noted the section of the transcript in question:

It reminds me of a time when I approached a local authority who were giving grants to community groups for social welfare projects to do the same for religious groups. I got a short curt response: 'we want nothing to do with all that bowing and chanting'. The same authority today does include religious bodies in its grants programme, confident in the knowledge that a small grant added to largely voluntary effort is true value for money in addressing social welfare issues.

To some, brief prayers before a council meeting are so much 'bowing and chanting'.

The Committee noted that the complainant had doubted the accuracy of this anecdote throughout the complaints process.

The Committee noted that the response from the TFTD team was:

"We know the example was [council name supplied] because we checked with Lord Singh. There is though no reason why he should have named the council in his TFTD piece. His point was a general one and he had no wish to generate a controversy about a particular council any more than he meant to comment on the contemporary ruling. This is underlined by the fact that he made clear in the piece that the council has changed its view some years ago."

The Committee noted that Lord Singh told the Editorial Adviser that the incident actually took place in [a different council] and that he remembered it well. He said this had happened in the 1980s. He said the council would make grants to racial or community groups, but would give nothing to religious organisations. He said he recalled the speaker had been a woman – though he could not recall her name:

"It took me aback though it was perfectly normal at the time. Some things stick in your mind when they are said to your face ... I can remember we were in a building opposite [Council] Town Hall..."

The Committee noted that Lord Singh added that there had been a change of tone after the then government had established an inner-city consultative committee, and that this change in attitude had filtered down to the local authorities.

The Committee saw no reason to doubt what Lord Singh had said and saw no evidence from the complainant to suggest that it was not well-sourced, based on sound evidence and duly accurate. The Committee did not therefore uphold any breach of the Editorial Guidelines on this point.

The Committee was clear that the audience would have recognised Lord Singh's recollection as an anecdote and would judge it in that context. The Committee considered it would be wrong to interpret the BBC's obligations on accuracy to mean that every contributor's recollection or story had to be independently corroborated before it could be broadcast.

Finally, the Committee considered whether the TFTD piece was duly accurate in describing when prayers would not be allowed to be said in a council meeting as a result of the ruling. The Committee noted that at the top of the piece Lord Singh said:

The court ruling that councils have no legal right to hold prayers at the start of meetings has certainly created a bit of a storm.

The Committee noted that the phraseology was ambiguous, and that it could be held to mean "as the first item on a meeting's agenda". The Committee considered that, in light of the scope of the court ruling, which ruled that a local authority had no power to hold prayers as part of a formal meeting, the phrase "*at the start of meetings*" was duly accurate.

The Committee considered the later reference in the TFTD piece:

To some, brief prayers before a council meeting are so much 'bowing and chanting'; for others it's an opportunity to calm moods and passions, and reflect on the real priorities and ethical implications in the work before them.

It concluded that this was not a misleading or inaccurate reference to the ruling but a reflection on the different opinions on the value of prayers before a meeting.

The Committee did not therefore uphold this part of the complaint.

Finding: Not upheld.

PM, BBC Radio 4, 26 February 2013

1. Background

An item on the *PM* programme about Hebrew being taught in Hamas-run schools in Gaza included an interview with a 15-year-old student. The girl, speaking in her native Arabic, was explaining why she considered it useful to be taught Hebrew. In the report her contribution was voiced over with an English translation, although it is possible to pick up some of the original Arabic.

In the Arabic, the girl had used the term “Al-Yahoud”, which translates into English literally as “the Jews”. This was translated in the voiceover as “an Israeli”. This was the immediate context:

Girl: If we meet an Israeli, and they’re speaking in Hebrew, it means that if they are planning to do something bad to us, we will know what they are up to.

2. Complaint

Stage I

The complainant emailed BBC Audience Services on 2 March 2013. He said that an interviewee had clearly said, in Arabic, “if we meet Jews” but it had been translated into English as “if we meet an Israeli”.

He said the mistranslation was significant because the presumption of deceiving is what the child talked about and “portraying Jews as ‘deceitful creatures’ is part and parcel of the Hamas education”.

The complainant also queried why the item did not report that Arabic had been on the Israeli curriculum for decades, without being taught as “another tool for ‘defeating the enemy’”.

BBC Audience Services replied on 19 March 2013 saying that the term “Yehud” is used by Palestinians colloquially to refer to Israelis:

“In this context the girl was clearly foreseeing possible conflict with an Israeli rather than a person of ostensibly Jewish ancestry. We therefore felt the translation was accurate in this context.”

The complainant responded that the correct Arabic term for Israeli is frequently used in the Palestinian media and that the term “Yehud” is used not “colloquially” as alleged in the response but rather pejoratively:

“Thus the mistranslation of the term is not just unjustified, but misleading: it deprives the non-Arabic speaking audience of a nuance critical to the understanding of the reported issue.”

The complainant said by way of example that the Hamas constitution quotes an exhortation from the Quran in which the term “Al-Yahood” is often translated as “the Jews”:

“The Day of Judgement will not come about until Moslems fight the Jews (killing the Jews), when the Jew will hide behind stones and trees. The stones and trees will say O Moslems, O Abdulla, there is a Jew behind me, come and kill him.”

BBC Audience Services sent a final response stating again that the translation aired was accurate in the context and noting that (regarding the teaching of Arabic in Israeli schools), 20 per cent of Israel’s population is Arab:

“...it would therefore be surprising if Arabic was not taught in Israel. In comparison, there are relatively no native Hebrew speakers in Gaza and very little use for the language; we felt this was the interesting aspect about the story.”

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) on 27 April 2013 as the second stage of the complaints process.

The ECU wrote to the complainant on 21 May 2013 with the outcome of its investigation. The ECU did not uphold the complaint.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 31 May 2013. He said that the mistranslation amounted to substituting journalists’ opinions for facts in a way that is opaque to the audience and was therefore materially misleading.

He reiterated the points he had made at earlier stages, explained the complaint history and noted the grounds on which he was appealing. Those grounds are summarised here:

- the public expects a translation to be an exact rendition; changing it to a surmised translation denies the audience the opportunity to form their own opinion
- there is no evidence (other than the journalists’ view) that “an Israeli” was what the girl meant when she used the Arabic word for “Jew”
- the girl is at a Hamas school and Hamas teach that the Jews are the enemy of the Moslem people; the mistranslation denies the audience an important insight into the religious terms in which Hamas view the conflict
- the ECU noted the important distinction between Israelis and people of the Jewish faith and simultaneously stated that the interviewee “had a limited understanding of the distinctions”; if true, the audience has the right to understand that and the mistranslation denied them the opportunity to do so
- the programme-makers considered it important enough to ponder the translation and then to substitute the literal translation for a surmised one, implying there was a material difference between the two versions.

3. Applicable Editorial Guidelines

The full guidelines are at bbc.co.uk/editorialguidelines . The sections on accuracy and impartiality 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 submissions from the complainant, the ECU and the Head of Editorial Compliance and Accountability for BBC News.

The Committee noted that this appeal raised issues that required consideration of the Guidelines on Accuracy and Impartiality.

In relation to accuracy, the Committee considered whether the translation was well-sourced and based on sound evidence and whether all the relevant facts and information were weighed to get at the truth, such that the content did not distort known facts, present invented material as fact or otherwise undermine the audiences' trust in the BBC's content. The Committee did this, taking into account the subject and nature of the content and the likely audience expectation.

In relation to impartiality, the Committee noted that the content in question dealt with a controversial subject. The Committee considered whether the content gave due weight and prominence to a wide range of significant views and perspectives and whether it distinguished opinion from fact. The Committee did this taking into account the subject and nature of the content and the likely audience expectation.

The Committee noted how the complainant summarised his argument in his letter of appeal:

“The mistranslation amounts to substituting journalists' opinions for fact in a way that is opaque to the audience; this materially misled the audience.”

It noted the complainant's allegation that the translation materially changed the meaning of the girl's words, that there is an important distinction between “Jews” and “Israelis” and that by translating the teenager's words in the way the programme did it “hid the reality” of how Hamas was educating Palestinian children.

It noted the complainant's assertion that there is no evidence to justify the translation and to assume that what the girl actually meant was “Israelis” even though she said “Jews”:

“There **is** evidence (which I have presented) that Hamas – which runs the interviewee's school – uses the term ‘Al-Yahood’ in its actual meaning: ‘the Jews’ (for instance, when claiming in its Covenant that ‘Israel, Judaism and Jews challenge Islam and the Moslem people’). It is therefore reasonable to believe that the interviewed teenager was taught that ‘the Jews’ were ‘the enemy’ of ‘the Moslem people’. Viewing the conflict in religious terms (rather than national, political, territorial) may vastly

diminish the possibility of making peace. The mistranslation denies the audience that important insight.”

The Committee noted the complainant’s argument that information about those mindsets constituted a material fact in the context of the report and that conversely, misinformation about it was materially misleading.

The Committee considered the complainant’s contention that anything other than a literal translation could not be considered accurate and would not have met audience expectation:

“The audience...assumes that the overlaid translation represents the accurate rendition of her words, unadulterated by opinions, subjective ‘interpretations’ or biases ... the audience expects (and the principles of ethical journalism require) the facts, unequivocally separated from opinions, commentary or ideas originating with the journalist. In the words of Section 4.4.7 of the BBC Editorial Guidelines: ‘Opinion should be clearly distinguished from fact’. In this case, the programme-makers have inserted their own opinions in the form of a surmised interpretation ... They have substituted their judgement for that of the audience and denied the latter an opportunity to make their own minds [sic] as to what the interviewee actually meant.”

The Committee did not accept the complainant’s contention that only a literal translation of the girl’s words would have met audience expectation. It noted the overarching requirement of the Editorial Guidelines, requiring that content observe “due accuracy” and “due impartiality”, i.e. that it is adequate and appropriate taking into account the subject and nature of the content and the likely audience expectation. The Committee noted that the requirements for “due accuracy” and “due impartiality” underpin the entire guidelines. In this case, as the ECU had also found, the programme-makers had demonstrated that they had taken care to reach a considered view on the appropriate translation, taking into account the circumstances in which the girl was discussing interaction.

The Committee considered that the decision to translate the girl’s words as “an Israeli” was an appropriate exercise of editorial judgement. In taking this view the Committee emphasised that no interpretation of the Editorial Guidelines requires content producers to make direct word-for-word translations without also taking account of relevant context.

The Committee then considered the wider issue of whether there was sound evidence to support the professional judgement brought by the programme to its decision to translate the phrase in the way it did. It noted the consideration the programme had given to the subject prior to broadcast, taking advice from the Jerusalem bureau on use of language by Palestinians in Gaza and how this was interpreted in the following assertion by the complainant:

“The fact that the team pondered the translation (and made the unusual decision of replacing the literal translation with a surmised one) demonstrates that the matter seemed to them important...which clearly implies that in their minds there was a

material difference between the two versions in terms of what was conveyed to the audience.”

The Committee noted that the programme did not deny the distinction between “Jews” and “Israelis”, but that in this context it felt that it would be misleading not to give the audience a clearer picture of whom the girl was most likely referring to and that a literal translation would not necessarily have achieved that.

The Committee noted the programme’s response to the ECU explaining why it felt the decision not to use the literal translation was the right one:

“It is clear in the context that she is talking about crossing the border into Israel and meeting Israelis. Translating the words as Israelis made the most sense within this context and didn’t alter the meaning or tone of her comment. Her distrust and dislike, which was clear from her quote, was of Israelis not of Jews. Jon thought long and hard about this translation but on the advice of Israeli and Palestinian colleagues they came to this decision. He also added that not in this case, but in interviews with other Palestinians who have used the word ‘Jehud’, he has clarified what the interviewee meant and they nearly always say they mean Israelis unless they are referring specifically to the religion.”

It considered too the submission from BBC News, in response to the circulation of a draft of the background note prepared for the appeal, which quoted the Multimedia Editor of the BBC Arabic Service:

“I think that using the word ‘Israelis’ in the voiceover was accurate. I travelled to Israel and the Palestinian territories many times over the past 20 years and I have heard myself how Palestinians (both in Israel and in the Palestinian territories) use the word ‘Jew/s’ to refer [to] Israelis. It would have been misleading to translate ‘Al Yahoud’ as Jews because it would give the wrong impression that the girl meant all Jews around the world, but in fact she was talking about Israeli Jews.

“Similarly, Palestinians are referred to by Israeli Jews as ‘Arabs’. So Palestinians refer to Israeli Jews as ‘Al Yahoud’ the same way that Israeli Jews refer to Palestinians as ‘Arabs’. Both sides don’t like to spell out the nationality of the other side for obvious reasons.”

The Committee considered, in light of these statements, that the translation employed by the programme-makers was well-sourced and based on sound evidence.

The Committee noted the programme’s assertion that it was aware of the BBC guidance to journalists which says, “Be careful over whether you mean ‘Israeli’ or ‘Jewish’: the latter might imply that the story is about race or religion, rather than the actions of the state or its citizens.” It noted the programme’s assertion that in this context, in which the interviewee was discussing interactions with the state and its citizens rather than being about race and religion, it was consistent with the guidance to translate Jew on this occasion as Israeli.

It noted the complainant’s assertion, in his response to the draft background note, that the BBC’s guidance was not relevant to his appeal as it was intended for use by BBC

journalists in their own reports and was not intended as a licence to mistranslate interviewees. The Committee did not agree that this was the relevance of the programme's acknowledgement of the guidance. Instead the Committee felt that citing the clause demonstrated that the programme had taken account of sensitivities in this area and that it had borne these in mind when reaching its decision to translate the content in the way it had.

It noted the terms in which the ECU had acknowledged that a literal translation might have "more accurately explained" the student's words but that the translation actually given was not materially misleading:

"The programme-makers have explained that they gave some thought to the translation, and considered that in the context – a discussion of the circumstances in which [the girl] might use Hebrew, and crossing the border and meeting Israelis – the translation gave the best sense of what she meant. They have put it that she was quite clearly discussing interactions with the state and its citizens, rather than people of the Jewish faith.

"The sense was certainly given that she believed 'the Israelis' to have bad intentions towards her – however I don't believe that this translation did much to soften the impact of what was said, or otherwise give a distorted account of her views. It seems to me that the potential offensiveness of the attitude she expressed is less about the precise definition of the people to whom she refers (and I think it could be argued as anti-Semitism in either version) and more to do with her approach to those people."

The Committee noted how the complainant's argument that the different terms for "Jew" and "Israeli" in Arabic are used to express distinct concepts and that therefore the choice of word is not a linguistic consideration but "a result of education which makes use of old religious prejudice in order to exacerbate distrust and hostility". It noted the complainant's assertion that in not using the literal translation, the programme had deprived the audience of an important insight into the mindset of a girl from Gaza educated in a Hamas school.

The Committee accepted that the main editorial purpose of this news item was to report that Hamas schools were teaching children Hebrew as "the language of the enemy". The programme-makers, based on their professional judgement, understood the enemy in this case to be Israel, and the Committee understood the reasons why the programme felt it was important to communicate that clearly.

The Committee concluded that the programme had demonstrated that it had weighed all the relevant facts, and taken into account the context in which the girl was speaking and whom she was most likely to be referring to, in reaching its decision to translate the words she used as it did. The Committee considered that the chosen translation did not dilute the girl's hostility or soften the impact of her words. The Committee therefore concluded that the programme had achieved due accuracy as required by the editorial guidelines.

Finally, the Committee noted the complainant's assertion that the programme ought to have included the information that Arabic had been taught in Israeli schools for decades and that failure to mention this fact demonstrated a lack of due impartiality. The

Committee noted that at earlier stages of the complaint it had been demonstrated that the situation in Israel, where 20 per cent of the population spoke Arabic as their first language, was very different from Gaza where there were effectively no Israelis and no native Hebrew speakers. It concluded that the two were not analogous and that it was a legitimate exercise of editorial judgement not to include the information in this report. The Committee concluded that the programme had also achieved due impartiality, as required by the Editorial Guidelines.

Finding: Not upheld.

PM, BBC Radio 4, 12 November 2012

I. Background

On 12 November 2012 BBC correspondent Wyre Davies reported for a Radio 4 news bulletin that the Israeli military had fired tank shells into Syria.

The bulletin, broadcast at 5pm within the *PM* programme, contained the following cue and voice piece:

Cue: Israel has fired tank shells into Syria, claiming a direct hit on an artillery unit. Israel said it was responding to stray fire from the conflict between Syrian government and rebel forces near the Golan Heights. Reporting from Jerusalem, Wyre Davies.

Wyre Davies: This is an almost exact repetition of events yesterday when a mortar shell from Syria hit an Israeli border post and Israel fired warning shots in response. But today Israel took much more serious and unprecedented action. When another mortar round from the same Syrian source landed in the Golan Heights Israel fired tank shells, deliberately targeting a Syrian artillery unit near the town of Kuneitra. After the recent incidents and concerns that Syria's civil war is spilling over, Israel has again warned Damascus that any additional shelling, whether deliberate or accidental would elicit a tough response.

2. The complaint

Stages I & 2

The complainant contacted the BBC to complain about “the failure to put into its proper context Wyre Davies’ report on trouble at the Golan Heights. That this territory does not belong to Israel but is Syrian territory, illegally occupied by Israel, did not seem to be important enough to be mentioned”. She asked why Mr Davies was “pretending that it’s a case of Syria trespassing in Israel and not the other way round?” She stated that this was a “gross factual inaccuracy”, caused by “pro-Israel bias”.

The complainant received a reply from the BBC Radio Newsroom which acknowledged that “the introduction to the report could have been clearer on this occasion as you suggest” but which stated that the focus of the report “was on the civil war in Syria, not on the status of the Golan Heights.” The BBC stated that this was a very brief report and that a subsequent lengthier bulletin at 6pm had included the term “Israeli-occupied”.

The complaint was escalated to the BBC’s Editorial Complaints Unit (ECU) and the complainant argued that the term “Israeli-occupied” should have been included in the report itself. In response, the ECU agreed that more information on the status of the area would have been of interest to listeners and aided their understanding of the wider context, but they did not accept that listeners would have been misled by the absence of the term. The ECU stated that this was a brief report on the exchange of fire rather than a report about the sovereignty of the land. The ECU also stated that *PM* listeners would be likely to be aware that much of the area around the borders of Israel was disputed and

in some places occupied by Israeli forces, so there was a very limited risk that they would have assumed from the absence of information to the contrary that the land belonged indisputably to Israel.

Appeal to the Trust

The complainant appealed to the Trust on 3 June 2013, claiming that the BBC's guidelines on accuracy had been breached. The complainant repeated earlier arguments but also specifically disputed the ECU's conclusion regarding the limited risk in relation to listeners of *PM*.

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

Point (A) The report should have included a term such as "Israeli-occupied" to clarify that, as the complainant put it at stage 1, Israel was "trespassing" in Syria and "not the other way round".

Point (B) The complainant believed this "extremely brief" qualification was necessary in order to give "proper context" to the story.

Point (C) Without this qualification the complainant argued that listeners were likely to be misled.

Impartiality was not raised at stage 3 on appeal. At stage 1, the complainant raised the following point in relation to the impartiality of this report:

Point (D) The omission demonstrated pro-Israeli bias because, in the absence of an explanation to the contrary, listeners would assume that Israel was defending its territory.

3. Applicable Editorial Guidelines

The sections of the BBC Editorial Guidelines relating to accuracy and impartiality are applicable to this case. The full guidelines are at bbc.co.uk/editorialguidelines.

4. The Committee's decision

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

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

The Committee noted that the Golan Heights is a mountainous region which has had strategic military significance for centuries, being situated at the meeting point of four modern-day countries: Syria, Lebanon, Jordan and Israel.

The Committee noted that Israel seized control of the Golan Heights from Syria during the Six-Day War of 1967. Syria tried, and failed, to recapture the Golan Heights during the 1973 Middle East war (Yom Kippur War). In 1974 Israel and Syria agreed a

disengagement plan that involved the creation of a disengagement zone patrolled by a United Nations observer force. In 1981 Israel annexed the Golan Heights. The UN published Security Council resolution 497 which declared this decision “null and void and without international legal effect.”⁴

The Committee noted that on 10 November 2012 the Israel Defence Forces (IDF) posted a statement on its website stating that “a mortar shell hit an IDF post in the Golan Heights, adjacent to the Israel-Syria border, as part of the internal conflict inside Syria” and in response, “IDF soldiers fired warning shots towards Syrian areas”. The BBC said at the time, “it is the first time that Israel has fired on Syrian forces since the Middle East war of 1973”.⁵ On 12 November 2012 the IDF stated that its tanks had scored direct hits on Syrian artillery units.

The Committee noted that mainstream media reports about the 12 November incident tended to put it in its historical context (i.e. a significant moment in the continuing dispute over the Golan Heights between Syria and Israel), and/or its current geo-political context, (i.e. whether this was a sign that countries surrounding Syria were being drawn into the battle between rebel and government forces).

The Committee noted the complainant’s view that this was a failure to put the story into “its proper context”.

“Wherever Israel is concerned BBC News reports tend to give the listener no pointers or reminders about the historical background. Just a word here or a phrase there would help them to better see any new incident in its proper context.”

The Committee noted the comments of the BBC Radio Newsroom’s Editor, who stated that he preferred to use ‘Israeli-occupied’ when referring to the Golan Heights but he did not accept that its omission in this instance led to a breach of the guidelines on accuracy.

The Committee noted that 3.1 of the Editorial Guidelines states that ‘due’ accuracy requires accuracy to be “adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.”

The Committee noted the ECU’s argument about the likely knowledge of *PM* listeners and the complainant’s view that, “even if it were correct, that would not exempt the BBC from its obligation for accuracy”. The Committee also noted the complainant’s argument that “presumed audience expectation” was not an appropriate defence, given the BBC’s previous efforts, in her view, to adjust content to tailor to presumed audience expectations in other programmes (the complainant drew the Committee’s attention to two previous complaints findings to support this point).⁶

The Committee also noted the BBC’s comments at stage 1 that this was a brief bulletin and that the longer 6pm bulletin included the term “Israeli-occupied”. The Committee

⁴ [www.undemocracy.com/S-RES-497\(1981\).pdf](http://www.undemocracy.com/S-RES-497(1981).pdf)

⁵ bbc.co.uk/news/world-middle-east-20288263

⁶ “Mic Righteous freestyle performance” – bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/dec.pdf – and *Sunday*, BBC Radio 4 – http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/jun.pdf

also noted the complainant's subsequent comments that information about the later 6pm bulletin was "totally irrelevant".

The Committee also noted BBC News' view that the report implied that the Golan Heights are occupied by Israel when referring to "an almost exact repetition of events."

The Committee also considered the complainant's argument regarding "audience expectation" but concluded that the cases drawn upon by the complainant to illustrate this point were very different from this complaint. The Committee agreed that each case should be judged on its own merits.

The Committee concluded that the brevity of the item and the likely knowledge of the Radio 4 *PM* audience mitigated the requirement for a reference to Israel's occupation of the Golan Heights on this occasion.

The Committee noted the complainant's emphasis on the part of the Editorial Guidelines which states that "due accuracy is more important than speed".⁷ However, the Committee considered that on this occasion, the subject of the broadcast was the escalation of tension on Syria's borders and the potential "over-spilling" of its civil war into neighbouring countries. It was not clear whether the incoming mortar fire from Syria was accidental or deliberate, or whether it was by rebel or government forces. The Committee considered that there was no evidence that the mortar fire was a response to the occupation of the Golan Heights. Accordingly, having regard to the subject and nature of the content, the Committee concluded that Israel's occupation of the Golan Heights was not essential to the understanding of the story. The Committee agreed that this report was duly accurate.

The Committee considered the complainant's claim that the BBC had misled its audience. The Committee noted that as they had concluded this was duly accurate, the BBC had not "knowingly and materially" misled the audience.

The Committee noted that the complainant had in her pre-appeal correspondence with the BBC complained that the BBC was in breach of its Charter requirement for impartiality as she argued that the claimed inaccuracy stemmed from pro-Israeli bias on the part of the BBC. Having concluded that the report was duly accurate, the Committee considered that there was no evidence to support a breach of the guidelines on impartiality.

Finding: Not upheld.

⁷ BBC Editorial Guideline section 3.1, available at bbc.co.uk/editorialguidelines/page/guidelines-accuracy-introduction

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.

Application of expedited complaint handling procedure at Stage 1

The Editorial Standards Committee reviewed 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

In correspondence with the Trust Unit, the complainant raised criticisms of the decision by the Director of BBC Cymru Wales to apply the expedited complaints handling procedure to him at Stage 1 of the complaints process. The Trust Unit treated the complainant's letter of 19 December 2012 as a request for an appeal against that decision (although, as detailed below, the complainant disputed that this was his intention).

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 is currently subject to the expedited procedure at Stage 3 in relation to appeals (including those relating to handling) and that this procedure was applied by the Editorial Standards Committee on 4 October 2012. This means that, although the Trust is obliged to read and consider appeals from the complainant, the Trust is only obliged to investigate the appeals and respond with reasons if the appeal does not fall within any of the conditions set out in paragraph 2 of Annex B of the Complaints Framework and in fact raises an issue of breach of any relevant guidelines or policies. If the complaint does fall within paragraph 2 of Annex B, the Trust does not have to acknowledge the complaint and it may be rejected without notifying the complainant or providing reasons. Although the Trust's Adviser was satisfied that this particular appeal fell within (d) of paragraph 2 of Annex B (no reasonable prospect of success), she considered that it was appropriate in this instance to provide the complainant with reasons for her decision. She took into account that this was an appeal against the application of the expedited procedure by the BBC at Stage 1, the result of which has serious consequences for the complainant.

The Trust's Adviser noted that, according to the BBC's Complaints Framework, the Expedited Complaints Procedure may be used at any stage of the complaints process, including Stage 1, and that there was no prohibition on the concurrent application of the Expedited Complaints Procedure at different stages.

The Trust's Adviser also noted that the Director had based his decision on three of the

five grounds set out in paragraph 2 of Annex B to the Complaints Framework. These were that the appellant had a history of persistently or repeatedly making complaints which:

- were trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
- failed to raise an issue of breach of any relevant Guidelines or Policies; or
- after rejection of the complaint at an earlier stage (eg Stage 1), were persistently and repeatedly appealed unsuccessfully to the next stage (eg Stage 2).

With regard to the volume of correspondence generated by the complainant at Stage 1, the Trust's Adviser noted that the Director had stated in his decision: "You have now contacted the BBC numerous times to make stage 1 complaints or escalations." The Trust's Adviser noted that the complainant had not challenged this assertion. She therefore concluded that the volume of correspondence generated by the appellant was not in issue.

The Trust's Adviser noted that paragraph 2(a) of Annex B to the Complaints Framework referred to complaints that were "trivial, misconceived, hypothetical, repetitious **or** otherwise vexatious" (emphasis added), and that it was therefore not necessary for complaints to be all of those things.

The Trust's Adviser noted that the complainant's substantive complaints repeatedly concerned allegations of pro-left-wing bias in general and bias against Margaret Thatcher in particular. For example, in this appeal, the complainant had asked for his letter of 19 December 2012 to be shown to the Chairman of the BBC Trust:

"...so that it may confirm the totalitarian power he has at his disposal to silence ordinary people from challenging left-wing bias that is so natural to the BBC."

The Trust's Adviser took the view that the complaints were essentially variations on the same theme, and were therefore "repetitious", within the meaning of paragraph 2(a) of Annex B to the Complaints Framework.

It appeared to the Trust's Adviser that the Editorial Complaints Unit's and Editorial Standards Committee's repeated rejections of what were, in essence, substantially similar allegations had, over the years, had the effect of rendering the complaints increasingly trivial.

The complaints were, in the view of the Trust's Adviser, also vexatious, given the disparity between, on the one hand, the relatively large amount of BBC staff time and licence fee payers' money that had been spent in handling them and, on the other hand, their relatively low likelihood of success and the increasing triviality over time.

Having regard to the manner in which the complaints had been pursued, and the tone of the complainant's correspondence, the Trust's Adviser considered that these had given rise to additional vexation and she quoted examples of his correspondence with the BBC to support her view. The Trust's Adviser noted that the complainant had visited the BBC Cymru Wales office without appointment, which was potentially intimidating towards BBC staff and was in any event not provided for by the BBC's complaints process. She noted that he had deliberately disregarded the formal provisions of the BBC's complaints process, for example, by intentionally failing to observe applicable time-limits.

The Trust's Adviser noted that, in his letter to the Trust dated 18 November 2012, the complainant had stated:

"[The Director] has specifically informed me that all of my complaints were vexatious. ... I have taken great offence by him claiming this and require him to say why he believes me to be a vexatious person."

The Trust's Adviser noted that, in the Director's explanation of his decision, it was the frequency and nature of the appellant's complaints and escalations that were referred to as representing a disproportionate and vexatious use of the complaints service, and that the term "vexatious" had not been applied to the complainant personally.

The Trust's Adviser said that the nub of dispute in this appeal concerned the complainant's and the Director's differing estimations of the merits of the substantive complaints. Having regard to the complainant's mostly unsuccessful complaint history, the Trust's Adviser said that both the ECU and the ESC had repeatedly and consistently upheld the Director's view. The ECU and the ESC had found, over the course of a number of years, that the complainant had failed to raise an issue of breach of the Editorial Guidelines. The Trust's Adviser therefore concluded that the requirement of paragraph 2(b) of Annex B to the Complaints Framework was satisfied.

The Trust's Adviser noted that in a previous letter of appeal to the Trust, in March 2009, the complainant had acknowledged that his delay in bringing that appeal was partly "calculated and deliberate".

The Trust's Adviser noted that, since 2007, the complainant had escalated complaints about the following items of BBC output:

- *Life on Mars*, BBC One, 6 March 2007
- *Wales: Power and the People - Back to the Future*, BBC Two Wales, 23 July 2007
- *News at Ten*, BBC One, 25 January 2008
- *Ashes to Ashes*, BBC One, 14 February 2008
- *The Satanic Verses Affair*, BBC Two, 7 March 2009
- *Wales Today*, BBC Cymru Wales, 12 March 2009
- *Dragon's Eye*, BBC Cymru Wales, 28 January 2010

The Trust's Adviser noted that the complainant had also engaged in Stage 1 correspondence with BBC Cymru Wales about non-output-related issues, and had raised a Stage 1 complaint about *Red Letter Day* (BBC Cymru Wales, 17 May and 19 June 2011).

The Trust's Adviser noted that, in two of the above cases, the appellant had raised additional procedural complaints at Stage 3, neither of which the ESC had upheld. While the ESC had upheld two appeals in the above cases, the Trust's Adviser noted that the Committee had only done so partially and had not upheld the remaining points of complaint. Furthermore, one of those "partial upholds" was in relation to the handling of the complaint, as distinct from the substance of the appeal.

In the view of the Trust's Adviser, the points of complaint that had been upheld were considerably outweighed, in terms of both number and significance, by those that had not.

The Trust's Adviser therefore concluded that the requirement of paragraph 2(e) of Annex B to the Complaints Framework was satisfied, in that, after the rejection of his complaints at an earlier stage, the complainant had persistently and repeatedly appealed unsuccessfully to the next stage.

For the above reasons, the Trust's Adviser believed there was evidence to suggest that

the pre-conditions for the application of the Expedited Complaints Procedure had been met. The Trust's Adviser therefore decided that there was no reasonable prospect that this appeal would be upheld by the ESC and that it would not be appropriate, proportionate or cost-effective for the ESC to consider this appeal.

Responses from the complainant

Having received the decision of the Trust's Adviser, the complainant engaged in further correspondence with the Trust in which he disputed that he had intended his correspondence with the Trust to be an appeal against the application of the expedited procedure at Stage 1. The complainant said that he was waiting to receive answers to questions he had submitted to the Director of BBC Cymru Wales before he would be in a position to appeal against the decision.

The Trust Unit wrote to the complainant noting the points he had made in his correspondence. The Trust Unit said that it would be happy to stop all action taken following his December letter (i.e. shelve the DNP and regard him as having accepted the decision of BBC Wales), but that if he did wish to proceed with an appeal, he should challenge the decision of the Trust's Adviser within the normal timeframe. The Trust Unit also provided the complainant with responses to his requests for information about the Trust Unit's handling of the complaint.

The complainant responded saying that it was clear he did wish to contest the matter but that the application of the expedited procedure should be put on hold until the outcome of a separate appeal to the Trust regarding the handling of a complaint about the BBC Wales programme *Red Letter Day*.

In response, the Trust Unit said that it did not consider the *Red Letter Day* appeal to be linked to an appeal against the application of the expedited procedure. The expedited procedure can be applied where complainants "have a history of making complaints" which are trivial, misconceived, or shown on investigation to have no reasonable prospect of success. The fact that the *Red Letter Day* appeal is being considered by the Trustees does not mean that the complainant does not have a history of making such complaints. In fact, the wording of Annex B expressly provides for the possibility that an individual subject to the expedited procedure could still make a complaint which should be investigated and could be upheld (hence the obligation to investigate as normal if the complaint would seem to fall outside of Annex B).

The Trust Unit said that the outcome of the *Red Letter Day* appeal was therefore not a relevant consideration for the purposes of the decision whether to accept an appeal against the application of the expedited procedure at Stage 1.

The complainant responded, reiterating his view that consideration of the admissibility of an appeal against the application of the expedited procedure should be suspended. The complainant alleged that the Director of BBC Cymru Wales placed him on the expedited procedure "out of self-interest and prejudice" and said he believed he could make a "strong and compelling" case for this if the ESC finds in his favour in the *Red Letter Day* complaint.

With regard to the application of the expedited procedure, the complainant said he had not been provided with any evidence that he is a "vexatious complainer". He said he had received no response to his proposition that if the part of the "banning order" referring to him being vexatious was withdrawn by the Director of BBC Cymru Wales then he would drop any appeal against the action.

The complainant also said that he had not been given any reasons as to why a review of an appeal request was carried out without his consent.

The complainant wrote to the Chairman of the Trust repeating some of the points he had made previously and asking for an adjournment of the consideration of his appeal.

The Trust Unit responded explaining that there was nothing to adjourn as no request for a review of the Trust Adviser's decision had been received. The Trust Unit said it was neither necessary nor appropriate under the applicable procedures to put to the Director of BBC Cymru Wales the complainant's proposition regarding withdrawal of an appeal. The Trust Unit reiterated the deadline for requesting a review by Trustees of the Trust Adviser's decision with regard to the admissibility of an appeal.

There followed another exchange of correspondence between the complainant and the Trust in which the complainant repeated his criticisms of the decision to apply the expedited complaints handling procedure at Stage 1, the decision of the Trust Unit to treat his correspondence as an appeal, and the decision not to put to the Director of BBC Cymru Wales the complainant's proposition regarding withdrawal of the appeal.

The complainant wrote a letter on 1 July 2013, addressed to the Chairman of the Trust, in which he repeated many of the points he had already made and set out his grounds for challenging the decision of the Trust's Adviser that his appeal against the application of the expedited procedure should not proceed to appeal. The Trust Unit told the complainant that this letter would be put before Trustees for consideration at their meeting on 18 July 2013.

The complainant's grounds for challenging the decision of the Trust's Adviser were:

- The Trust's Adviser should not have carried out a review of the Director's decision because she is junior to him.
- The reasons given by the Trust's Adviser for imposing the ban are a "duplication" of a previous application of the expedited handling procedure by the Trust at Stage 3.
- The dictionary definition of vexatious states there must be an intention to cause annoyance and the Trust's Adviser fails to prove such intent.
- The Trust's Adviser made reference to paragraph (c) of the expedited procedure – use of gratuitously abusive or offensive language – but the Director did not refer to this paragraph when making the decision to apply the ban and so cannot do so now.
- The Trust's Adviser said that visits to BBC Wales are outside the Complaints Framework but had the complainant not done so he would not have received a reply. The complainant asked if he was barred from visiting BBC Wales because it is outside the Framework.
- The examples the Trust's Adviser gave of the complainant's comments were given out of their context and there were good reasons for him to make these comments. In relation to one of the comments allegedly made by the complainant, the complainant objected because the Director had already asked

BBC Investigations to look into this and they concluded that there was nothing wrong with the complainant's correspondence. The complainant therefore asked: "Why then after it had been investigated and replied to from the Director-General's office, was this slur about me in the review?" The complainant said he resented having to defend himself again against these allegations.

The complainant referred to a previous complaint he had made regarding the origin of a photograph used in a BBC Wales news programme. The complainant disputed the truth of a response received from the Director of BBC Cymru Wales at that time and said that there should be a reinvestigation of the matter. The complainant said there should be an investigation of the suitability of the Director of BBC Cymru Wales to be in his post.

The complainant also referred to a recent complaint about the removal of the Welsh flag during the funeral of Lady Thatcher and said this was further evidence against the Director of BBC Cymru Wales. He repeated his offer to terminate the appeal subject to the withdrawal of the allegation of vexation by the Director of BBC Cymru Wales.

The complainant sent further correspondence to the Chairman of the Trust prior to the consideration of this appeal request in which he objected to the consideration of the matter by members of the ESC who had previously considered his appeals. The complainant raised particular concerns about the impartiality of the Chairman of the ESC in considering his appeal request.

The Committee's decision

The Committee was provided with the complainant's correspondence with the Trust, including the complainant's letter of 19 December 2012, the response from the Senior Editorial Strategy Adviser, the complainant's substantive response of 14 June 2013 and correspondence with the Chairman of the Trust. The Committee was also provided with the complainant's correspondence with BBC Wales from 2 March 2011 to 29 October 2012.

As a preliminary matter, the Committee noted the letters that had been sent by the complainant on 11 and 18 July 2013, in which he stated his view that the consideration of this matter should not proceed. The Committee agreed that there was no evidence to substantiate the complainant's allegation that Trustees who had previously considered complaints brought by the complainant would be incapable of considering the latest matter impartially. The Committee was mindful that it frequently considers appeals from people who have previously brought matters before it and this is a normal part of its function. The Committee noted the particular circumstances of this case, where it was being asked to consider the admissibility of an appeal against the application of the expedited procedure at Stage 1 when it had already approved the application of the expedited procedure at Stage 3. The Committee did not agree that it would be incapable of considering this new matter afresh and taking into account only those factors relevant to its decision. The Committee noted that the complainant had also requested additional time in which to obtain answers to questions he had raised and to seek legal advice. The Committee noted the responses that had already been given to the complainant on these points in correspondence with the Trust Unit. The Committee considered that the complainant had received sufficient information to ask the Trust to review the decision of the Trust Unit not to admit his appeal against the application of the expedited procedure by the Director of BBC Cymru Wales. The Committee noted that the complainant had provided extensive reasons for disagreeing with the decisions of the Director and the Trust Unit in a lengthy series of correspondence. The Committee noted that the complainant had previously been provided with extended deadlines by the Trust Unit

when he had asked for them. The Committee agreed that it would not be necessary to postpone the consideration of this matter any further.

The Committee noted that there were three principal issues before it for consideration:

- i) The Trust Unit's decision to take the complainant's letter of 19 December 2012 as a request for an appeal against the decision by the Director of BBC Cymru Wales to apply the expedited handling procedure at Stage 1
- ii) The Trust Unit's decision to treat the letter from the complainant of 14 June 2013 as a challenge to the decision of the Trust's Adviser not to accept the appeal
- iii) Depending on its conclusions with regard to points i) and ii), a review of the decision of the Trust's Adviser not to accept the appeal

i) The Trust Unit's decision to take the complainant's letter of 19 December 2012 as a request for an appeal against the decision by the Director of BBC Cymru Wales to apply the expedited handling procedure at Stage 1

The Committee noted the complainant's argument that, before making an appeal, he needed to know on what basis the Director of BBC Cymru Wales considered him to be vexatious. The Committee noted that the complainant put this request to the Director directly but BBC Wales decided not to respond further.

The Committee noted that the complainant said that if the Director withdrew this aspect of the decision to place him on the expedited procedure, the complainant would withdraw his challenge of the decision. The Committee noted the complainant said this proposition should be put to the Director and objected to the fact that the Trust Unit had refused to do so.

Trustees were mindful that the Trust is not a mediator in disputes with BBC staff but has the role of an appeal body to which complaints can be brought when the Executive has finished answering them. The Committee agreed that it was neither necessary nor appropriate for the Trust Unit to put the complainant's proposition to the Director of BBC Cymru Wales.

Trustees noted that, under the Complaints Framework, if a complainant wishes to appeal the decision of the Executive to apply the expedited procedure, they must do so within 20 working days of being informed of that decision. The Trustees noted the relevant correspondence:

- 29 October 2012 - Letter from the Director of BBC Cymru Wales to the complainant explaining that an appeal to the Trust would be the next step;
- 18 November 2012 - Letter from the complainant to the Trust saying that he had been referred to the Trust if he wished to appeal the decision and that he intended to appeal but was awaiting further information from BBC Wales;
- 21 November 2012 - Email from the Trust Unit to the complainant confirming that BBC Wales had nothing further to add and that the Trust would await his appeal;
- 19 December 2012 – Complainant's letter in which he referred to the Trust Unit's "recent e-mails regarding my wish to question the decision ... and giving me until

today to respond”;

- 26 February 2013 – Complainant’s letter in which he said “I do not believe paragraph 1 [of his letter of 19 December] or these outspoken and rather insulting and disparaging accusations against [the Director of BBC Cymru Wales] can in any way be regarded as a request for an appeal”;
- 22 April 2013 – Trust Unit’s email to the complainant saying that it was not clear that the complainant did not wish to appeal, and if he did wish to proceed with his complaint, an appeal to the Trust would be the next step; and
- 13 May 2013 – Complainant’s letter to the Trust Unit in which he said “Thank you for your email of the 22nd April...giving me until...21st May to respond should I wish to contest this matter. You say I have not made [sic] it clear if I want to do this but I feel the contents of my letters makes it [sic] perfectly clear that I do.”

Trustees considered that, in the light of the complainant’s wish to proceed with a complaint about the decision of the Director of BBC Cymru Wales, and the fact that the complainant had been informed that the BBC Trust is the next step in the complaints process, it was reasonable and appropriate for the Trust Unit to treat the complainant’s letter of 19 December 2012 as an appeal to the Trust.

ii) The Trust Unit’s decision to treat the letter from the complainant of 14 June 2013 as a challenge to the decision of the Trust’s Adviser not to accept the appeal

The Committee noted that the complainant had objected to this matter going before the Committee on the basis that the DNP is “unlawful” and not suitable for consideration by Trustees. The Committee noted that the Trust’s Head of Editorial Standards had explained that the Trust Unit would treat the complainant’s letter as a challenge to the decision of the Trust’s Adviser.

The Committee noted the relevant correspondence:

- 26 February 2013 – Complainant’s letter to the Trust Unit in which he said that before requesting Trustees review the Senior Editorial Strategy Adviser’s decision, he would like to know on what basis the Adviser’s review had been carried out;
- 22 April 2013 - The Trust Unit’s email to the complainant explaining that if he wished to proceed with an appeal, he should write to the Complaints Adviser explaining why he disagrees with the Senior Editorial Strategy Adviser’s decision and ask the Trustees to review it;
- Further correspondence between the complainant and the Trust, including letters to the Chairman of the Trust, between 18 May 2013 and 1 July 2013.

In the light of the complainant’s objection to the Adviser’s decision, and the fact that the complainant had been informed that a request for Trustees to review that decision is the next step in the complaints process, the Committee agreed that it was reasonable and appropriate for the Trust Unit to treat the complainant’s letter of 14 June 2013 as a request for a review of the decision of the Trust’s Adviser.

iii) A review of the decision of the Trust’s Adviser not to accept the appeal

Having agreed that it was reasonable to conclude that the complainant had appealed

against the decision to place him on the expedited procedure, and that he had then challenged the decision of the Trust's Adviser not to put that appeal before Trustees, the Committee considered whether it was correct for the Trust's Adviser to have decided that there would be no reasonable prospect of success for the appeal.

The Committee noted that the complainant had made numerous criticisms of the decision of the Trust's Adviser that there would be no reasonable prospect of success for his appeal. The Committee noted that the complainant had made the following points:

- The Trust's Adviser should not have carried out a review of the Director's decision because she is junior to him.
- The reasons given by the Trust's Adviser for imposing the ban are a "duplication" of a previous application of the expedited handling procedure by the Trust at Stage 3.
- The dictionary definition of vexatious states there must be an intention to cause annoyance and the Trust's Adviser fails to prove such intent.
- The Trust's Adviser made reference to paragraph (c) of the expedited procedure – use of gratuitously abusive or offensive language – but the Director did not refer to this paragraph when making the decision to apply the ban and so cannot do so now.
- The Trust's Adviser said that visits to BBC Wales are outside the Complaints Framework but had the complainant not done so he would not have received a reply. The complainant asked if he was barred from visiting BBC Wales because it is outside the Framework.
- The examples the Trust's Adviser gave of the complainant's comments were given out of their context and there were good reasons for him to make these comments. In relation to one of the comments allegedly made by the complainant, the complainant objected because the Director had already asked BBC Investigations to look into this and they concluded that there was nothing wrong with the complainant's correspondence. The complainant therefore asked: "Why then after it had been investigated and replied to from the Director-General's office, was this slur about me in the review?" The complainant said he resented having to defend himself again against these allegations.

The Committee was mindful that the key issue for it to consider was whether there was a reasonable prospect of success for an appeal against the decision of the Director of BBC Cymru Wales. In doing so the Committee could take into account the reasons given by the Trust's Adviser, and the complainant's responses, but the main consideration was whether the Committee would be likely to overturn the decision of the Director if it took the case on appeal. To this end, the Committee agreed that it was not required to come to a decision on the merits of each of the reasons given by the Trust's Adviser for concluding that the appeal did not have a reasonable prospect of success.

The Committee noted the conditions under which it may be determined that a complainant should be subject to the expedited procedure:

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

- (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
- (b) fail to raise an issue of breach of any relevant Guidelines or Policies (eg in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework);
- (c) use gratuitously abusive or offensive language;
- (d) are shown on investigation to have no reasonable prospect of success; or
- (e) after rejection of the complaint at an earlier stage (eg Stage 1), are persistently and repeatedly appealed unsuccessfully to the next stage (eg Stage 2)."

The Committee noted that it was not necessary to meet all of these criteria and that if there is a history of complaints meeting any of them then the expedited procedure may be applied.

The Committee noted that the complainant had argued that the reasoning provided by the Director of BBC Cymru Wales was insufficient and, in particular, that he had not explained why he thought the complainant was vexatious or given evidence to show that he is vexatious. The Committee noted that the letter from the Director dated 29 October 2012 said:

"You have now contacted the BBC numerous times to make stage 1 complaints or escalations. We replied to these complaints and did not consider that they provided evidence of a breach of the BBC's editorial guidelines"

"At all stages, an editorial complaint may not be investigated if it fails to raise an issue of breach of the editorial guidelines or is 'trivial, misconceived, hypothetical or otherwise vexatious'. I consider the frequency and nature of complaints and escalations you have made at stage 1 meets these criteria and represents a disproportionate and vexatious use of the complaints service and hence of the licence fee."

The Committee agreed that the reason for applying the expedited procedure was made clear by the Director and that, while he had not enumerated the complaints to which he referred, the complainant was well aware of his own complaint history and it was not necessary to have provided this information. The Committee considered that it was clear the Director was taking into account the entirety of the complainant's previous contacts at Stage 1 when he said "I consider the frequency and nature of complaints and escalations you have made at stage 1 meets these criteria and represents a disproportionate and vexatious use of the complaints service and hence of the licence fee."

The Committee noted the complainant's view that in invoking the part of the procedure referring to vexatious complaints, the Director of BBC Cymru Wales was making an insulting attack on the complainant's character and reputation. The Committee considered, however, that the reference to "vexatious" was in relation to the complainant's use of the complaints process and was not a statement about the complainant's character.

The Committee noted that in the seven complaints which the Trust's Adviser had referenced, the underlying issue was the BBC's treatment of Margaret Thatcher and alleged left-wing bias. The Committee noted that two complaints had been partially upheld at Stage 2. The Committee noted that, with the exception of one complaint partially upheld on appeal, none of these substantive complaints had been successful at Stage 3 of the process. The Committee agreed that the points of complaint which had

been upheld, relating in the main at Stage 3 to complaint handling, were considerably outweighed in terms of both number and significance by those which had not. The Committee noted that the handling of complaints from the complainant typically involved a large volume of correspondence and represented a significant burden on BBC resources at all levels of the process. The Committee considered that, taking into account the merit of the underlying issues raised by the complainant, the continued handling of his complaints at Stage 1 represented a disproportionate use of licence fee payers' money. The Committee agreed with the Director of BBC Cymru Wales that this met the criteria set out in paragraph (a) of the expedited procedure which refers to complaints which are "trivial, misconceived, hypothetical, repetitious or otherwise vexatious". The Committee was clear that it considered it to be appropriate to describe the way in which the complainant chose to pursue his complaints, and the resulting demand on resources, as vexatious. The Committee considered that the complainant also evidently had a history of making complaints which variously met the criteria set out in paragraphs (b), (d) and (e), given the reasoning above.

The Committee therefore concluded that it was unlikely to find that the decision taken by the Director of BBC Cymru Wales to apply the expedited handling procedure to the complainant at Stage 1 was inappropriate, and there was no reasonable prospect of success for an appeal against that decision.

The Committee did not agree with the complainant that the evidence it had seen suggested anything other than that the BBC was acting within the spirit of the procedures which are intended to avoid the disproportionate use of resources on complaints which fail to raise an issue of a breach of standards. The Committee was mindful that applying Annex B does not mean that future complaints from the complainant will be ignored, and that the BBC must continue to read them, but that they do not require acknowledgment and can be rejected without notifying the complainant or providing any reasons providing they fall within the criteria set out in paragraph 2 of Annex B (above).

The Committee noted an additional point made by the complainant: that he considered the complaints process to be unfair and illegal, with specific reference to an incorrect date being given to him by the Trust Unit as a deadline for a response. The Committee was aware that complaints about handling by the Trust should in the first instance be sent to the Director of the Trust. The Committee noted that the expedited handling procedure had already been applied to the complainant by the Trust (http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/oct.pdf)

The Committee noted that the Trust Unit had advised the Director of the Trust that the handling complaint fell within paragraph 2 of the expedited complaints procedure and the Director of the Trust had confirmed that he was content with the decision not to respond to the complainant further on these points.

Finally, the Trustees noted that the complainant had questioned the need for applying the expedited handling procedure at Stage 1 when it had already been applied by the Trust at Stage 3. The Committee was mindful that the Complaints Framework allowed for the expedited procedure to be imposed at all three stages. It was therefore appropriate, if the BBC thought that incoming complaints at Stage 1 fell within the expedited procedure, to apply the procedure separately at that stage. The Committee noted that this situation had been explained to the complainant in the Head of Editorial Standards' letter of 21 June 2013 and repeated in a further email from the Trust Unit on 11 July 2013.

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

In Our Time, BBC Radio 4, 14 February 2013 and Today, BBC Radio 4, 8 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

The complainant wrote to the BBC Trust on 10 April 2013 following the decision by the Editorial Complaints Unit not to uphold his complaint of bias relating to two items of content on BBC Radio 4 in which aspects of the science of climate change were discussed: an interview on the *Today* programme with Lord Stern and an edition of *In Our Time* about ice ages.

The complainant detailed his specific allegations about the items in his submissions at Stages 1 and 2; his letter of appeal focused on why, in his view, the BBC was not duly impartial in how it presented as settled scientific consensus the view that climate change as a result of anthropogenic global warming (AGW, or man-made global warming) was caused by rising CO₂ levels.

The complainant said in his appeal that even though CO₂ continued to rise, temperatures since 2003 had been on a falling trend. He claimed the BBC's response to his complaints relied on the flawed modelling of the Intergovernmental Panel on Climate Change (IPCC) or outdated NASA website material.

The complainant said the computer models upon which the IPCC based their predictions of dire catastrophe were not capable of making a qualified prediction because they were not supported by evidence but relied on supposition. He said the IPCC model was flawed because it relied on a straight linear projection of rising CO₂ causing a linear rise in global temperature and that was "computer modelling not science".

The complainant argued that there was no evidence that rising CO₂ had led to a parallel rise in temperature.

The complainant argued that NASA data cited in the response from the Editorial Complaints Unit (ECU) at Stage 2 to support the view that "the current warming trend is of particular significance because most of it is very likely human-induced and proceeding at a rate that is unprecedented in the past 1,300 years", most likely predated 1995 when the four tenths of 1 degree C rise since 1960 stopped and started to trend down.

The complainant asked for clarification of the meaning of "due impartiality" and "due accuracy" as cited by the ECU in its finding.

The complainant said he had attached full supporting documentation and that if the BBC wished to refute his complaint then it needed to refute all the data individually.

The complainant concluded his appeal by stating that his approach to the issue was based on fact, whereas he considered the ECU was defending a "biased prejudiced theology overcome by time and reality" and that it was time the BBC changed its approach.

Whilst the letter of appeal did not relate the complainant's allegations directly to the

broadcast content which was the subject of this appeal, in previous correspondence he detailed his specific concerns.

In relation to an interview on the *Today* programme, the complainant alleged that Lord Stern said "unless we stop warming now temperatures will rise by 3-4 degrees by 2100". The complainant said that, as damage caused by climate change could not happen until temperatures increased by 3-4 degrees "why precisely are we supposed to hand over cash now for climate change caused by CO₂ not predicted to happen until 2100?" The complainant said:

"Lord Stern was interviewed in isolation and allowed to promote his version of events without challenge and was never once asked to validate his assertion. IPCC say 15 years with level temp means their computer models lack the skill to correctly predict future climate."

The complainant made the following additional points during the course of his correspondence with the BBC:

- there was no challenge to the statement that the UN wanted to raise \$100 billion from the western world to compensate the developing world for climate change caused by CO₂
- there was no objective and substantive evidence that indicated that CO₂ caused our climate to change
- there had been no statistically recognisable warming for 17 years; this was borne out by data from bodies such as the Met Office and NASA.

Regarding the second item of content, an *In Our Time* programme about ice ages, the complainant alleged:

- the guests' analysis of the data was biased and lacked correct statistical dimension
- the older the ice cores, the more compressed they become "losing resolution and time scale" the effect being that data obtained from them was not reliable
- throughout time, CO₂ had been higher when temperatures had been lower and lower when temperatures had been higher; there was no correlation
- the participants did not mention that there had been no statistically recognisable warming for between 17 and 19 years even though CO₂ continued to rise; historically CO₂ had been a lagging indicator not a leading indicator
- the programme finished by saying Greenland was doomed; even if Greenland started to melt now it would take 13,000 years for the ice sheet to disappear, enough time to move to higher ground.

Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was reviewed by the Trust Unit and an independent editorial adviser listened to the programmes in question, as did the Senior Editorial Strategy Adviser (the Trust's Adviser).

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

The Trust's Adviser quoted the relevant Guidelines on Accuracy and Impartiality:

Editorial Guidelines relating to Accuracy - Introduction

The BBC is committed to achieving due accuracy. This commitment is fundamental to our reputation and the trust of audiences, which is the foundation of the BBC. It is also a requirement under the Agreement accompanying the BBC Charter.

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

Therefore, we do all we can to achieve due accuracy in all our output, though its requirements may vary. The due accuracy required of, for example, drama, entertainment and comedy, will not usually be the same as for factual content. The requirements may even vary within a genre, so the due accuracy required of factual content may differ depending on whether it is, for example, factual entertainment, historical documentary, current affairs or news.

Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should also be weighed to get at the truth.

Editorial Guidelines relating to Impartiality – Introduction

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

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

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

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

Principles

4.2.1 - We must do all we can to ensure that 'controversial subjects' are treated with due impartiality in all our output.

4.2.2 - News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument.

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

4.2.4 - We are committed to reflecting a wide range of opinion across our output

as a whole and over an appropriate timeframe so that no significant strand of thought is knowingly unreflected or under-represented.

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

Due Weight

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

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

The Trust's Adviser noted that in neither the *Today* interview with Lord Stern nor the edition of *In Our Time* about ice ages was the science of global warming or the role of CO₂ in the current climate change debate the stated subject or the main focus of the item. Lord Stern was giving a news interview about the likely outcome of the UN Climate Change Conference in Qatar and a proposal to compensate small countries affected by the consequences of climate change; *In Our Time* was a discussion on past ice ages and their effect on the geography and biology of our planet.

She considered that Trustees would be likely to conclude that in neither instance would there be an expectation from the audience for a detailed discussion of the interpretation of CO₂ levels in relation to future temperature rises.

However, she considered there remained a requirement that the content observed due accuracy, i.e. that the material presented was well-sourced, based on sound evidence and presented in clear, precise language.

In relation to the *Today* programme, the Trust's Adviser noted the relevant exchange between Lord Stern and the interviewer, James Naughtie:

Lord Stern: My guess is that they'll find a way to focus on the small island states without opening up the issue of compensation very generally. They've come a very long way in these talks and they are laying the foundations for an agreement three years from now, 2015, which will be in France and I think it is important to recognise how far they've come. And they've extended the Kyoto protocol, or they will if it all goes through, to a second stage. They've recognised just how big the gap is between where we're going and where we need to go. We're headed into very dangerous territory, perhaps towards three and a half or four degrees centigrade on current plans. And that, I think, is starting to be recognised much more clearly. So if all of this hangs together over the next 24 hours then I think those foundations will be very valuable to go forwards. And I think the UK delegation, I've been very close to them of course, I am a cross bench peer, I'm not part of government, the UK delegation have been

doing very well in working with the EU to hold this together.

James Naughtie: You mention that figure of three or four degrees. You are well aware that a lot of people are still sceptical about the science despite the insistence of many people in the scientific community that the essential facts are beyond dispute, and people do say "well three degrees, what's that going to mean?" Just remind us what a change of that magnitude, if it came about, would mean?

Lord Stern: Well we haven't seen three degrees on the planet for around three million years. We've been around as human beings for around 250,000 so we have no idea how well we could cope with this. It would come with a pretty big risk at four degrees. The World Bank has just published, made a publication on what that would mean. It would probably mean hundreds of millions of people having to move because of rising sea levels, because of the failure of the monsoon, because of desertification in, for example, southern Europe.

The Trust's Adviser noted the following:

- that, contrary to the complainant's assertion, Lord Stern did not suggest that a 3-4 degree rise in temperatures might take place by 2100; he gave no timescale for the event;
- Lord Stern did not state as a fact that there would be 3-4 degree temperature rise, he nuanced it by saying "perhaps towards three and a half or four degrees";
- as noted by the ECU at Stage 2, Lord Stern had not cited rising CO₂ levels as the cause of the predicted increase, he made no explicit mention of CO₂;
- Lord Stern's comments were immediately followed by the interviewer who noted that, in relation to predictions of a rise in temperature of between three and four degrees, "a lot of people" were sceptical of the science, but he also stated it was the view of "many people in the scientific community";
- the interviewer's comments were consistent with the findings of the recent review into the impartiality of the BBC's science coverage for the BBC Trust, which as the ECU noted, concluded that the weight of evidence for man-made climate change was overwhelming; and
- the Trust at the time of that review agreed with Professor Steve Jones, the review author, that "there should be no attempt to give equal weight to opinion and to evidence" and that a "false balance" between well-established fact and opinion should be avoided.

The Trust's Adviser noted the broad range of sources cited by the ECU at Stage 2 which supported the weight the BBC had chosen to place on the view that man's activity had and would continue to contribute to a rise in global temperatures. The Trust's Adviser noted the sources cited by the ECU included a paper published by the Royal Society in

September 2010⁸, which while acknowledging uncertainties about future temperature increases concluded:

“There is strong evidence that changes in greenhouse gas concentrations due to human activity are the dominant cause of the global warming that has taken place over the last half century. This warming trend is expected to continue as are changes in precipitation over the long term in many regions. Further and more rapid increases in sea level are likely which will have profound implications for coastal communities and ecosystems.”

The Trust’s Adviser noted the complainant’s assertion that the Met Office had acknowledged there had been “no statistically recognisable warming for 17 years”. She also noted the Met Office’s refutation of the interpretation put on their data in some quarters, and the entry on the Met Office website⁹ which offered a different interpretation of the data, which was consistent with the agreed position of the BBC. This stated:

“As we’ve stressed before, choosing a starting or end point on short-term scales can be very misleading. Climate change can only be detected from multi-decadal timescales due to the inherent variability in the climate system. If you use a longer period from HadCRUT4 the trend looks very different. For example, 1979 to 2011 shows 0.16°C/decade (or 0.15°C/decade in the NCDC dataset, 0.16°C/decade in GISS). Looking at successive decades over this period, each decade was warmer than the previous – so the 1990s were warmer than the 1980s, and the 2000s were warmer than both. Eight of the top ten warmest years have occurred in the last decade.”

The Trust’s Adviser noted the complainant’s contention that NASA had also confirmed there had been no statistically significant warming for 17 years, and that as the ECU noted, the NASA website stated¹⁰:

“As the world consumes ever more fossil fuel energy, greenhouse gas concentrations will continue to rise and Earth’s average temperature will rise with them. The Intergovernmental Panel on Climate Change (or IPCC) estimates that Earth’s average surface temperature could rise between 2°C and 6°C by the end of the 21st century.”

Whilst the Adviser acknowledged the complainant’s submission, at each stage of the complaint, of a range of studies and graphs which he said supported the view that rising CO₂ levels were not a reliable indicator of future temperature trends, she was not aware that these studies or any others had changed the prevailing consensus scientific view since the BBC Trust formed its view in 2011 (that the weight of evidence for man-made climate change was overwhelming).

The Trust’s Adviser noted the ECU’s conclusion that the presenter’s acknowledgement of an ongoing debate in response to Lord Stern’s assertion was sufficient in the context of this news item and would have met the guideline requirements for due weight and fulfilled audience expectation taking account of the subject and nature of the content. She agreed with that analysis and considered that Trustees would be likely to conclude that

⁸ <http://royalsociety.org/climate-change-summary-of-science/>

⁹ <http://metofficenews.wordpress.com/2012/10/14/met-office-in-the-media-14-october-2012/>

¹⁰ <http://science.nasa.gov/earth-science/big-questions/how-well-can-we-predict-future-changes-in-the-earth-system/>

the interview with Lord Stern met the Guideline requirements to be duly accurate and duly impartial and therefore she considered the appeal did not have a reasonable prospect of success on that point and should not be put before Trustees.

In relation to the allegations concerning *In Our Time*, the Trust's Adviser noted that while there was a substantial discussion amongst the guest panellists about the role of CO₂ levels across the ice ages, the majority of this concerned events in the past; it was only in the final few minutes of the programme that contributors were asked to look ahead.

The Trust's Adviser noted these extracts from the programme as relevant to consideration of the allegation:

Melvyn Bragg: Can I come now to the atmosphere and particularly CO₂ ...
What role does that play in the ice ages?

Jane Francis (Professor of Paleoclimatology at the University of Leeds):

Well it's very important in regulating temperature... And one of the interesting sources of information about CO₂ in the past is from ice cores. So now we're coming into very recent history about the last 800,000 years and so glaciologists can drill ice cores through the big ice caps they've done that in big projects in Greenland and in Antarctica and drilled hundreds of metres of ice core. And the ice cores record very faithfully the climate almost on an annual band so when you find an ice core it's segmented almost like tree rings. And within each annual band there are tiny bubbles that are preserved in the ice which are full of the atmosphere that was present thousands of years ago. So what the glaciologists do is they slice up their ice cores and then they treat them and release the gas from these air bubbles and can measure the atmosphere millions of years ago and that gives us a record of the carbon dioxide levels. And we can see that that's a record of the temperature so the CO₂ is giving us a record of the variation of temperature when we're in an icehouse world with ice on earth...

MB: What role does CO₂ play in the initiation of ice ages?

JF: I think it comes down to this idea of thresholds. So the carbon dioxide level will set the mean climate state of the world. So if we look at this past 50 million years that we keeping coming back to. At the beginning CO₂ levels were pretty high, probably I don't know, about 1000 ppm and they've decreased, they've declined over this interval and as they decline climate cools and they pass through various thresholds for each of the different ice sheets...

MB: Are we talking about CO₂ as the major crucial determinant in this?

JF: Yes.

MB: This is an initiation. But does this, Richard Corfield, does this

necessarily continue?

Richard Corfield: (Visiting Research fellow in the Department of Earth Sciences at Oxford University):

The flux of carbon dioxide, the movement of carbon dioxide in and out of, there are three big sinks on this planet – there's the atmosphere, there's the ocean and there's the rock, the lithosphere. Carbon moves in and out of these three sinks. And what happens is that if you have an ice age you have relatively low carbon dioxide, which is about 350 ppm at the moment but it was eight times higher in the late cretaceous which is 70 million years ago. And we know the late cretaceous is very warm and in fact it's possible to correlate times of temperature with carbon dioxide throughout the geological history of the world and in fact carbon dioxide is the major factor controlling temperature in the last two billion years...

MB: We've seen dramas happen without human interference for millions and even billions of years and now of course the story is that human interference is going to exacerbate or influence or modify those dramas, so can you give us a steer on that? Starting with you Jane.

Jane Francis: ...as I mentioned in the ice core records in the carbon era, that when the earth for the last 800,000 years has been going in these glacials, inter glacials, there's always been a window of CO₂ levels, up to 280 ppm so even though it's got warm cold warm cold and glaciers have waxed and waned it's always stayed within this envelope of 280 ppm of CO₂ fairly stable: warm cool warm cool. Where we are now of course CO₂ levels are at 394 ppm so we're way, way outside of that envelope so to get to those carbon dioxide levels we have to go back and look back and look at the record millions of years to find that so I think we're outside of that envelope where we're likely to go just back into a smooth glacial phase, we're way outside that. So we probably are heading into a proper greenhouse climate and I think a lot of the glaciers, we'll see glaciers on earth melt.

Richard Corfield: A greenhouse climate of course is the natural condition for the earth. 85% of earth's history has been greenhouse. 70 million years ago carbon dioxide levels were eight times higher than they are at the moment, which made them 2400 ppm, before that they were 12 times higher. The only certainty is that climate change is a natural part of the earth. And as a species we may have been the result of climate change, we may now be altering it but anyhow we'd have to deal with it so I think we are going to have to geo-engineer our own climate to deal with it. Nothing wrong with that.

Carrie Lear (Senior Lecturer in Palaeoceanography at Cardiff University):

Just looking at the paleo-climate record at modern day levels of CO₂, the Greenland ice-sheet and the West Atlantic ice sheet are not stable. So I think unless we reduce our current levels they're doomed I'm afraid.

Melvyn Bragg: Well, it's been a heck of a story, with or without us.

The Trust's Adviser noted the terms in which the complainant alleged this programme was inaccurate and biased:

- that it wrongly claimed that falling CO₂ levels has caused previous ice ages
- that it was "just plain stupid" to claim "if Greenland melts we are all doomed"
- that the older the ice cores, the more compressed they become, the effect being that data obtained from them was not reliable
- that the programme did not mention there had been no statistically recognisable warming for between 17 and 19 years.

The Trust's Adviser noted that the programme was examining the science of the ice ages over tens of millions of years and the discussion about greenhouse ages, inter-glacials and ice ages were all in the context of millions rather than thousands or hundreds of years. Therefore she considered listeners were unlikely to have assumed the guests were referring to any shorter time scales when they were asked to project forward at the end of the programme. She noted the response from the ECU at Stage 2 which stated:

"I note that you have also said that there was no mention in the programme that 'there has been no statistically recognisable warming for between 17 and 19 years'. I appreciate that you mention this as evidence that rising CO₂ levels cannot be linked to rising temperatures but this programme was about what causes ice ages and made it very clear that the processes take place over millions of years. I therefore cannot see any requirement to refer to any recent trends in global temperatures."

The Trust's Adviser noted the expertise of the panellists who were invited to comment about examining ice cores for evidence to help determine CO₂ values in the past. She noted their contributions included detailed explanation as to why the evidence from ice cores was so important, and that the views heard were consistent with the prevailing scientific consensus amongst climate scientists who have examined ice cores. While there remained a debate about the evidence from ice cores, it was nevertheless broadly accepted that they were able to offer valuable data on the levels of greenhouse gases at particular points in history.

Regarding the closing reference to the Greenland ice-sheet and the West Atlantic ice sheet being doomed, the complainant alleged that the observations in the programme were panic-mongering and inaccurate, because it would take at least 13,000 years to happen and would give time for populations to move to higher ground. The Trust's Adviser noted that the contributor's reference to being "doomed" related to specific ice sheets and not to the human race. Moreover, in the context of a programme in which the timescales were immense, she considered the audience would not have been left with the impression that it was likely to happen soon.

The Trust's Adviser noted the complainant's contention in the correspondence that the greenhouse climate is the earth's natural state but also that this was reflected in the programme in the contribution from Richard Corfield, quoted above.

The Trust's Adviser noted that the BBC gave due weight to the informed scientific opinion on the climate change debate and that the reflection of the issue in the two items which are the subject of this appeal were consistent with that position. She noted the response of the output editor of the *Today* programme at Stage 1, who stated:

"The BBC guidelines commit us specifically to 'due' impartiality. In practice that means we do not and cannot promise equal airtime to every view, and that we cannot and will not ignore the scientific consensus on an issue such as this.

"If substantial new evidence emerges, we shall of course reflect that in our coverage and we will always make space for minority opinions from time to time. But beyond that, the BBC's position is clear and consistent on this and has not changed."

For the above reasons, the Trust's Adviser considered none of the points raised stood a reasonable prospect of success and considered they should not proceed to appeal.

Request for review by Trustees

The complainant responded to the Trust's Adviser initially with a 35 page letter containing detailed arguments against the statement of the Trust's Adviser that the prevailing scientific consensus was that the weight of evidence for man-made climate change was overwhelming.

In response to a request from the Trust Unit for a shorter submission, the complainant provided four pages explaining why he considered that the issue he had raised was a "matter of substance", accompanied by supporting documentation. The complainant's arguments focused on criticisms of the view that man-made climate change is a reality.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the BBC Trust's Senior Editorial Strategy Adviser and the complainant's resubmitted response. The Committee was also provided with the programmes in question.

The Committee noted that the complainant, throughout his complaint, had provided detailed arguments to support the view that CO₂ is not a cause of climate change. The Committee noted the complainant's statement that if the BBC wished to refute his complaint then it needed to refute all the data individually. The Committee did not agree with the complainant on this point and considered that it was not the job of the BBC's complaints process to come to a conclusion on the science of climate change. Rather, the issue for consideration was whether the programme content complained about had breached the BBC's Editorial Guidelines. The Committee considered that a substantial amount of work had already been done by both the BBC Executive and the BBC Trust on the BBC's coverage of climate change. The Committee agreed with the Trust's Adviser that it was not aware of any studies which had changed the prevailing scientific position since the Trust had formed its view regarding the weight of evidence for man-made climate change.

The Committee noted the complainant's arguments as to why his complaint raised a "matter of substance" but it was mindful that this phrase was used in the appeals procedure with specific reference to the prospect of success on appeal. The Committee considered therefore that it was not required to judge the validity or otherwise of the complainant's critique of the scientific consensus which the Trust and the BBC had

accepted, but whether it would be likely to find that the programmes in question had breached the BBC's Editorial Guidelines.

With regard to the specific items complained about, *In Our Time* and *Today*, the Committee took into account what had actually been said in the programmes and noted that in neither case was the science of climate change or the role of CO₂ in the current climate change debate the stated subject or the main focus of the item. The Committee agreed that in neither programme would there be an expectation from the audience for a detailed discussion of the interpretation of CO₂ levels in relation to future temperature rises.

The Committee noted the responses from the Trust's Adviser on the specific allegations made by the complainant against the programmes in question. The Committee agreed that, for the reasons given by the Trust's Adviser, it was likely to conclude that both programmes met the Guideline requirements to be duly accurate and duly impartial and there was no reasonable prospect of success for an appeal.

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

BBC Online coverage of Israeli-Palestinian conflict; BBC complaints process

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

Appeal

The complainant wrote to the BBC Trust on 1 April 2013 asking that the Trust consider his two-part complaint as two separate appeals.

The complainant's first allegation is that BBC Online's coverage of the Israeli/Palestinian conflict is biased towards Israel. He lodged his appeal with reference to seven items which were published on the BBC News website between December 2012 and February 2013 and a further three stories which received no coverage on BBC Online, but which the complainant considered ought to have been carried.

The complainant stated that only five of the ten examples submitted in his appeal had been examined by BBC News at Stage 2 and that he had been invited to submit the additional five items as a new complaint if he wanted them to be considered. The complainant asked that all ten examples be considered by the Trust in this appeal as the additional items were "extra evidence of bias, not a new complaint in themselves". He asked that the Trust consider the examples as illustrating what he saw as a trend in favour of Israel in the BBC's reporting of the issue.

The second complaint alleged that the BBC complaints system is severely flawed and that the BBC's procedure for making corrections to online articles is also flawed. The complainant summarised the points he wished the Trust to investigate:

- BBC Online had no method for signposting corrections on its own website
- the webform system did not respond fast enough to complaints
- the 1500 character limit on the complaints webform actively discouraged well-argued and reasoned criticism
- channelling all correspondence through the complaints form discouraged dialogue and reduced the accountability of editors and journalists.

The complainant cited part 1 of the Editorial Guidelines outlining the BBC's Editorial Values as well as clauses from the sections on Accuracy and Impartiality as relevant to his complaint.

The complainant said he was unhappy with the two responses from BBC News at Stage 2 which he said gave little reasoning for the dismissal of his first complaint and failed to address many aspects of his second complaint. He argued that his complaints raised "matters of substance" within the definition of the guidelines and as such the guideline section on Accountability was relevant to his appeal, in particular that part of clause 19.4.2 which states:

- When considering complaints on substantive matters the BBC must provide adequate reasoning for its decision, setting this reasoning within the context of any relevant BBC guidelines.

Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was reviewed by the Trust Unit and an independent editorial adviser read the articles in question as did the Senior Editorial Strategy Adviser. The Senior Editorial Strategy Adviser (the Trust's Adviser) decided that the complainant's appeal did not have a reasonable prospect of success.

In respect of the first complaint alleging a general bias towards the Israeli narrative in BBC Online coverage of the Israeli/Palestinian conflict, the Trust's Adviser noted that the complaint potentially engaged the guidelines on Accuracy and Impartiality and that the over-arching requirement was for due accuracy and due impartiality. That meant that account should be taken of the subject and nature of the content, the likely audience expectation and any signposting that might influence that expectation.

The Trust's Adviser considered the following clauses from the Guidelines on Accuracy in reaching her decision:

Principles

3.2.2 All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

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

Gathering Material

3.4.1 We should try to witness events and gather information first hand. Where this is not possible, we should talk to first hand sources and, where necessary, corroborate their evidence. We should be reluctant to rely on a single source. If we do rely on a single source, a named on-the-record source is always preferable.

3.4.2 In all our content we must check and verify information, facts and documents, where required to achieve due accuracy. If we have been unable to verify material sufficiently, we should say so and attribute the information.

Material from Third Parties

3.4.5 Material supplied by third parties needs to be treated with appropriate caution, taking account of the reputation of the source.

We should normally only rely on an agency report if it can be substantiated by a BBC correspondent or if it is attributed to a reputable news agency.

The Trust's Adviser considered the following clauses from the Guidelines on Impartiality in reaching her decision:

4.1 Introduction

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

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

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

4.2 Principles

4.2.1 We must do all we can to ensure that 'controversial subjects' are treated with due impartiality in all our output.

4.2.2 News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument.

The Trust's Adviser also considered the concept of "due weight" as defined in 4.4.2 of the Impartiality guideline in reaching her decision:

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'...

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

The additional requirement for Impartiality in dealing with a controversial subject was also considered by the Trust's Adviser to be relevant to this complaint. In that respect 4.4.7 of the Impartiality guideline was applied to the issues raised:

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

And she noted too the complainant's reference to the following extracts from Section 1 of the Editorial Guidelines in relation to the BBC's Editorial Values on Impartiality and serving the Public Interest:

1.2.3 Impartiality

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

1.2.6 Serving the Public Interest

We seek to report stories of significance to our audiences. We will be rigorous in establishing the truth of the story and well informed when explaining it.

The Trust's Adviser noted the ten examples suggested by the complainant as evidence of a trend that BBC Online coverage of the Israeli/Palestinian conflict was biased in Israel's favour:

- 1 3 December 2012 "Palestinian 'with axe' killed by Israeli forces in West Bank"
<http://www.bbc.co.uk/news/world-middle-east-20579157>
- 2 12 December 2012 "Hebron fake gun teenager killed by Israeli border guard"
<http://www.bbc.co.uk/news/world-middle-east-20706226>
- 3 23 January 2013 "Palestinian shot dead in West Bank"
<http://www.bbc.co.uk/news/world-middle-east-21167376>
- 4 14 January 2013 failure to cover the death of Mustafa Abu Jarad
- 5 19 January 2013 failure to cover the Israeli army's "invasion" of a tented village protest in the West Bank
- 6 13 February 2013 failure to cover the call by the UN Special Rapporteur for Palestinian Territories for the release of three Palestinian detainees on hunger strike in an Israeli jail
- 7 21 February 2013 "Barcelona to play Middle East 'peace' match"
<http://www.bbc.co.uk/news/world-middle-east-21540504>
- 8 24 February 2013 "Palestinian prisoners stage fast over inmate death"
<http://www.bbc.co.uk/news/world-middle-east-21564604>
- 9 26 February 2013 "Gaza rocket lands near Ashkelon in southern Israel"
<http://www.bbc.co.uk/news/21583481>
- 10 The removal of a link from the Middle East homepage to the article about the death of Arafat Jaradat (example 8 above)

A summary of the allegations for each point, along with relevant comments from Stages 1 or 2 (where applicable), and comments from the Trust's Adviser were provided in an annex to the decision not to admit the appeals.

The Trust's Adviser noted that the majority of the examples represented stories where the complainant alleged the BBC had placed too great a weight on Israeli sources and either underplayed, ignored or failed to investigate perspectives which questioned the Israeli version.

The Trust's Adviser noted that in none of the six examples which related to the content of stories published on the BBC website was there any evidence presented as part of the appeal that the BBC had published information which it could or should have known at the time was inaccurate, or that had since been shown to be inaccurate (such that, for example, it required to be corrected and a clarification issued). The Trust's Adviser did not consider that the complainant had provided any substantive evidence that either the BBC was aware that the Israeli version of events was not true or indeed that it was not true.

The Trust's Adviser noted that, where the complainant suggested alternative information from other sources offering a "Palestinian" narrative, in the majority of cases it was material that post-dated by a day or more BBC Online's reporting of the story, such that the additional information would not have been available at the time of publication of the BBC Online article. The additional information was often in the regional media and was uploaded a day or two after the original incident, containing, for example, quotes from families of a victim which challenged the Israeli version of events. In the view of the Trust's Adviser, the different datelines meant that the examples supplied were not capable of being used as valid comparisons against which the BBC Online content could be assessed for this appeal, notwithstanding there might also have been other reasons that the information could not have been included in a BBC Online article.

The Trust's Adviser noted that the complainant's primary concern in the examples cited were most often about the framing of the article and the omission of material which would have tended to support a view of events that challenged the Israeli version.

The Trust's Adviser noted that on each occasion that BBC Online included information that was not independently verifiable it was clearly sourced, as required by the Guidelines. On some occasions this was, for example, a reliable international news agency, such as AFP or Reuters. On others it might be local eyewitnesses, quoted by those news agencies.

The Trust's Adviser noted the explanation provided to the complainant at Stage 1 by the BBC Online Middle East desk, outlining the consideration it gives to what material to include in a BBC report. The response below was in reference to one of the items submitted as examples for this appeal. This response was sent on 25 January 2013 regarding a complaint about the article "Palestinian shot dead in West Bank" – item 3 from the list of ten above:

"We would not use a Palestinian, or Israeli, news agency as an uncorroborated source except in exceptional circumstances, such as a purely domestic story that is not open to dispute or an exclusive interview. Even here, attribution would be very important. With a report about which there are directly contradictory accounts we are even more cautious. The independent journalist you quote was not a witness to events. You are reporting to me his account of a third person's account. One of those people is a family member. I appreciate that this information is available, but if we publish it we need to be happy that it is reliable, even if attributed. We are obliged to rely mainly on our newsgathering or on established news agencies who have a record of consistently getting things right, not largely representing one side of the conflict or its perspective."

The Trust's Adviser considered also the allegation that in some of the examples provided, BBC Online had not only omitted to include specific context but had ignored a story altogether. She noted that the omission of content was not generally an issue that could be considered against the Guidelines as it is a matter of editorial judgement what

information to include or exclude. The Trust's Adviser considered in particular these clauses from the guideline on Impartiality:

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'...

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

The Trust's Adviser considered that across the range of BBC output, including BBC Online, there was substantial coverage given to the range of issues related to the conflict. She noted the view articulated by BBC News in its Stage 2 response:

"On the issue of breaking news and choice of content - and especially in a long-running story of competing narratives, such as the conflict between Israel and the Palestinians - our news programmes and website are not able to be, and neither do they set out to be, a journal of record. Decisions on what news to include and what not to include are a matter of editorial judgement. We cannot - and neither are we required to - report on every incident or give every fact in every report or article.

"To expand on this: the BBC has an international news website and is unlikely to carry reports in the same detail as local agencies such as Ma'an, which you have quoted extensively. We report events as quickly as possible based on the information available at the time, attributing the facts. It is not always possible to revisit such stories two or three days later, as local media might do. Neither is it - as I have just indicated - an editorial requirement for a global news organization such as the BBC to do so. We do, however, often post links from stories to related online resources so that readers can find out more details if they are interested in the development of an issue or incident...

"Sometimes really interesting issues have to be by-passed for any number of factors. At times an article carried by one programme or platform may be reported on another. Sometimes it may be overlooked altogether because other news has more relevance or topicality to audiences or resources are directed at news elsewhere that day. There are discussions going on in our newsrooms all the time about what merits coverage and clearly we cannot cover everything. The BBC employs experienced, impartial journalists who aim not to rush into print without source verification. It certainly cannot adopt an approach and take a stance, but must aim to reflect as wide a range of perspectives - even those that may be unpalatable to sections of the audiences - so that readers, viewers and listeners can form their own judgements."

The Trust's Adviser agreed with the analysis of the the Head of Editorial Compliance and Accountability, BBC News. She noted too that it was a matter of editorial judgement which stories should be covered. On that point, the Trust's Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "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 was not one in which the Trust would generally get involved.

The Trust's Adviser noted the extensive Stage 1 correspondence in which the complainant engaged with the Middle East desk on the principles behind its newsgathering and story selection. She noted the response the complainant received to the query as to why the BBC had not covered the statement by the UN rapporteur calling for the release of two Palestinians on hunger strike in an Israeli jail (Item 6 in this appeal):

"Regarding the statement of the UN rapporteur: we are not a journal of record and all reports are subject to editorial decisions on the day. We would not, therefore, carry a report by a UN rapporteur or another official as a matter of course.

"... Our audience is an international one, not a domestic Palestinian one. The hunger strikes are a form of protest and we do not necessarily report political protest. For an international audience, they become newsworthy, we believe, when the protest becomes widespread, when there is international reaction, when the hunger strikers' demands are met or perhaps rejected or when their physical condition deteriorates or becomes critical. We did carry the statements of Blair and Ashton, and the expressions of concern by Israeli, Palestinian and international groups.

"We said 'The prisoners say they have been detained without charge' because there was some confusion over whether charges had been issued but were not being made public by the Israeli authorities. Not all the hunger strikers are on administrative detention.

"We do not routinely carry internal reports of this kind. These annual reports by EU diplomats in Jerusalem do not have a direct effect on the policies of the individual states or the EU as a whole."

Finally, the Trust's Adviser noted in the correspondence trail at Stage 1 where BBC Online had acknowledged and corrected errors that had been brought to their attention by the complainant on two separate occasions: on both occasions he had received a response and action had been taken to correct the error within 24 hours of the original complaint.

The first related to item 2 above, the complainant brought an issue of attribution to the attention of the Middle East desk on 8 January 2013. The Middle East desk responded the same day, acknowledging that the reference to a man said to be holding an axe should have been attributed to an Israeli source and notifying the complainant that this had been amended. The second related to an item about which the complainant contacted the Middle East desk on 13 January 2013 stating that quotation marks in the headline *Palestinian farmer "killed by Israeli gunfire"* were unnecessary once it was not disputed that Israeli gunfire had resulted in the death of the farmer. The Middle East desk replied the following day acknowledging the point and confirming that the article had been amended.

The complainant had argued for this appeal that the examples he provided were indicative of a pro-Israeli bias in BBC Online content. In the view of the Trust's Adviser, Trustees would be likely to conclude the examples did not, either separately or collectively, provide the evidence to support the allegation of bias. In terms of the news items which the complainant said the BBC ought to have reported (items four, five and six in the list above) the Trust's Adviser noted the reasonable responses that the Middle East

desk had sent to the complainant. The first related to a man allegedly shot just outside the Gaza Strip when the Israeli army started shooting from a watchtower. The Trust's Adviser noted that the Middle East desk informed the complainant that the sources he referred to were both partisan and it could not separately verify the story via reputable news agencies – as required by the Guidelines. It referred to the allegations in a story that was published the following day, duly noting the events were disputed. The Trust's Adviser did not consider she had seen any evidence to suggest this was other than a reasonable news judgement. The second story which the complainant believed should have been covered related to an Israeli "invasion" of a tented village (item five). The Trust's Adviser noted the response from the Middle East desk that it had reported on the first tented village but, this being the second, was less newsworthy. She considered this was a reasonable news judgement. The final item which the complainant considered ought to have been covered was a call by the UN Rapporteur for the release of Palestinian hunger strikers (item six). The Trust's Adviser noted the response from the Middle East desk and considered that it gave very helpful and full information about the editorial thinking around covering hunger strikes. She did not consider there was evidence that this was anything other than an editorial judgement.

Therefore, the Trust's Adviser considered that the decisions over the stories which were not covered fell within "the direction of the BBC's editorial and creative output" referred to above. She considered Trustees would be likely to conclude it was a matter of editorial judgement not to have covered the stories the complainant referred to and there was no evidence to support a complaint of bias.

Therefore, in terms of both the content of the stories published, and also those stories which had not been covered, the Trust's Adviser considered Trustees would be likely to conclude they had not seen evidence of bias and therefore the complaint did not have a reasonable prospect of success on this first point.

On the second complaint, regarding the BBC's complaints process, the Trust's Adviser noted that all of the points raised by the complainant were considered in the same or similar form by the BBC Trustees in the revised complaints framework agreed last year following extensive public consultation. The Trust's Adviser drew on the document in considering her responses to the issues raised by the complainant http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/complaints_framework_review.pdf

The Trust's Adviser noted that the complainant had said in his appeal that there was no method for signposting corrections on the BBC website. She noted the Stage 2 response:

"There is guidance for when the BBC should acknowledge that a report has been changed in any way. Such an amendment is generally added when the sense of a report, or any part of it, has **materially** changed.

"In fact, contrary to your suggestion otherwise, there is a mechanism for recording such alterations. Corrections are shown at the end of the article, as here:

<http://www.bbc.co.uk/news/world-middle-east-21363104>
<http://www.bbc.co.uk/news/world-asia-20239567>
<http://www.bbc.co.uk/news/uk-19553238>
<http://www.bbc.co.uk/news/world-middle-east-14605714>"

While the Trust's Adviser noted the complainant's contention that **all** corrections should be noted on the website alongside the article, she considered that the Stage 2 response

was consistent with this sentence from clause 3.4.23 of the Accuracy guideline which states:

When a material change is made to an item of content, the change should normally be indicated to users.

The Trust's Adviser therefore considered this aspect of the complaint did not have a reasonable prospect of success and should not be put before Trustees.

The Trust's Adviser considered the complainant's second point, that the webform limit of 1500 characters "actively discourages well-argued and reasoned criticism". She noted that in a review of the complaints framework in 2012, BBC Trustees decided that the 1500 character limit was acceptable:

"The BBC Executive has reported that before the character limit was in place 95% of online complaints were under 1500 characters. This therefore affects a small percentage of complaints. The BBC complaints website makes clear that complainants can submit a complaint by post or phone as well as through the website. The Trust feels that as complainants have the option of telephoning or writing a letter the current 1500 character limit is not unreasonable and will assist the BBC in having a publishable overnight log of complaints and comments to circulate to programme teams for their information and to ensure issues are dealt with speedily. The character limit also restricts the practice of including multiple complaints in one submission which make complaints handling difficult and increases the risk that a complaint will not be fully answered.¹¹"

Given that the Trust had so recently reached a view on the matter the Trust's Adviser considered it would not be a proportionate use of resources to ask the Trustees to look at it anew. Therefore on this point too, she considered the appeal did not have a reasonable prospect of success and should not be put before Trustees.

The Trust's Adviser considered the complainant's assertion that the complaints system is too slow, such that, by the time the BBC is able to assess and respond, the item has far less prominence and so would any correction. She considered that, where a significant error was seen to have been made it was likely that it would have been brought to the attention of editors promptly and corrected immediately if this was considered the correct remedy (as would be the case for most BBC Online content). The Trust's Adviser noted the two occasions during the course of this complaint where the complainant brought errors to the attention of the BBC Online Middle East desk which were corrected within 24 hours as set out above. She acknowledged that a mechanism for speedy identification and remedy of errors was essential but also that in most cases, particularly more complex complaints, greater reflection and investigation was required, such that a considered response was preferable – and that this inevitably took time.

The Trust's Adviser noted where the issue of the speed of responses to complaints was discussed and addressed in the revised complaints framework. She noted the appointment of a Chief Complaints Editor whose role is to ensure the identification and fast investigation of the most serious complaints; the confirmation that the consolidation of similar complaints would continue; the setting for the first time of a time limit for a second Stage 1 response; the acknowledgement that for some complaints speed was of

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http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/complaints_framework_review.pdf

the essence and that, where appropriate, programme makers and divisional complaints leads would exercise discretion and fast track time sensitive substantive complaints.

In this context, the Trust's Adviser noted one of the complainant's other concerns was the channelling of all complaint correspondence through the complaints form, which he said reduced the accountability of editors and journalists and discouraged dialogue. The Trust's Adviser noted the discussion of the issue in the 2012 review¹² and the conclusion that Trustees reached: that centralisation of complaints handling streamlined the process and ensured complaints were accurately tracked; accountability would remain a priority through the opportunity for programme makers to engage at Stage 1B of the process and also through the BBC Audience complaints logs which are shared with programme teams.

The Trust's Adviser also noted the response of the Head of Editorial Compliance and Accountability, BBC News, of 13 March 2013 which stated:

"I am sorry that you feel that the complaints system prevents dialogue with editors. Actually, I think that you have negated that argument by including in your submission to me a detailed and lengthy correspondence with the Middle East editor. In fact, I know of few if any other major media organizations in the world which are as open to engagement with their audiences as the BBC News website. I am sorry that you feel you have been somehow excluded from such dialogue and interactivity."

The Trust's Adviser agreed with that analysis and considered Trustees would be likely to conclude that the complainant had received substantive and thoughtful responses to his queries and that the webform had not prevented that dialogue. Therefore, on this point too, the Trust's Adviser considered the complaint had no realistic prospect of success and it should not be put before Trustees.

Finally, the Trust's Adviser noted the complainant's comment in his appeal that he had been given "little reasoning" for rejecting his complaint at Stage 2 and that this was in breach of clause 19.4.2 of the guideline on Accountability which requires that the BBC gives "adequate reasoning for its decision". The Trust's Adviser considered that each of the complainant's examples were given full and comprehensive consideration at both Stages 1 and 2 and that the responses he received addressed each of the first five specific examples and also included substantial context about the newsgathering and editing process. With regard to the Stage 2 response about the complaints process itself, the Trust's Adviser considered the complainant was given clear information and explanation on procedures and practices and pointed in the direction of further information with the provision of hyperlinks to various items of relevant BBC content.

Therefore for all the reasons set out above, the Trust's Adviser considered the appeal did not have a realistic prospect of success on either count and should not be put before Trustees.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal. The complainant said that the letter from the Trust's Adviser was inaccurate,

¹² pp 5-6

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/complaints_framework_review.pdf

poorly argued and logically flawed. In the complainant's view, the Trust's Adviser should have compared the response from the Head of Editorial Compliance and Accountability for News at Stage 2 with the complainant's subsequent reply. He also said that the Trust's Adviser should have assessed and commented on the analysis given by the complainant in his letter of complaint to the Director of BBC News. The complainant alleged that the Trust's Adviser had not objectively or competently assessed the complaints he made.

The complainant provided a list of 15 examples of where he considered that the Trust's Adviser had made serious errors.

The complainant said that he could provide a line-by-line analysis of the letter from the Trust's Adviser if the Committee wished it. He also said that he should be allowed to present his case personally before the Trustees as he said he had little faith in his case being advocated fairly.

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 complainant's correspondence with the BBC since his initial complaint on 8 January 2013.

The Committee began by considering the complainant's request for a hearing in person. The Committee noted that paragraph 5.17 of the Editorial Complaints and Appeals Procedures¹³ states that:

The Trust does not normally hold hearings (i.e. inviting parties to put their case to the Trust in person) although in exceptional circumstances and at the Trust's discretion it may decide to allow it.

The Committee noted the complainant's correspondence with the BBC at Stages 1 and 2 of the procedure and with the Trust Unit at Stage 3 and considered that there were no exceptional circumstances in this complaint. The Committee therefore decided not to allow a hearing in person.

The Committee then turned to consideration of the substantive issue, which was whether the complaint met the threshold for consideration on appeal. In coming to its decision the Committee noted that there were two aspects which the complainant had raised in his request for an appeal:

1. The allegation that BBC Online's coverage of stories relating to the Israeli/Palestinian conflict is consistently biased and favours an Israeli-centric view; and
2. The allegation that the BBC's procedures for making corrections and the complaints system are severely flawed

Point 1 - The allegation that BBC Online's coverage of stories relating to the Israeli/Palestinian conflict is consistently biased and favours an Israeli-centric view

¹³

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

The Committee noted that in deciding whether to accept this element of the appeal it would need to consider the 10 items cited by the complainant in support of his allegation, and decide whether individually and when considered together these demonstrate that the complainant's allegation of bias has a reasonable prospect of success on appeal.

The Committee noted the reasons given by the Trust's Adviser as to why in her view the appeal did not have a reasonable prospect of success, and it noted the points raised by the complainant in his challenge to that decision.

The Committee noted that the complainant had argued that the letter from the Trust's Adviser was inaccurate, poorly argued, defensive and logically flawed. The Committee noted that the complainant had provided a list summarising some of what he described as the more obvious errors. The Committee was satisfied that references to specific items in the letter from the Trust's Adviser appeared to be correct, with the exception of one. The Trust's Adviser had said that the Middle East desk had acknowledged an error in the article listed as item 1. In fact, the Middle East desk had acknowledged an error in a different article¹⁴, and not that listed by the Trust's Adviser as item 1.

The Committee agreed that this did not affect the point being made by the Trust's Adviser, which was that the BBC did, on two occasions, correct errors relating to attribution which had been brought to its attention by the complainant.

The Committee noted the complainant's argument that, in relation to the article listed as item 8 ("Palestinian prisoners stage fast over inmate death"), the Trust's Adviser had considered an updated version and not the original one complained about. The Committee noted that the article was updated the day on which it was written and the Trust's Adviser only referred to the updated, later version.

The Committee was mindful that the complainant had raised issues with both the original article and the updated version and it took into account the points the complainant raised in relation to both versions.

With regard to the allegation that correspondence is said to have been sent to the complainant that he has no record of, the Committee noted that the two corrections referenced in this part of the letter from the Trust's Adviser were sent to the complainant on 8 and 14 January 2013 respectively.

The Committee further noted the complainant's view that the Trust's Adviser should have compared the Stage 2 response from the Head of Editorial Compliance and Accountability for News with his reply, and that it should have assessed and commented on the analysis given by the complainant in his appeal to the Trust.

The Committee was mindful that the purpose of the letter from the Trust's Adviser is to explain to the complainant why in the Trust Unit's view the appeal does not have a reasonable prospect of success. In this case, the Trustees agreed that it was not necessary or proportionate to set out in the letter all the replies/points put forward by the complainant, and an absence of such reference does not necessarily mean they have not been considered. The Committee was also mindful that, where the Trust Unit considers that a complaint raises a matter of substance, paperwork for an appeal is prepared which examines in detail a complainant's allegations together with the BBC's responses. The Committee was mindful that the Trust Unit had considered that this complaint did not raise a matter of substance, and therefore should not proceed to be investigated on

¹⁴ <http://www.bbc.co.uk/news/world-middle-east-20986433>

appeal.

The Committee agreed that the Trust's Adviser had taken a proportionate approach to the complaint and had adequately explained why she considered that the appeal did not have a reasonable prospect of success.

Turning to the substance of the complaint regarding alleged bias, the Committee noted the responses given to the complainant by the BBC at Stages 1 and 2 of the process, as well as the points made by the complainant. The Trustees considered each of the 10 articles cited in the appeal. The Committee agreed that the BBC had provided a reasonable explanation for the approach taken in each case and it concluded that it saw no evidence either individually or taken as a group that these represented bias. The Committee agreed that there was no reasonable prospect of success for an appeal on the grounds of a breach of the Editorial Guidelines on Impartiality.

Point 2 - The allegation that the BBC's procedures for making corrections and the complaints system are severely flawed

The Committee noted the complainant's view that his complaint about the procedures for making corrections and the complaints system in general were matters of substance. The Committee noted the arguments advanced by the complainant both in his appeal and in his response to the decision of the Trust's Adviser not to accept an appeal on this point.

The Committee agreed with the Trust's Adviser that a mechanism for speedy identification and remedy of errors was essential but also that in most cases, particularly more complex complaints, greater reflection and investigation was required, such that a considered response was preferable – and that this inevitably took time.

The Committee noted that the complainant had taken issue with the handling of complaints through the complaints form, which has a 1500 character limit. The Committee noted the complainant's argument that the channelling of correspondence through the form reduced the accountability of editors and journalists and discouraged dialogue. The Committee noted the many replies which the complainant had received from the Middle East desk and agreed that this did not bear out the claim that there was a lack of accountability.

The Committee noted that the BBC's complaints procedure was comprehensively reviewed in 2012 to make it speedier, simpler and easier to understand. Trustees were mindful that, although they will always consider comments on the complaints system, they also have to bear in mind what is a cost effective way of handling complaints. The Committee agreed that a 1500 character limit on online complaints is appropriate and there was no reasonable prospect of success for an appeal on this point.

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

***Jeremy Hardy Speaks to the Nation*, BBC Radio 4, 28 February 2013 and alleged bias in Radio 4 comedy**

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

Background

The complainant initially contacted the BBC on 28 February 2013 in relation to an episode of *Jeremy Hardy Speaks to the Nation*, which had been broadcast on BBC Radio 4 that day. The complainant considered the programme was "left-wing propaganda" that should have been balanced by another programme. At Stage 2 of the BBC's complaints process, this complaint was divided into two elements; the BBC's Editorial Complaints Unit responded to the complaint of lack of impartiality in terms of this specific broadcast while a representative from BBC Television (which handles such issues for Radio 4) responded on the nature of Radio 4's comedy output in general and due impartiality.

Appeal

The complainant escalated his complaint to the Trust, saying that he was unhappy with the responses he had received at Stage 2.

He considered that the finding underlined his view that the Jeremy Hardy programme offered a very partial, one-sided political perspective and that there was nothing to balance this left-wing polemic elsewhere on Radio 4's comedy output.

He did not accept the BBC's argument that balance, and therefore impartiality, was achieved through having a broader range of voices on other programmes such as *The News Quiz*. He noted that "No-one in the News Quiz has the microphone to themselves for the whole programme."

The complainant referred to his Stage 2 response which stated: "Radio 4 audiences still have the opportunity over time to hear a range of voices from across the breadth of the political spectrum." He considered that the responses he had received amounted to an abuse of process by the BBC. In his appeal to the Trust he stated: "The response is an unsubstantiated assertion, not a researched reply, and therefore an abuse."

Decision of the Senior Editorial Strategy Adviser

The relevant programme was listened to and the correspondence was carefully reviewed by the Trust's Senior Editorial Strategy Adviser (the Trust's Adviser). The Trust's Adviser considered that the complainant's appeal did not have a reasonable prospect of success.

The Trust's Adviser assessed the appeal against the relevant sections of the BBC Guidelines concerning Impartiality.

Introduction

Impartiality lies at the heart of public service and is the core of the BBC's commitment to its audiences. It applies to all our output and services - television, radio, online, and in our international services and commercial magazines. We

must be inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected.

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

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

Principles

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

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

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.

Drama, Entertainment and Comedy

4.4.16 - The audience expects artists, writers and entertainers to have scope for individual expression in drama, entertainment and culture. The BBC is committed to offering it. Where this covers matters of public policy, political or industrial controversy, or other 'controversial subjects', services should normally aim to reflect a broad range of the available perspectives over time.

Personal View Content

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.

The Trust's Adviser noted that the BBC, in its response at Stage 2, had referred to these guidelines in some detail. She noted that it had explained that the term "due" meant that

impartiality must be adequate and appropriate to the output and that it had said that “achieving impartiality for comedy, drama and entertainment is not a matter of strict balance – but about ensuring there are opportunities to hear a breadth of voices and perspectives operating in that creative field”.

The Trust’s Adviser noted that the complainant considered the requirement for balance meant the BBC should have broadcast a similarly formatted programme by a comedian who described him or herself as right-wing. However, the Trust’s Adviser agreed with the ECU’s Complaints Manager that the Editorial Guidelines did not require that a mirror image of the programme being complained about should be broadcast, but instead required that the BBC should broadcast “a wide range of opinion across our output as a whole and over an appropriate timeframe”.

The Trust’s Adviser understood the strength of the complainant’s feelings and agreed that it was important for the BBC to seek comedians with a range of political views. She noted this was an area that the BBC had acknowledged it found challenging and that the Commissioning Editor for Radio 4 Comedy had discussed this recently on Radio 4’s *Feedback* in relation to *Jeremy Hardy Speaks to the Nation*¹⁵.

In particular, the Trust’s Adviser noted that the Commissioning Editor said:

“I think the target of satirists will always be those in power. [...] It’s very difficult to find comedians from the right. I’m not saying they aren’t around out there – producers, both in-house and independents – spend a lot of time in the comedy clubs looking for people with a range of views. [...] I am very open to names – if someone says, ‘please will you go and see...’, we will go and see – but we are not seeing them come through.”

The Commissioning Editor was asked directly whether, in the absence of being able to find a right-wing comedian who could record a programme that would act as a counter balance to *Jeremy Hardy Speaks to the Nation*, Radio 4 should not transmit Jeremy Hardy’s material. She said:

“I disagree with that point of view completely. I think the BBC has a responsibility – and indeed it’s there as part of our Guidelines on Impartiality – which is different from absolutely balancing everything. But you can’t say to somebody that we are not going to broadcast that because we can’t find your opposite. I think the BBC’s responsibility towards creative people – towards dramatists, comedians, writers – is slightly different from its responsibility to take a breadth of political views. It’s absolutely got to be funny, it’s got to be clever, it’s got to be thoughtful and I don’t think we would broadcast anybody who actually had just one note. And I would argue that the notes in Jeremy Hardy are actually subtly quite different and that there are very clever views about Ed Miliband and about the Lib Dems as well as about the Conservatives.”

The Trust’s Adviser noted that the Commissioning Editor had also made the point that in broad terms, stand-up comedy had shifted away from political material towards observational material. She considered it difficult to assume a comedian supported any particular party and noted too that people’s political opinions varied from subject to

¹⁵ <http://www.bbc.co.uk/blogs/radio4/posts/Feedback-Does-comedy-tend-to-be-left-wing-or-is-it-just-anti-authority>

subject. The Commissioning Editor also noted that *The News Quiz* had sought to recruit panellists who were right wing to ensure a breadth of opinions was heard.

The Trust's Adviser noted that the Stage 2 response from the Complaints Management and Editorial Standards Advisor for Television included the following:

"... the guests booked for [the] last series of The News Quiz were Hugo Rifkind; Rebecca Front; Bob Mills; Susan Calman; Roisin Conaty; Jeremy Hardy; Katy Brand; Daniel Finkelstein; Samira Ahmed; Nick Doody; Francesca Martinez and Fred MacAulay. This is a broad spectrum of individuals in terms of politics, gender, class, disability etc. but one thing they share is the ability to be funny."

The Trust's Adviser noted that the Editorial Guidelines did not require a counterbalancing programme in order to achieve due impartiality, instead they required a suitably wide range of voices. She noted the range of people who had taken part in BBC Radio 4's comedy output in the recent past. She also noted that the Executive had said it was committed to diversity of opinion in its comedy output and to have a range of voices from across the breadth of the political spectrum. She considered Trustees would be likely to conclude the names referred to in the Stage 2 response represented a broad sweep of views.

In terms of the audience expectations of *Jeremy Hardy Speaks to the Nation*, she noted that the programme was in its eighth series and that the programme was described in publicity material as a polemic. She noted that Jeremy Hardy himself had a career on Radio 4 that spanned 18 years and that the BBC Editorial Guidelines explained that the audience expected artists, writers and entertainers to have scope for individual expression. The Trust's Adviser considered that, given Mr Hardy's long association with Radio 4, this in itself would have acted as a clear signpost for his potential audience.

The Trust's Adviser also noted that, in the course of his programme, Mr Hardy made it clear that he did not expect it to sway people's judgement or to be taken seriously. She noted that he concluded the programme in question – which took 'power' as its theme – by saying:

"But the only area in which arty liberals wield any power is the arts, where in fairness there are quite a lot of them. And in all honesty they do look kindly on those of us who are on the left. So it might be reasonable to say that we are rather numerous in the arts. But we have very little influence because we're not very popular. Bless those of you who are listening but you're hardly representative."

She considered Trustees would be likely to conclude that the Radio 4 audience would have been aware of Jeremy Hardy's political views.

Finally the Trust's Adviser considered the complainant's point that the responses he had received so far constituted an abuse of process. The complainant had considered that the response he had received at Stage 2 from the Complaints Management and Editorial Standards Advisor for Television had been "an unsubstantiated assertion" and as a result was an abuse of process by the BBC. The Trust's Adviser considered that the Complaints Management and Editorial Standards Advisor for Television had sought to explain the requirement for achieving due impartiality and had given detailed information about the range of voices that could be heard on Radio 4's comedy output. The Trust's Adviser considered Trustees would be likely to conclude the BBC had offered a reasonable interpretation of the letter and spirit of the Impartiality guidelines and agreed that there

was a clear distinction in how impartiality should be treated in news and current affairs programmes compared with comedy, drama and entertainment.

She considered that for all the reasons set out above, Trustees would be likely to conclude the appeal had no reasonable prospect of success and should not be put before Trustees.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal. He referred to section 4.4.16 of the Editorial Guidelines:

4.4.16 - The audience expects artists, writers and entertainers to have scope for individual expression in drama, entertainment and culture. The BBC is committed to offering it. Where this covers matters of public policy, political or industrial controversy, or other 'controversial subjects', services should normally aim to reflect a broad range of the available perspectives over time.

The complainant said that the programme, *Jeremy Hardy Speaks to the Nation*, had contained polarised political views which had not been challenged. The complainant asserted that there had been no output to reflect opposing political views and the Editorial Guidelines had therefore been breached.

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 episode of *Jeremy Hardy Speaks to the Nation* in question.

The Committee noted the complainant's reference to Guideline 4.4.16. The Committee noted that this guideline makes specific reference to matters of public policy, political or industrial controversy, or other "controversial subjects", and says that services should normally aim to reflect a broad range of the available perspectives over time.

The Committee considered that not all political comment constitutes a matter of public policy or political controversy within the terms of the Guidelines. The Committee noted that the complainant had not specified which matters of public policy or political controversy he believed had been covered in a way which breached the requirements of the Impartiality Guidelines.

The Committee noted that the Editorial Guidelines on Impartiality could not reasonably be interpreted to mean that any comedy programme in which political views were expressed should be balanced by another comedy programme expressing the opposing political views. The Committee noted that the BBC had not conducted an analysis of Radio 4 output over a period of time in order to check whether a broad range of perspectives on the issues covered in this specific programme had been reflected. However, the Committee noted the nature of the programme and how it was signposted to its audience and agreed that it would not be proportionate to conduct such a review on the basis of this general complaint which centred on the principle of whether the BBC was required to "balance" a programme such as *Jeremy Hardy Speaks to the Nation* with an equivalent programme from the opposite perspective.

The Committee noted that the Trust's Adviser had pointed the complainant towards

statements made by the Commissioning Editor for Radio 4 Comedy on *Feedback*. Trustees agreed that it was important for the BBC to seek comedians with a range of political views. They noted that the Trust's Adviser had pointed out that this was an area the BBC had acknowledged it found challenging and that the Commissioning Editor for Radio 4 Comedy had explained the issues and what steps were being taken by the BBC. The Committee noted that the Complaints Management and Editorial Standards Advisor for Television had provided the complainant with examples of recent guests on *The News Quiz*. The Committee agreed that this illustrated the range of viewpoints which the BBC had sought.

The Committee concluded that the BBC had provided reasonable responses to the complainant in the course of handling the complaint and had clearly set out why the broadcast of programmes such as *Jeremy Hardy Speaks to the Nation* on BBC Radio 4 without an equivalent programme specifically commissioned to balance it did not breach the requirements of the Editorial Guidelines.

The Committee agreed that the complainant had not made out a convincing case that the Editorial Guidelines had been breached either in the specific programme cited or in BBC Radio 4's comedy output in general.

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

The Big Questions, BBC One, 3 March 2013

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

Background

The complainant considered the subject of the programme *The Big Questions*, broadcast on 3 March 2013, was biased in favour of women and against men. The programme was considering the question: "Are unwanted advances just part of life?" The complainant considered programme makers had sought female participants who were feminists and who were skilled in debate. He considered the principal male speaker was not an effective counterbalance to the female voices and considered the programme makers should have sought male interviewees from the Men's Rights movement who could be found online.

Appeal

The complainant escalated his complaint to the BBC Trust, saying that he was dissatisfied with the responses received at Stages 1 and 2. He maintained that the debate about sexual harassment was biased in favour of a feminist viewpoint. He summarised his complaint in four points:

1. There was an imbalance in terms of male and female speakers – with more women than men taking part.
2. There was an imbalance in terms of the skills of the speakers – programme makers had found women to take part who were better speakers than the men who were involved. The complainant considered this had been a deliberate decision and amounted to bias. The complainant considered more skilful male speakers could have been found "in the Men's Rights fraternity which is well represented on the net".
3. The programme was designed to be perceived along gender lines and this reflected a gender bias by the BBC.
4. The title of the discussion was biased and was intended to be a "straw man" that would be demolished by the debate.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) reviewed the correspondence and watched the relevant section of the programme in question. She decided that the complainant's appeal did not have a reasonable prospect of success.

The Trust's Adviser considered the complaint against the Editorial Guidelines on Impartiality. She noted that the introduction to this section of the Guidelines states:

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

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

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

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

Principles

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

The Trust's Adviser noted that *The Big Questions* had been running for more than five years and carried the following generic billing: "Nicky Campbell hosts a series of moral, ethical and religious debates". She considered the programme was well established as a forum which would air strong opinions about matters that were potentially controversial and its audience would expect to hear lively debate.

The Trust's Adviser noted some of the points made in the response from the BBC's Editorial Complaints Unit (ECU) at Stage 2:

- A programme did not become biased by having more female than male contributors and the topic under discussion was not a matter of women's rights versus those of men. One female contributor twice made the point that men as well as women were the victims of harassment.
- Several men spoke in the debate and it was not the case that it was dominated by women.
- A range of views were included in the programme. For example, one contributor said that tactile contact was not always worth raising as an issue and another said that many cases of harassment against men might go unreported.
- The Editorial Guidelines require "due impartiality" but this does not necessitate that different opinions must be covered in equal proportions.
- A male academic contributor spoke clearly and succinctly about the science behind attraction and advances.
- The choice of discussion title was a matter of editorial judgement and did not raise a question of editorial standards. (This had followed a Stage 1 response which said that the title was chosen as a starting point for the debate and did not reflect any preconceived view on the BBC's part.)

The Trust's Adviser noted the points made by the ECU. She noted too that the male speakers on the programme were not limited to the academic, Dr Glenn Wilson, but also included the business and finance journalist Damian Reece, whose comments included the statement:

"...This is about many women being abused, as it were, but that's in terms of the reported cases and I think a lot of men don't report cases of [unwanted advances]."

The Trust's Adviser noted that other male speakers included, but were not limited to, David Griffiths from Christian Solidarity Worldwide; Ajmal Masroor, a relationship counsellor; and Muslim activist, Anjem Choudary.

The Trust's Adviser noted that around ten people contributed in total, roughly the same number of men as women, and while some spoke more often and more strongly than others, a range of views were expressed on a variety of issues related to sexual harassment. She noted too that another contributor, Liz Fraser, had commented: "Please, let's not go, this is about men abusing women, there are women who abuse men as well and it goes both ways", a point which the Trust's Adviser noted she made twice during the programme.

The Trust's Adviser noted that a good proportion of the debate was not related to behaviour of men against women but about how, as parents, children might be raised so as to encourage respect between people generally. She noted the programme also included comments about how different faiths might consider relations between men and women – including a disputed argument that there should be an end to "free mixing" between men and women. The Trust's Adviser considered that as the programme was billed as one which included religious elements, it was reasonable and would have been within audience expectations to include a number of speakers from different faiths.

The Trust's Adviser noted too 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. She said that "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 the light of those points, the Trust's Adviser considered Trustees would be likely to conclude that the programme was a reasonable discussion about a subject that was intended to encourage wide-ranging debate and was well within the expectations of the audience. She considered Trustees would be likely to conclude there was no bias as a result of having more female than male speakers. She considered Trustees would be likely to conclude they had not seen any evidence that suggested that the male speakers had been chosen because they were less adept at public speaking, and she also considered that all the speakers had been able to make reasonable contributions to the debate. The Trust's Adviser considered Trustees would be likely to conclude they had not seen evidence that the male contributors had been selected as a result of bias. She added that the choice of contributors to feature on a programme was a matter for programme makers. The Trust's Adviser noted that the complainant would have preferred that other male contributors had been invited instead, but she considered this was not a point that it was appropriate for Trustees to consider as it was a matter of the editorial judgment of the programme makers.

In terms of setting up a "straw man" that could be demolished in the debate, the Trust's Adviser considered that Trustees would be likely to conclude the discussion title, "Are unwanted advances just part of life?" was a reasonable starting point for a wide ranging debate about sexual harassment and there was no evidence that it had been chosen as a result of bias. She said that the decision about which question to pose was an editorial judgment which rested with the programme team and it would therefore not be appropriate for Trustees to consider this point.

For all the reasons set out above, the Trust's Adviser considered 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 Trustees review the decision not to proceed with his appeal. He said that, while maintaining that there was balance in the numbers of participants on both sides of the debate, the Trust's Adviser had ignored his point that the debate was held mainly by five participants consisting of four feminists and one opposing male academic. The complainant said that viewers' perceptions would be that the four women won the argument.

The complainant repeated his allegations with regard to the choice of participants and the intentions of the programme makers. He also repeated his allegation that the title of the discussion had been selected to make the "right" answer apparent. The complainant alleged that the programme always seeks a feminist point of view to defend.

The complainant said that the Trust's Adviser had not provided a proper reason for why the complaint should not be put before Trustees.

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 episode of *The Big Questions* that was the subject of the complaint.

The Committee noted the complainant's central allegation that the programme's approach to the discussion had been intended to favour feminist viewpoints. The Committee was mindful that due impartiality was not necessarily a matter of numbers but of ensuring that an appropriate range of viewpoints are included. The Committee noted that the ECU and the Trust's Adviser had referred to the fact that the discussion included those who made the point that men were also the subject of unwanted advances. The Committee, having regard to the context of the debate, the audience expectations and the content of what was broadcast, was satisfied that an appropriate range of opinions had been included.

The Committee agreed that, while the complainant was not happy with the way arguments had been put forward by some of the contributors, the choice of guests was a matter for the programme makers and, in the absence of a breach of relevant standards, this was not a matter for the Trust to become involved in.

The Committee considered that the title of the discussion was in line with the established approach of the programme to stimulate a vigorous debate and did not indicate any bias or viewpoint on the part of the programme makers.

The Committee considered that there was no evidence to support the complainant's

allegation that the editorial decisions taken by the programme makers were based on prejudice or a favouring of one side of the argument over another.

The Committee agreed that the letter from the Trust's Adviser had been clear in explaining the basis for her view that the appeal did not have a reasonable prospect of success and should therefore not be put before Trustees.

The Committee agreed that there was no reasonable prospect of success for an appeal alleging the Editorial Guidelines, in particular those relating to impartiality, had been breached in the selection of guests for the programme or the framing of the question which was under discussion.

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

A Point of View, BBC Radio 4

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

Background

The complainant registered his interest in becoming a presenter of the Radio 4 programme, *A Point of View*, in November 2012 and met with the Assistant Editor, BBC Current Affairs Radio, in March 2013 to discuss the matter further. This meeting did not result in an offer of employment to present *A Point of View* and the Assistant Editor's reasons for declining the complainant's proposal were outlined in a letter dated 2 May 2013. This response included the following statement:

"I mentioned that there's a resistance to using columnists, and you rightly pointed out that some POV contributors do write or have written for the newspapers. But none of the existing line-up is, first and foremost, a journalist.

"The point is that the slot was not designed for journalists with outlets elsewhere, but for writers or thinkers who don't often, or ever, present their ideas in this format. We have been more or less consistent with that approach throughout, and I have a nagging but growing doubt about whether we should be turning away from that convention.

"I also thought your ideas, on reflection, felt more like very good documentary themes, rather than POV essays. If you want to develop one of them, or another idea, and put it into the commissioning process through me and the Radio Current Affairs department, I would be very happy to help you."

The complainant remained dissatisfied. He wrote again on 4 May 2013 and stated that he considered other presenters of *A Point of View* were journalists and columnists – for example, he noted, Will Self, Clive James, Martin Jacques and John Gray had all presented *A Point of View* and had worked as, variously, journalists, columnists, writers and reviewers. The complainant stated:

"If my portfolio isn't quite as grand as those of some of your other contributors, that may be because of the prejudice and snobbery against socially and morally conservative persons which I think is endemic in the BBC and many other institutions of modern Britain. The difference between them and the BBC is that the Corporation is financed by a licence fee which it is a criminal offence not to pay, and governed by a Royal Charter enjoining impartiality on issues of controversy."

On 17 May, the complainant wrote to the Executive Editor of *A Point of View*. He gave further information about the other contributors to the programme and also about his own work. He suggested that other contributors had included columnists and journalists and that his work extended beyond journalism and included working as a foreign correspondent, an author, a public speaker and a television presenter.

On 20 May, the Executive Editor responded and stated:

"Richard took over as editor of *A Point of View* a few months ago, and is, with encouragement from me and from Radio 4, looking to introduce new contributors.

He was very happy to meet you as part of that search, but the number of new people he can introduce is small and none of those he has – in the end – asked to write for the programme is primarily a journalist.

“I take your point that some current and past contributors to A Point of View have been, to a greater or lesser extent, journalists, but I would agree with Richard that none of them has as high a journalistic profile as you do.”

In further exchanges of emails between the complainant and the Executive Editor, the complainant stated on 20 May:

“What I am saying (and I have given substantial evidence for my contention) is that I simply do not accept the reasons offered for rejecting me as a possible presenter of this programme.”

The programme’s Executive Editor responded the same day and stated:

“I’m sorry that you don’t accept Richard’s reasons for deciding not to take up your offer to present A Point of View. I’m not sure there is much I can do to persuade you of their veracity but I assure you that it IS true that the new APOV presenters (the ones Richard is responsible for selecting) are not primarily, if at all, journalists.”

The complainant responded the same day. He said:

“As for [the Editor] being allowed to choose [which presenters to use], who disputes it? Not I. But I would draw attention to the fact that he does it not in his personal capacity, nor as the editor of a privately-owned publication might do so, but as the servant of the British Broadcasting Corporation, established by Royal Charter and financed by a licence fee which is collected under threat of imprisonment from the TV-owning population.”

The following day, the complainant wrote seeking information about how he could escalate his complaint, in respect of which, he stated: “I regard the matter as a clear instance of institutional bias against conservative views and ideas, and therefore a Charter breach...”

The following day he complained to the Controller, Radio 4 and stated that he considered he had been the subject of institutional bias, adding: “...the unconscious prejudice against people such as me prevented normal checks and balances from operating as they normally would have done”.

In the same letter, in support of his capability to work as a presenter, he noted that he had provided a programme idea for *Great Lives* which had been taken up and he had also contributed to *A Good Read*. He noted too that he was also in discussions with *What the Papers Say* about the possibility of working as a presenter on the programme.

He went on to write:

“I plan to continue to behave as if the institutional bias of which I write is non-existent, and see what happens.

“It was on that basis that I approached ‘A Point of View’... I will say frankly that I never thought of doing this until Will Self and Martin Jacques were given the slot

... when the programme was opened to two highly journalistic and controversial figures, whose minor celebrity status is not significantly different from mine, it seemed to me to be reasonable to put myself forward. I lack only one thing in common with both the older presenters and the new ones. I am a social, moral and cultural conservative. None of them is."

The letter concluded:

"I think the extraordinary slowness of the response to my approach, and the peculiar, contradictory, logically and factually confused reasons given for my rejection, are signs that the old institutional bias is once again unconsciously at work, and – as ever – incapable of admitting its own existence.

"Since the programme is the expression of an individual point of view by an individual, and since the BBC has an absolute duty of impartiality, it seems to me to be plain wrong for it to be closed to people who hold conservative (not Conservative) views."

The Controller, Radio 4, responded on 30 May. She stated:

"Achieving the right blend of speakers for a programme takes account of a range of considerations and, even though you may disagree with their reasoning, I have no reason to believe that the decision of my current affairs colleagues is based on anything other than honestly-taken editorial judgements.

"... I really cannot agree that there is an institutional bias against conservative thinkers on Radio 4. You have of course been a valued, thought-provoking contributor over the years and I am confident there will continue to be opportunities for you to broadcast on the network. I see that, while Richard Knight didn't think some of your *A Point of View* ideas were quite right for that programme, he did express an interest in developing them into documentary proposals – so there may well be some possibilities there, alongside your current discussions with *What the Papers Say*."

The Controller, Radio 4, advised the complainant that if he wished to escalate his complaint he would now need to contact the BBC Trust.

Appeal

The complainant remained dissatisfied with the responses he had received from the BBC and wrote to the BBC Trust on 5 June 2013. His appeal stated:

"The reason for the complaint is that I believe my application was rejected because of institutional bias against social and moral conservatism in the BBC. This bias contravenes the BBC's duty of impartiality."

He gave the following reasons in support of his allegation that the BBC had demonstrated institutional bias against social and moral conservatism:

1. No moral or social conservative has ever presented *A Point of View*.
2. When the complainant, "a moral and social conservative", put himself forward as a possible presenter he faced a delay of four months and only received a response in March 2013 after he had repeated his offer to present the programme. In a

meeting with the Editor of *A Point of View*, he was told that journalists and columnists were not generally considered suitable presenters; however, he noted several previous presenters who were well known as journalists and as columnists. He also noted that his own work ranged beyond journalism.

The complainant believed that the reason given for rejecting his proposal to present *A Point of View* was “incoherent, and insupportable either by fact or by logic” and he believed that this, together with the delay in responding to his initial communication, meant that an alternative explanation was more believable. He said that he had studied a list of past and current presenters of *A Point of View* and considered that none of those listed could be described as “a moral and social conservative”.

Decision of Senior Editorial Strategy Adviser

The Trust’s Senior Editorial Strategy Adviser (the Trust’s Adviser) carefully reviewed the correspondence that had already passed between the complainant and the BBC.

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. She noted that “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.

The Trust’s Adviser said that decisions relating to who should present programmes generally fell within the category of editorial and creative output and were the responsibility of the BBC Executive. The Trust’s Adviser noted that the complainant had accepted this principle in his email of 20 May, referred to above.

However, the Trust’s Adviser noted too that the complainant had not accepted the reasons he had been given to explain why he was not thought to be a suitable choice as a presenter. In particular, he considered that his own employment experiences were broader than working as a journalist and columnist and he noted that other contributors were also well known as journalists and columnists. He considered too that the decision to use Will Self and Martin Jacques as presenters but not him was an indication of bias against the moral and social conservatism that he represented.

The Trust’s Adviser noted that the complainant considered “no moral or social conservative has ever presented *A Point of View*”. However, the Trust’s Adviser noted that the complainant had not brought forward evidence in support of this assertion and noted that the Executive had not responded on this specific point.

The Trust’s Adviser acknowledged the complainant’s strongly held belief that the BBC showed an “institutional bias against conservative views and ideas”. However, the Trust’s Adviser also noted the complainant had described how one of his own ideas for *Great Lives* had been taken up, that he had contributed to *A Good Read* and was in discussions as to whether he should present *What the Papers Say*. She also noted the response from the Controller, Radio 4, of 30 May 2013 which referred to the complainant as a “valued, thought-provoking contributor over the years”. In broader BBC output, she noted that the complainant had in recent months contributed to *Question Time*, *Any Questions*, *The Daily Politics* and *Start the Week*. The Trust’s Adviser considered that these programmes, on both television and radio, represented a spread of output that spanned topical, current

affairs output to more discursive broadcasting. The Trust's Adviser considered that Trustees would be likely to conclude that the complainant was given a voice on BBC output with some frequency – both in programmes where his conservative views would be explored and in other output where he would be invited to speak more broadly.

The Trust's Adviser noted that on the BBC's website, *A Point of View* was given the following description:

Weekly reflections on topical issues from a range of contributors including historian Lisa Jardine, novelist Sarah Dunant and writer Alain de Botton.

The Trust's Adviser noted that other recent presenters had included Tom Shakespeare, Mary Beard, Adam Gopnik, Will Self and John Gray. The Trust's Adviser noted that the Executive Editor had given the complainant the following assurance on 20 May:

"I assure you that it IS true that the new APOV presenters (the ones Richard is responsible for selecting) are not primarily, if at all, journalists."

The Trust's Adviser considered Trustees would be likely to conclude the Executive Editor's statement was borne out by the list of recent contributors. The Trust's Adviser noted the response of the Controller, Radio 4, of 30 May which had stated:

"I have no reason to believe that the decision of my current affairs colleagues is based on anything other than honestly-taken editorial judgements."

The Trust's Adviser noted that the subjects of recent broadcasts had not been political in nature, but had been very wide ranging, for example, subjects discussed had included: the impact on parents when children leave home, the use of a cyber-currency, the lessons to be learnt from early astronomers and whether we should celebrate midsummer.

In terms of the complainant's concerns relating to bias, the Trust's Adviser noted that the Editorial Guidelines as they related to Impartiality state:

Impartiality: Introduction

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

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

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

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

Personal View Content

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.

The Trust's Adviser considered that the complainant had not referred to any specific broadcast in support of his complaint of bias in BBC output. She considered that the audience of *A Point of View* would be aware that the programme gave one person's perspective on a particular issue. She considered no evidence had been brought forward that indicated the Guidelines had been engaged.

The Trust's Adviser concluded that she had not seen evidence that supported the complainant's allegation that the BBC's decision not to use him to present *A Point of View* was a result of a bias against him or the conservative moral and social views he held. She believed the Trustees would be likely to conclude the complainant had received a reasoned and reasonable response from the BBC Executive explaining their editorial policy with regard to choosing presenters for *A Point of View*.

It followed from that, that she considered Trustees would be likely to conclude the decision not to use the complainant as a presenter for *A Point of View* was a matter of the editorial judgment of the programme makers. As such, it fell under the "creative and editorial" decisions that were the responsibility of the BBC Executive and she considered it would not be appropriate for Trustees to consider the appeal.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal. He reiterated his view that the BBC was failing to abide by its duty of impartiality.

He said that the summary of his correspondence with the BBC missed the point of his complaint and that he had demonstrated factually and logically that the BBC's responses were contradicted by statements he had made. The complainant noted the Executive Editor's contention that the approach had been "more or less consistent" with the fact that the slot was "not designed for journalists with outlets elsewhere, but for writers or thinkers who don't often, or ever, present their ideas in this format". The complainant said that this was contradicted by the fact that other past or existing presenters of *A Point of View* are or have been journalists and columnists. The complainant said that, were there a convention that journalists were not selected to present the programme, Will Self, Clive James, Martin Jacques and John Gray would have been precluded from taking part. The complainant concluded that, as they had not been, there could be no such convention.

The complainant noted that the Trust's Adviser had said the complainant had provided no evidence that *A Point of View* had never been presented by a social or moral

conservative. The complainant said that, if the BBC disagreed with this statement, it would be a simple matter to name one former presenter who had been a social or moral conservative. The presenter provided a list of 19 presenters and asked to be informed if he had left anyone out.

The complainant noted the Executive Editor's contention that he was a newspaper columnist with a "high profile". The complainant stated that he was not only a columnist but also an author, broadcaster, award-winning foreign correspondent and debater. He said that his profile was no higher than that of Clive James, Joan Bakewell or Sir Harold Evans, and this could not be a valid reason for preventing his engagement as a presenter.

The complainant also argued that his initial application for a role as a presenter on the programme had been "ignored for months" and that this was further evidence that his application had not been given fair consideration.

The complainant concluded by referring to the response from the Controller of Radio 4 and stating that he had been treated unfairly and there had been a breach of impartiality. The complainant asked to whom he could turn if the Trust would not hear his complaint.

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 day-to-day operational running of the BBC, including matters such as the choice of contributors to programmes, is not ordinarily a matter for the BBC Trust unless it results in a breach of relevant standards. The Committee noted that the complainant had alleged that the choice of contributors to *A Point of View* represented an anti-conservative bias. The Committee therefore considered whether there was evidence to suggest that, in not selecting this complainant or another contributor with similar views, the programme makers were creating bias in the output.

The Committee noted the complainant's view that the BBC's response to his discussion about presenting the programme indicated bias. The Committee noted that the BBC had provided reasons for its decision which the complainant considered were not logically consistent with past behaviour. The Committee noted that the complainant had therefore concluded, with reference to the assertion that no social and moral conservatives had ever presented the programme, that the decision not to use him was the result of bias.

The Committee noted that the Executive Editor had said that the approach taken in the past had been "more or less" consistent with the aim of the programme to give a platform to those who were not primarily known as journalists. The Committee agreed that this was far from the statement of an absolute rule that nobody who had ever engaged in journalism could present the programme. The Committee noted, however, that the reasons given by the BBC for not selecting the complainant did not depend on such a rule but that, in fact, none of the people who the new Editor of *A Point of View* had selected to write for the programme was "primarily a journalist". Trustees considered that the stated policy for choosing the new presenters of *A Point of View* was not inconsistent with the decision not to use the complainant. The Committee was satisfied that the reasons provided to the complainant were reasonable and there was no indication that they had not been applied consistently to the candidates under consideration by the new Editor of the programme. The Committee agreed that this did not constitute compelling evidence that the decision not to utilise the complainant was the result of bias.

The Committee noted that the Executive Editor of Radio Current Affairs had said that she agreed with the Assistant Editor that none of the current or past contributors to *A Point of View* had as high a journalistic profile as the complainant. The Committee noted that the complainant disagreed with this, citing examples of those who he thought had a higher profile. The Committee considered that this was a subjective argument which it was not necessary for it to resolve in order to determine whether there was merit to the allegation that the decision not to engage the complainant was the result of bias. The Committee did not agree with the complainant's characterisation of the BBC's rationale for its decision as being the application of certain rules but, rather, Trustees considered that it was an editorial decision which took into account a number of factors which were primarily the creative direction of the programme and the type of contribution offered by the complainant.

The Committee noted that the complainant had cited the time taken for the BBC to respond to him as further evidence that he was not treated impartially. The Committee noted that, after registering his interest to be considered as a possible presenter of the programme in November 2012, the complainant had not heard anything until he followed up in writing in March 2013. The Committee noted that the Assistant Editor had apologised for the delay, explaining that no decision had been made regarding future presenters and assuring the complainant that it had not been forgotten that he had registered his interest. The Committee noted that the Assistant Editor had then arranged a meeting with the complainant to discuss the matter. The Committee did not agree with the complainant that this indicated any prejudicial treatment of him on the basis of his social and moral views.

The Committee noted the examples of the type of subjects covered by the programme; the impact on parents when children leave home, the use of a cyber-currency, the lessons to be learnt from early astronomers and whether we should celebrate midsummer. The Committee considered that views on these subjects could not necessarily be split along the lines of whether the presenter was deemed to be a "social and moral conservative" or otherwise. The Committee noted that a central argument in the complainant's allegation of bias was his assertion that no moral or social conservative had ever presented *A Point of View*. The Committee acknowledged that this allegation remained unresolved in the absence of a definitive list of presenters of the programme and an accepted classification of each of these as either a "social and moral conservative" or otherwise. However, the Committee considered that, even if the complainant was correct in his assertion it would not constitute evidence that the output of the programme did not adhere to the requirements of due impartiality. The Committee noted that, in the absence of evidence of a breach of the relevant standards, the choice of contributors to programmes would be a matter of editorial judgment and therefore ultimately for the Executive Board rather than the BBC Trust. The Committee therefore considered that there would be no reasonable prospect of success for an appeal to the Trust on this basis.

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

Decision of Audience Services not to respond further regarding a complaint about BBC News at Ten, BBC One, 27 February 2013

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

Background

The complainant said that the word "refute" had been used inaccurately in an introduction to a report in the BBC's *News at Ten*. The complainant said that the presenter was wrong to use the word "refute" in terms of Lord Rennard's response to allegations of sexual harassment, and instead should have used either "deny" or "reject". The introduction to the report stated:

The Liberal Democrat leader Nick Clegg has been giving a new account of the sexual harassment crisis that's hit the party. For the first time he now says that Lord Rennard's inappropriate behaviour was known when he resigned as the party's Chief Executive in 2009. Lord Rennard refutes the allegations of sexual harassment made against him.

The BBC sent an initial response on 11 March 2013 which stated:

"... 'refute' was the term used in the denial made on behalf of Lord Rennard by his spokesperson when they said 'Lord Rennard refutes these allegations...'. Its use here by Fiona Bruce was therefore accurate as it was quoting Lord Rennard's representative's terminology and was, consequentially, the term widely reported across the media to describe Lord Rennard's response to the allegations."

The complainant remained unsatisfied and wrote again on the same day, stating:

"If a spokesman stated that fast food was health-giving this would not confer accuracy on it (your phrase) and I am quite sure the BBC would report it as a claim.

"In just the same way claims to have refuted an assertion or allegation, as in the Lord Rennard case, should be reported as such not as actual refutations, which require evidence."

The BBC sent a further substantive response on 29 April 2013, which stated:

"The word 'refute' can be taken to mean to disprove with evidence, but equally it can be taken to mean to refuse or reject:

<http://www.oed.com/view/Entry/161157?rskey=kIAtcq&result=3&isAdvanced=false#eid>

With this in mind, we're satisfied that our script reflected Lord Rennard's denial of the allegations while making no comment on their accuracy."

In the same letter, the BBC said it would not engage in further correspondence in relation to this complaint as it did not consider there was a breach of the Editorial Guidelines and had nothing further to add to what it had already said.

Appeal

The complainant appealed to the BBC Trust on 3 May 2013. The complainant had appealed on the substance of his complaint which related to the use of the word “refute” which he considered had been inaccurate. The Trust’s Senior Editorial Strategy Adviser (the Trust’s Adviser) noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision by BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Trust’s Adviser carefully read the correspondence that had passed between the complainant and the BBC and she noted – and had a good deal of sympathy with – the strength of the complainant’s feelings on this point.

She noted that the Editorial Guidelines required all BBC output to be “duly accurate”. The Guidelines for Accuracy state:

Introduction 3.1

The BBC is committed to achieving due accuracy. This commitment is fundamental to our reputation and the trust of audiences, which is the foundation of the BBC. It is also a requirement under the Agreement accompanying the BBC Charter.

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

Principles: 3.2.2

All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don’t know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

The Trust’s Adviser noted that the complainant considered the BBC had used language inaccurately. He had not accepted the BBC’s argument that, according to the Oxford English Dictionary, “refute” could be taken to mean “refuse” or “reject”. He had consulted the same dictionary and said that this meaning was described as rare, unlike the first meaning (“disprove with evidence”). The complainant had said that the Chambers dictionary gave only the “disprove” meaning. The complainant maintained that Fiona Bruce’s use of the word “refute” in reporting Lord Rennard’s response to allegations of sexual harassment was wrong since the allegations had not been disproven.

The Trust’s Adviser acknowledged that the complainant disputed the meaning of the word “refute” which had been advanced by the BBC. She noted that the online Oxford English Dictionary gave both meanings – both to “prove that (someone) is wrong” and to “deny or contradict (a statement or accusation)”. She noted too that the online OED stated:

“The core meaning of refute is ‘prove a statement or theory to be wrong’ [...] In the second half of the 20th century a more general sense developed, meaning simply ‘deny’. [...] Traditionalists object to this newer use as an unacceptable degradation of the language, but it is widely encountered.”

Given that the OED had listed both meanings of the word, she considered that the use of the word “refute” had been duly accurate, albeit that it was not the core meaning of the word. She noted too that in the body of the report, it was stated that: “Lord Rennard denies any impropriety”. She therefore considered that Trustees would be likely to conclude that the BBC had given the complainant a reasonable response to his substantive complaint and that the appeal for a further response from the BBC therefore had no realistic prospect of success and should not be put before Trustees.

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 which did not apply in this case. Decisions relating to the precise choice of words to use in news reports fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

For completeness, the Trust’s Adviser considered that decisions relating to the scripting of news reports were operational and editorial matters for the BBC (unless there was a breach of the Editorial Guidelines, which was not the case in this instance) and that generally it would not be appropriate for Trustees to consider a complaint of this nature.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal against the decision of BBC Audience Services not to respond further. He said that his underlying complaint was a matter of the non-application of the Editorial Guidelines relating to accuracy. The complainant restated his argument that, although contained within the OED’s definition of “refute”, the sense of meaning refuse or reject was described as rare. He said that the BBC had not yet made any comment as to why it appeared to be encouraging news presenters to adopt a rare usage of the word.

The complainant said that in using the word “refute” the News presenter had failed to test and attribute the claims, and was therefore in breach of section 3.2.2 of the Editorial Guidelines, which states that output must be well sourced, based on sound evidence and presented in clear, precise language.

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 item in question.

The Committee noted that the BBC had explained why it considered the use of the word “refute” to be duly accurate. The Committee noted that the complainant disagreed with this reasoning. The Committee considered that, whether or not it would have been better if a different word had been used (and this was clearly not an absolute matter given the

dictionary definitions which allowed the sense of deny or contradict), there was no evidence to suggest that viewers would have been given a misleading impression of the facts of the story taking into account the piece as a whole. The Committee considered that it was unnecessary to focus on the meaning of one word in the introduction to the piece and, as there was no issue with regard to the Editorial Guidelines on Accuracy, it would be disproportionate for the BBC to continue to enter into further correspondence. The Committee agreed that there was no reasonable prospect of success for an appeal against the decision of BBC Audience Services not to respond further to this complaint.

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