

# Editorial Standards Findings

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

February and March 2013 issued April 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](http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2011/esc_tor.pdf).

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

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

The Committee may consider appeals concerning complaints which allege that:

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

However, not all requests for appeal qualify for consideration by the ESC. The Editorial Complaints and Appeals procedure<sup>1</sup> explains that:

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

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<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

It is published at [bbc.co.uk/bbctrust](http://bbc.co.uk/bbctrust) and is available from:

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

# Summaries of findings

## *Richard Bacon, BBC Radio 5 Live, 28 & 29 February 2012*

The complainant alleged breaches of the BBC's Guidelines on Editorial Integrity and Independence from External Interests, and on Conflicts of Interest in the way Mark Easton and Simon Mayo were interviewed about their books on BBC Radio 5 Live's Richard Bacon Show. The complainant also raised wider issues relating to an alleged pattern of BBC employees being interviewed about their books on the show and on the BBC more generally.

The Committee concluded:

- that there had been no impropriety in the way the interviews had been arranged (either by the publishers, Mr Easton or Mr Mayo) and there was no evidence that either Mr Mayo or Mr Easton had lobbied to get on the show to promote their books or otherwise asked for favours.
- that there was no sign of Richard Bacon or the show's production team acting in any way that was improper or in breach of the Editorial Integrity and Independence from External Interests Guidelines and/or the Conflicts of Interest Guidelines in this respect.
- that it was not evident that there was gross overrepresentation of BBC authors (however they were defined) on the Richard Bacon show, and the proportion on the 5 Live network overall did not strike the Committee as an obvious overrepresentation either.
- that no elements of the BBC's Guidelines had been breached in relation to this element of the appeal, although the complainant had raised some issues of wider importance which would be explored further with the BBC Executive.
- that the two BBC guests had broadly been treated as other guests would have been and the books had not been given undue prominence. There had not been a breach of the Guidelines on Editorial Integrity and Independence from External Interests in relation to this element of the appeal.
- that it was satisfied that nothing had occurred, either in the arrangements by which Mr Easton and Mr Mayo came to be interviewed, or in the actual interviews, which would be likely to undermine the public's perception of the impartiality, integrity, independence and objectivity of the BBC or bring the BBC into disrepute.
- that, overall, it did not see some of the problems inherent in BBC employees talking about their books on the BBC that the complainant apparently did. However, the Committee did agree with the complainant about the importance of the Editorial Guidelines being adhered to in relation to such interviews and it wished to thank him for prompting discussion on these matters.

The complaint was not upheld.

For the finding in full see pages 7 to 18.

## Six Nations on-screen graphics

This is a complaint from RadioCentre, the trade body for commercial radio companies in the United Kingdom, about the presence of Accenture's animated logo in on-screen match data graphics during the BBC's live television coverage of the 2012 Six Nations championship. The complainant said that the graphics were unduly prominent and amounted to sponsorship.

The Committee concluded:

- that to give Accenture on-screen credits as data-supplier was appropriate and editorially justified.
- that it was reasonable for the provision of official match data to have been dealt with as part of the contract by which the BBC acquired the rights to broadcast the tournament and the BBC had not used data supplier references as "currency" to pay for a service.
- that, as Accenture's contractual relationship was with the tournament organiser (Six Nations Rugby Ltd), not the BBC, and as no fee or other valuable consideration had been paid to the BBC by Accenture, no question of programme sponsorship arose.
- that the BBC had acted reasonably within its editorial discretion in arriving at the number and duration of data supplier credits likely to be appropriate within coverage of a match.
- that BBC Sport's advance indication to SNRL of its broadcast intentions in relation to the number and duration of on-screen data-supplier credits had not had the effect of fettering the BBC's editorial judgement.
- that the Accenture logo was not unduly prominent, and did not give the impression that the BBC was promoting or endorsing Accenture, its products or services, and that on-screen appearances of Accenture's logo were neither unfair nor unduly promotional.
- that the guidelines covering cumulative impact were not applicable to this complaint.
- that the credits to Accenture were both fair and editorially appropriate.
- that the wording of an email sent from the Executive Producer to BBC Sport staff might have given recipients the impression that BBC Sport had made a binding commitment to SNRL, and might have been interpreted by the programme team as meaning that delivery of the specified number and duration of data supplier credits overrode any countervailing editorial considerations.
- that audiences could not have a well-founded confidence that the BBC's editorial decisions in relation to on-air appearances of the animated Accenture logo were not influenced by commercial pressures due to the interpretation that the Committee considered recipients would have placed on the internal email.
- that the BBC had entered into an arrangement which could undermine its editorial integrity because the internal email had had the same practical effect of fettering the BBC's editorial judgement as if the contract had done so.

- that the BBC's editorial integrity had been compromised in this case but there was no evidence before the Committee to suggest that the BBC had not retained editorial control of its output.

The complaint was upheld with regard to the BBC's editorial integrity in giving the impression that BBC Sport had made a binding commitment to the tournament organiser. The complaint was not upheld on any other points.

For the finding in full see pages 19 to 29.

### ***Horizon – Fukushima: Is Nuclear Power Safe?, BBC Two, 14 September 2011***

The complainant said that the programme inaccurately described what happened at Fukushima as a "partial meltdown", with the effect that the audience was misled as to the gravity of the accident.

The Committee concluded:

- that the uses of the term "partial meltdown" could not be considered wholly accurate in the context of what is generally understood by the term, because at the time of broadcast it was clear that the fuel rods in three of the reactors had melted completely.
- that there is no universally agreed definition of what the phrases "full meltdown" or "partial meltdown" mean, and that neither have any scientific legitimacy.
- that any ambiguity about the interpretation of the scale of the meltdown because of the use of the word "partial" was effectively guarded against by the clear presentation of the scale of radioactive contamination and the predicted health impact.
- that, while the term "partial meltdown" wasn't a precise description of what happened at Fukushima, it would not have misled the audience as to the gravity of the accident and therefore there had not been a breach of the guidelines on Accuracy or Impartiality.

The complaint was not upheld.

For the finding in full see pages 30 to 37.

# Appeal Findings

## **Richard Bacon, BBC Radio 5 Live, 28 & 29 February 2012**

### **1. Background**

Richard Bacon's show is a mix of news, sport, entertainment and interviews with guests. It frequently features interviews with authors who have recently had books published.

On 28 February 2012, Radio 5 Live presenter Richard Bacon featured Simon Mayo, a Radio 2 presenter, as a guest on his afternoon show.

The following day, Richard Bacon featured Mark Easton, the BBC's Home Editor, as a guest on the show. Both guests talked about books they had written that were about to be published.

The complainant alleged breaches of the BBC's Guidelines on Editorial Integrity and Independence from External Interests, and on Conflicts of Interest in the way both guests were interviewed about their books. The complainant also raised wider issues relating to an alleged pattern of BBC employees being interviewed about their books on the show and on the BBC more generally.

Simon Mayo presents Simon Mayo Drivetime weekdays on BBC Radio 2. He is a former regular Radio 5 Live daily afternoon show presenter and, together with Mark Kermode, reviews films on Fridays for Radio 5 Live in the 2-4pm slot. He is not on the BBC's staff: he is a freelance presenter, working in a non-news area of the BBC's output. His children's book, *Itch*, was published on 1 March 2012.

Mark Easton, the BBC's Home Editor, talked about the book he had written, as well as a number of other topics. The book, *Britain etc – the way we live and how we got there*, was published on 1 March 2012. Mark Easton is on the BBC's staff and works in a news area of the BBC's output.

### **2. The complaint**

#### **Stage 1**

The complainant contacted the BBC on 28 February 2012 to complain about the appearance on Richard Bacon's show that day of Simon Mayo, who had been invited on, as the complainant saw it, to promote a children's book that he had written. The complainant said that this "promotion", which, the complainant alleged, often happened on the programme, was made worse because Mr Mayo was a former presenter of the same show and still presented a show on Fridays.

On 28 March 2012, the complainant wrote again, chasing up a response to his complaint and saying he had a second example from Richard Bacon's show, broadcast on 29 February 2012, and he wanted to add this to his original complaint. This time it concerned an interview with Mark Easton, the BBC's Home Editor, which the complainant said was plugging a book he had written.

BBC Audience Services passed on a response from the programme's Editor who had explained that authors were regularly interviewed on the show and, indeed, that was part of the programme's entertainment remit. The decision to interview Mr Mayo had been

made on the same basis as for any other guest, namely whether the audience would be interested in them, and it was known from audience feedback that there was interest in Mr Mayo.

A similar response was sent by BBC Audience Services in answer to the complainant's second complaint about Mr Easton's interview. The programme's Editor had added that Mr Easton, as well as being interviewed about his book, had also talked about a range of news stories.

## **Stage 2**

On 2 May 2012 the complainant wrote to the Editorial Complaints Unit reiterating both his complaints and explaining in more detail the way in which he thought both interviewees were favoured because of their existing connections to the BBC and "used their contacts in the BBC to get airtime to discuss (=plug) products in which they had a financial interest".

Correspondence followed on the issues of whether the two complaints should be dealt with separately or together, and the extent of the ECU's remit.

The result of this correspondence was that the ECU considered the two complaints in relation to potential breaches of the guidelines on Editorial Integrity and Independence from External Interests and whether there was undue prominence given to either book. Meanwhile, the Head of Editorial Compliance and Accountability for BBC News looked at whether there was any pattern of "plugging" by BBC employees, as alleged by the complainant. She also investigated the potential conflict of interest issues.

On 7 June 2012 the ECU informed the complainant that it did not uphold the elements of the complaint it had examined. The ECU concluded that Mr Mayo's interview had not given undue prominence to his novel and that the conversation had extended well beyond consideration of the novel and included a broader discussion about the writing process. Similarly, the interview with Mr Easton, the ECU concluded, had been primarily about his professional judgement on a range of issues and the references to his book had been limited.

On 27 June 2012 the Head of Editorial Compliance and Accountability, BBC News wrote to the complainant to say she did not uphold the elements of the complaint that she had examined. With regards to the allegation concerning a pattern of plugging, she provided figures relating to numbers of guests, authors and BBC presenters or correspondents interviewed. She set out criteria for selecting guests and explained there was a policy of allowing only one interview about a book on one outlet on the network. She looked at the editorial reasons for five separate interviews involving BBC staff and concluded there had been justification for each. On the question of conflicts of interest, the Head of Editorial Compliance and Accountability, BBC News said she could see no evidence that the public's perception of independence had been undermined; neither, given the editorial justification for each of the interviews, could she see evidence that any questions of personal friendship or collegiate obligation had been brought to bear.

## **Appeal to the Trust**

The complainant wrote two appeal letters to the BBC Trust, the first on 25 June and the second on 2 July 2012. The points that he raised included:

- The allegation that Mr Mayo and Mr Easton had used their status as BBC employees to gain access to a platform which afforded them publicity for their work and therefore increased sales

- The allegation that undue prominence had been given to the books
- The allegation that the ECU had ignored the nub of his complaint (namely that BBC staff had used their own personal contacts within the organisation to obtain access to airtime to promote products in which they had a financial interest)
- Concerns regarding the approach taken by the ECU (including its decision that conflicts of interest was outside its remit)
- The allegation that there was a pattern of BBC staff being overrepresented as guests on BBC shows.

The BBC Trust's Head of Editorial Standards decided that the points that the complainant had made about complaints handling and, in particular, points concerning the extent of the ECU's remit (e.g. in relation to conflicts of interest), should not progress to appeal. This was subsequently challenged by the complainant and considered by the Editorial Standards Committee at their meeting of 19 September 2012.

The Committee decided that they agreed with the Head of Editorial Standards' decision not to proceed with these points.

The Committee's decision regarding the admissibility of these other points has been published and is available at:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2012/19\\_sep.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/19_sep.pdf)

#### Points considered in this appeal

The complainant raised the following points in relation to the Editorial Guidelines on Editorial Integrity and Independence from External Interests, and the related guidelines on Conflicts of Interest:

- Point (A) Simon Mayo and Mark Easton used their influence and connections as BBC employees to secure interviews on the Richard Bacon show in order to promote their books. At the same time, the show's producers were influenced in their selection of guests by their personal connections with BBC colleagues.
- Point (B) The interviews were examples of a pattern on Richard Bacon's show of BBC employees being greatly overrepresented as guests with books to promote.
- Point (C) Undue prominence was given by Richard Bacon to books written by Simon Mayo and Mark Easton when the authors were interviewed on the show.
- Point (D) Whether it was appropriate at all for these two BBC employees to talk about their books on the BBC, given that they had a financial interest in promoting them to increase sales.

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

The Editorial Guidelines on Editorial Integrity and Independence from External Interests (Section 14) and Conflicts of Interest (Section 15) are applicable to this case. The full guidelines including other sections raised by the Complainant such as impartiality are at <http://www.bbc.co.uk/editorialguidelines>.

The Guidelines were considered by the Committee, who concluded that the relevant Editorial Guidelines for the purpose of this appeal are:

#### **Section 14 – Editorial Integrity and Independence from External Interests**

##### 14.1 Introduction

...Our audiences must be able to trust the BBC and be confident that our editorial decisions are not influenced by outside interests, political or commercial pressures, or any personal interests.

This section of the Editorial Guidelines concerns the editorial decisions and production of our output. It should be read in conjunction with Section 15 Conflicts of Interest, which is concerned with ensuring the external activities of those involved in making content do not bring the BBC's editorial integrity into question.

##### 14.2 Principles

14.2.1 We must be independent from outside interests and arrangements which could undermine our editorial integrity.

14.2.3 We must not give undue prominence to commercial products or services.

14.2.7 We must not unduly promote BBC commercial products or BBC-related commercial products and services on our public service outlets.

##### 14.4 Practices

###### Product Prominence

###### 14.4.4

We need to be able to reflect the real world and this will involve referring to commercial products, organisations and services in our output. However, we must avoid any undue prominence which gives the impression that we are promoting or endorsing products, organisations or services. To achieve this we must:

- ensure that references to trade names, brand names and slogans are clearly editorially justified
- not linger on brand names or logos and use verbal references sparingly unless there are very strong editorial reasons for repeated references to a brand...

###### Undue Prominence and Contributors

14.4.8 We must avoid undue prominence when contributors appear on chat shows and other programmes where they are promoting a product, such as a film, album or book. Although proper editorial discussion is perfectly acceptable, the related product should not normally be used as a prop unless clearly editorially justified...

## Reviewing Products or Services

14.4.10 We must ensure there is no element of plugging when we review products or services...

## **Section 15 – Conflicts of Interest**

### 15.1 Introduction

A conflict of interest may arise when the external activities of anyone involved in making our content affects the BBC's reputation for integrity, independence and high standards, or may be reasonably perceived to do so. Our audiences must be able to trust the BBC and be confident that our editorial decisions are not influenced by outside interests, political or commercial pressures, or any personal interests.

There is a danger of conflict of interest in every area of programme or content making. Each department or team must be aware of its area of vulnerability. There may be particular sensitivities for on-air talent.

The Principles on conflicts of interest apply equally to everyone who makes our content...

All BBC staff are required formally to declare any personal interest which may affect their work with the BBC. Freelance presenters, reporters, producers and researchers and most other freelancers will also be required to declare personal interests which may affect their work with the BBC.

### 15.2 Principles

15.2.1 External activities of individuals working for the BBC must not undermine the public's perception of the impartiality, integrity, independence and objectivity of the BBC. Nor should they bring the BBC into disrepute.

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

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

### 15.4 Practices

#### News and Current Affairs

15.4.2 Regular BBC news presenters should not undertake promotions ... in exceptional circumstances, with the prior approval of the BBC, they may undertake promotional activities for books which they have written. Any such activity must not jeopardise a presenter's reputation for objectivity and impartiality.

#### Other Output Areas

15.4.5 The external activities of BBC editorial staff, reporters and presenters should not undermine the public's perception of the impartiality, integrity or independence of BBC output.

## Writing commitments – News and Current Affairs...

15.4.10 Specific permissions are required for those working in news areas to publish books. The book should not compromise the integrity or impartiality of the BBC...

### Other areas

15.4.11 Programme makers, editorial staff, reporters and presenters in non-news areas may all wish to undertake journalistic work, write articles or write books. Such activity should not bring the BBC into disrepute

### **Applicable Editorial Guidance**

There is also editorial guidance on conflicts of interest. The full guidance on conflicts in relation to external activities can be found at:

<http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidance-conflicts-off-air>.

### **The relevant sections are:**

#### **News and Current Affairs - Specific Guidance**

**This guidance applies to those working in BBC News and Current Affairs, BBC Global News, news and current affairs output in the Nations and Sport News.**

### **Writing Books**

#### **BBC staff and BBC Correspondents on non-staff contracts**

**BBC editorial staff and BBC Correspondents on non-staff contracts must have prior written approval from their Head of Department to publish a book on any topic.** The book should not compromise the integrity or impartiality of the BBC and should adhere to all contractual requirements such as confidentiality. The copy of any book must be approved by the BBC before publication. Copy should be submitted in good time before publication to the Head of Department or their nominee. The relevant BBC Press and Publicity Manager should be informed of plans to promote and market the book.

#### **Other Output Areas**

In other output areas, the degree to which external activities are constrained will depend on the nature of both the output and the individual's role. It is important that any outside activities do not undermine the BBC's impartiality, bring the BBC into disrepute or damage the BBC brand. Heads of Department must judge what is appropriate and consult Editorial Policy in cases of difficulty...

Whatever the subject matter, presenters should not use their programmes as a vehicle for promoting books they have written. In some cases, it may be editorially justified to make some reference to the book, providing there has been clear prior approval from the editor or relevant editorial executive. But it is essential that the book is not "plugged" on-air.

## **4. The Committee's decision**

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

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

The Committee confirmed that this appeal raised issues requiring consideration of the guidelines relating to Editorial Integrity and Independence from External Interests, and on Conflicts of Interest.

The Committee considered each element of the appeal in turn.

**Point (A) The complainant alleged Simon Mayo and Mark Easton used their influence and connections as BBC employees to secure interviews on the Richard Bacon show in order to promote their books. At the same time, the show's producers were influenced in their selection of guests by their personal connections with BBC colleagues.**

It was noted that the complainant had said his suspicion was that both Mr Mayo and Mr Easton had approached Richard Bacon's editor and asked for a favour, and that personal interests and relationships must have played a part in them getting on the show.

The Committee noted the BBC's response which was that the interviews had been booked by the publishers and not directly through either Mr Mayo or Mr Easton. Moreover, said the BBC, no one on the programme had a personal relationship or friendship with either Mr Mayo or Mr Easton.

The Committee looked at the evidence as to how both men had come to be on the show.

In an email to Mark Easton's publicity manager (which had been provided to the Trust by Mr Easton), the producer of the show had said that Mr Easton had mentioned to Mr Bacon on a previous occasion when he had appeared on the show that he was preparing for his book launch. The Committee noted that Mr Easton said he could not remember such a conversation (which was not on-air), but that he imagined he would have been chatting before his item and would have mentioned that he was busy preparing for his book launch. The Committee was aware that Richard Bacon had no recollection of this conversation. The Committee considered that, if a conversation did take place, the reference to the book was likely to be a passing reference in conversation rather than lobbying of an improper nature to get on the show.

The Committee examined evidence which included statements from the two publishers concerned, confirming that the publishers approached the show. Email trails and further statements from the various individuals were also considered.

The Committee noted that it had been Mr Mayo's idea to set up a panel of reviewers to talk about his book on the programme (when Mr Mayo had presented the afternoon show on 5 Live, a panel of reviewers would regularly talk about books while the author was present). The production team had been enthusiastic about the idea and the books panel had been reconvened for the programme, the Committee noted. However, this had come after the initial approach from the publisher to the programme had been made and there had been nothing improper about it in the Committee's view.

Overall, the Committee's conclusion was that there had been no impropriety in the way the interviews had been arranged (either by the publishers, Mr Easton or Mr Mayo) and there was no evidence either that Mr Mayo or Mr Easton had lobbied to get on the show to promote their books or otherwise asked for favours. Similarly, the Committee could see

no sign of Richard Bacon or the show's production team acting in any way that was improper or in breach of the Editorial Integrity and Independence from External Interests Guidelines and/or the Conflicts of Interest Guidelines in this respect.

**Point (B) The complainant alleged the interviews were examples of a pattern on Richard Bacon's show of BBC employees being greatly overrepresented as guests with books to promote.**

The Committee examined the various figures in relation to this allegation. It also considered in detail the comments made by the complainant. The Committee noted the BBC's evidence that over 12 months there had been 300 guests on the show and out of these 102 had been authors. Among these authors, six were identified by the BBC in the relevant period as being "BBC authors".

The Committee noted that the BBC had said "BBC authors" were defined as people who were primarily associated with being BBC on-air talent; the figures excluded, for example, Steve Coogan, and Professor Brian Cox.

The criteria set out by the BBC for selecting guests for the show were considered. Top of the list was whether the guest was someone who would be of interest to that particular audience.

The Committee did accept that an individual who was already known to BBC audiences and was a first-time author would probably be considered of greater interest than a first-time author who was unknown to BBC audiences. This was particularly likely to be true, it thought, in relation to a programme such as the Richard Bacon show which was fairly relaxed and informal, and often featured celebrities.

The Committee considered the BBC's editorial justifications for each of the interviews with "BBC authors" and agreed that these justifications were reasonable.

The Committee examined the list of 102 authors who had been on the Richard Bacon show over a 12-month period. The Committee was aware that the figure given at Stage 2 to the complainant was 80 but that this figure was revised to 102 in the BBC's response to the Trust's appeal investigation. The Committee noted the difficulties of defining and categorising guests as "BBC" or "non-BBC": for example, a number of academics and other experts might be mainly known to the general public through their appearances on the BBC, but that did not necessarily mean they should be counted as "BBC authors".

In essence, the complainant had argued that six BBC authors demonstrated gross overrepresentation of BBC employees and that, if extrapolated, (taking into account the number of book titles published in the UK) meant one of two things: in order for these figures to be representative, the BBC would have to have around 18,000 authors working for it or BBC employees got a much better chance than other people of promoting their books. The complainant later revised his calculation and stated "...if BBC authors (as defined by the BBC) were not over-represented on Bacon's show, over 5,000 BBC staff must have written books in the year in question."

The Committee's view was that the figures could not be used in this way for a number of reasons including: the one-year sample on the Richard Bacon show of six BBC authors was small; the size of the pool of books suitable for review for the audience for the show was open to debate; the need for the show to interview authors who could talk ably on air meant that those who had broadcasting experience would be bound to be at an advantage; the definition of a "BBC author" was also open to question; and the number of people working for the BBC (however that was defined) who had had books published in any one year was unknown.

The Committee concluded that to pin down all these elements would require disproportionate research to no obvious benefit.

During consideration of this aspect of the appeal, the Committee also looked at figures provided by the BBC for interviews with authors for the whole of the BBC 5 Live network, giving a larger sample than the one provided by just the Richard Bacon show. The figures for the whole network, including the Richard Bacon show, were 348 author interviews, of which 11 were with "BBC authors", as defined by the BBC.

The Committee examined the list of the 348 names and, again, could see the difficulties of attempting to define who should be in or out of the "BBC authors" category.

In conclusion on this point, the Committee did not agree with the complainant that it was evident there was gross overrepresentation of BBC authors (however they were defined) on the Richard Bacon show, and the proportion on the 5 Live network overall did not strike the Committee as an obvious overrepresentation either.

Overall, the Committee did not consider that any elements of the BBC's Guidelines had been breached in relation to this element of the appeal. However, the Committee agreed that the complainant had raised some issues of wider importance which would be explored further with the BBC Executive.

**Point (C) The complainant alleged that undue prominence was given by Richard Bacon to books written by Simon Mayo and Mark Easton when the authors were interviewed on the show.**

The Committee noted the complainant's view that the interviews with Mr Mayo and Mr Easton were, in effect, just "plugs" for the books, and this undue prominence was against the BBC's Editorial Guidelines.

The Committee considered in detail the content of the interviews, and the language used in them. Mr Mayo's interview was slightly shorter than the one with another author on the same programme. The interview had centred on discussion of his book and the Committee agreed that Richard Bacon, as well as the independent reviewers, had been enthusiastic about it. The Committee did not consider that this, in itself, indicated that any undue prominence had been given by Richard Bacon to the books written by the Mr Mayo and Mr Easton. The interview with Mr Mayo contained a degree of friendly banter and the Committee noted by way of example the following extract:

Richard Bacon:	Simon Mayo, good afternoon.
Simon Mayo:	Hello Richard, how are you?
RB:	Not bad. How's Simon Mayo?
SM:	Simon Mayo ... I don't want to start talking about myself in the third person because people will think I've got DJ madness.
RB:	I was eating out on my own last night in a restaurant. The waiter came to clear away the cutlery and the little plate from my starter and he said 'have you finished?' And I said 'yes, we've finished'. And I thought 'we've, who's this we've?'
SM:	You've become Mrs Thatcher. You've been doing this show too long.

- RB: [laughs] Radio can drive you mad Simon, would you agree with that?
- SM: No, no, not really ... you just have to do the right radio. It's nice to be here Richard.
- RB: It's nice to have you here, Simon.
- SM: What a ridiculous idea this was...
- RB: ...to get you on to a programme you used to present, where you had a book panel, and to get a book panel together to review your book in front of you – which is what you used to do on your book panel with other authors.
- SM: Yeah, but the whole point was I could sit there being smug while top reviewers, like Joel who's sitting opposite me, were able to do the nasty work, or the good work, depending on what was required. The poor writer just had to take what's coming. I didn't really think it would ever come to this...

The Committee noted that Richard Bacon said several times how much he liked the book. The Committee noted in particular the following extract:

- RB: Simon's book – it's terrific – I do mean that sincerely. Ah, I've pre-empted the review. That's killed the tension because I'm sure Simon was very nervous about what I was going to say...

The Committee also noted that the two guest reviewers were entirely positive about the book and after they had finished their assessments, Mr Mayo joked: "I love the book panel! Thank you Joel, thank you Paul – I'm very moved."

The interview with Mr Easton, the Committee noted, ranged over a number of issues relating to breaking news stories, and there were extensive sections of the interview where his book was not mentioned at all.

The Committee noted one particular remark to which the complainant had objected, which came near the start of a discussion of breaking news stories. Mr Easton was referring to the fact that his interview had been held up by breaking news:

- Mark Easton: ...a little bit later we're going to be talking about my book, but it's quite amusing, because my book is about me stepping back from the news and trying to stand away from the blood and guts of the breaking story... and here I am having a chance to talk to you about it, but being delayed by breaking news!

The Committee also noted that later in the interview, after talking about the news stories, Richard Bacon had returned to Mr Easton's book, saying:

- Richard Bacon: Now Mark, you're the BBC's Home Editor. We'll come back to talk about your excellent book 'Britain etc', which is an A-Z ... and it's about the characteristics of Britain. It's a bit about history, it's a bit about myths, about elements of the British way of life that we take for granted. We shall analyse and discuss it in a moment – Mark Easton's 'Britain etc'. First of

all Mark, explain what your job is. Explain the role of the BBC's Home Editor...

Next, the Committee considered the number of trails – mentions that the book would be discussed later in the show – in each of the two programmes. It agreed that this was a key radio device to keep people listening and did not think the number or manner of the trails was excessive in these two instances.

Overall, the Committee, having listened carefully to the interviews and being familiar with the context of the Richard Bacon show, considered there was nothing unusual about the way these two particular guests had been treated or had talked about their books. The Committee did not consider that the language used amounted to plugging.

The show was a general interest one, often featuring guests from the world of entertainment, and, as such, was generally positive. It would be unusual for anything particularly negative to be said about a book on the show, in the Committee's experience. In this context, the two BBC guests had broadly been treated as other guests would have been. The Committee therefore did not consider that the books had been given undue prominence.

For the reasons outlined above, the Committee did not accept there had been a breach of the Guidelines on editorial integrity and independence from external interests in relation to this element of the appeal.

**Point (D) The complainant questioned whether it was appropriate at all for these two BBC employees to talk about their books on the BBC, given that they had a financial interest in promoting them to increase sales.**

The Committee noted that the complainant said he did not object to BBC employees writing books but he did object to these authors then using their BBC contacts to obtain publicity for their work. The complainant had gone on to say that "plugging" interviews, of the type that might be tolerated for non-BBC authors, were not acceptable in the case of BBC staff.

The Committee noted that the complainant had cited his own perception as evidence that the appearance of these two BBC employees who had both recently had books published undermined perceptions of the "impartiality, independence and objectivity of the BBC":

"Well I have provided some evidence [it had been suggested by the BBC at Stage 2 that he had no evidence for his assertion]. As soon as I heard the Mayo interview I thought, 'This is shameless cronyism and plugging'. I complained the same day. Then the next day I heard the Easton interview and I thought, 'Here we go again'. I felt sufficiently strongly about it to make two complaints and to persist with the matter despite the closing of ranks by BBC complaints staff. I am a member of the public, and I felt the BBC was undermined by the activities of the programme makers and guests. What is that if it is not evidence?"

In considering these points, the Committee referred to the decision it had already taken under Point (A) (relating to sections 14 and 15 of the Guidelines), that nothing improper had taken place in the way Mr Mayo and Mr Easton had come to be on the Richard Bacon show. Similarly, it referred to the decision under Point (C) (relating to section 14 of the Guidelines) that plugging, as defined by the Editorial Guidelines, had not taken place. The Committee was satisfied that nothing had occurred, either in the arrangements by which Mr Easton and Mr Mayo came to be interviewed, or in the actual interviews, which would be likely to undermine the public's perception of the impartiality, integrity, independence and objectivity of the BBC or bring the BBC into disrepute.

Overall, the Committee did not see some of the problems inherent in BBC employees talking about their books on the BBC that the complainant apparently did. However, the Committee did agree with the complainant about the importance of the Editorial Guidelines being adhered to in relation to such interviews and it wished to thank him for prompting discussion on these matters.

#### Additional consideration

The Committee noted that the complainant had, during the course of his correspondence, raised the question of whether Mr Easton and Mr Mayo had obtained the appropriate permissions for writing their books. The BBC confirmed to the Committee that Mr Easton, as a BBC staff member working in a news related area, had obtained permission as set out under the Editorial Guidelines on Conflicts of Interest, supplemented by Editorial Guidance. Mr Mayo is not on the BBC's staff and works in a non-news area: he did not need permission to write the book.

**Finding: Not upheld.**

# Six Nations on-screen graphics

## 1. Background

The Royal Bank of Scotland (RBS) Six Nations championship is an annual rugby union tournament between the four Home Countries, France and Italy. Six Nations matches involving Home Countries are a Group B Listed Event.<sup>4</sup> The BBC has exclusive live UK television, radio and online broadcast rights to the RBS Six Nations championship until March 2017. With regard to the BBC's television coverage, 14 of the 15 matches of the 2012 tournament were broadcast live on BBC One and BBC One HD, and one was broadcast live on BBC Two and BBC HD. Recorded highlights were broadcast on BBC Two and BBC HD.

Accenture is a global management consulting, technology services and outsourcing company.

## 2. The complaint

### Stage 1

On 27 February 2012 the Chief Executive of RadioCentre, the trade body for commercial radio companies in the United Kingdom, wrote to the Director, BBC Sport, with reference to the BBC's live television coverage of the RBS Six Nations tournament. The complainant objected to the presence of Accenture's animated logo in on-screen match data graphics.

The Director of BBC Sport issued a substantive response on 7 March 2012.

The complaint was escalated directly to the Editorial Complaints Unit (ECU), and the Director, BBC Sport, did not issue a follow-up Stage 1 response.

### Stage 2

The ECU considered the complaint against the Editorial Guidelines on Editorial Integrity and Independence from External Interests (14.2.3, 14.2.4) and External Relationships and Funding (16.2.1, 16.2.4) with particular reference to Sponsored Third Party Events (16.4.44).

The ECU did not uphold the complaint that undue prominence had been given to Accenture, that the credit for Accenture was without editorial justification, or that it had given the impression that the BBC's coverage was sponsored.

### Stage 3 – Appeal to the Editorial Standards Committee (ESC)

In a letter to the BBC Trust dated 21 June 2012 the complainant's Chief Executive stated that he had initially contacted the BBC because of concerns that advertisers and event sponsors were agreeing deals to be technology partners or similar at sporting events in order to be directly included in the BBC's coverage. In this instance, the complainant was concerned that the undue prominence of a third party in the BBC's coverage amounted to sponsorship.

While acknowledging that branded logos were unavoidable in the commercially-driven world of sport, the complainant argued that deals for on-screen brand prominence were materially different and breached the BBC's Editorial Guidelines. The BBC's responses at

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<sup>4</sup> Ofcom Code on Sports and Other Listed and Designated Events, Annex 1. See:

[http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom\\_code\\_on\\_sport.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom_code_on_sport.pdf)

Stages 1 and 2 had led the complainant to believe that such 'back-door sponsorship' was now accepted practice across the BBC.

The complainant argued that a precedent was being set for 'back-door' deals that effectively enabled sponsorship of BBC content. In the complainant's view, such deals were arguably taking money away from an already struggling commercial media industry. The complainant argued that the BBC should not enter into agreements with sporting events that had branded partners.

In the complainant's view, the current situation had arisen because there was no specific guidance on the coverage of third-party sponsored events for sports broadcasts on BBC publicly-funded channels. The complainant argued that, in the absence of such guidance, the BBC was forced to refer to the European Broadcasting Union Rules, despite the fact that the EBU had no remit in this matter and the EBU Rules were merely advisory and had no standing under the BBC's Charter or Agreement. The complainant recommended the incorporation of new guidance for sporting events into the Editorial Guidelines, to avoid similar manipulation or misinterpretation in future.

In the complainant's view, it would be naive to assume that companies such as Accenture entered into partnership deals without recognising where their sponsorship would be used and its potential value. The complainant argued that, as Accenture had no direct contract with the BBC, it was ultimately the BBC's responsibility whether to feature the company's logo or not. The complainant argued that Accenture did not calculate statistics for the BBC or have any rights associated with broadcasting the tournament. It appeared to the complainant that the BBC had unilaterally chosen to feature a third-party logo, despite the provisions of Editorial Guideline 16.4.44 and section 3.2 of the BBC's guidance on Coverage of Third Party Sponsored Events (Non-Sports) Broadcast on BBC Publicly Funded Channels.

The complainant did not accept that keeping score or acknowledging substitutions were similar to timing laps in Formula One or European athletics, as accurate timing was intrinsic to those sports and required specialist technology.

Pointing out that the ECU had not taken account of the fact that the BBC had covered all 18 [*sic*]<sup>5</sup> games of the 2012 RBS Six Nations tournament in its finding, the complainant argued that, in accordance with Editorial Guideline 14.4.5, consideration should have been given to the potential cumulative effect of the on-screen credits. The complainant argued that, assuming the England v Wales game was typical, the logo would have appeared for 21 minutes 36 seconds<sup>6</sup> over the entire competition. According to BARB ratings, the average Six Nations game reached an audience of around 3.5 million adults, from which the complainant estimated that a company advertising in each match in the competition for the amount of time the logo appeared on screen would pay a commercial broadcaster over £1.2 million.<sup>7</sup>

### **3 Applicable Editorial Guidelines and Guidance**

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

The sections on Editorial Integrity and Independence from External Interests, and External Relationships and Funding are relevant to this case. The Committee also noted

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<sup>5</sup> In fact, there were 15 games in the 2012 RBS Six Nations Championship.

<sup>6</sup> As there were 15 games, not 18, this gives a total of 18 minutes.

<sup>7</sup> Pro-rating this figure by 15/18, to reflect the number of games actually played, gives a total of £1 million.

the following extract from the EBU principles for on-site advertising and on-screen identification for sports events (the EBU Rules).

## **Part B**

### **On-Screen Identifications**

The Federation<sup>8</sup> undertakes not to permit any injection into the broadcast signal of the Event, other than that agreed for the official timing and data processing companies as detailed hereunder:

1. On-screen identification means only visual display. There may be no dedicated visual or audio effects and/or references to an online domain or address included in this identification. On-screen identifications will be authorised only for companies whose principal activities include the provision of the equipment used (hardware) and/or the service (software) ("the Company (ies)"). The identification shall be in the form as described in this document. All proposed identification together with on-screen graphics shall be submitted for approval by the EBU and/or Broadcaster twenty (20) days prior to the Event.
2. No other on-screen identification other than for the Companies, on terms and conditions detailed herein, may be transmitted at the same time as the appearance on-screen of timing and/or data processing information. Newer forms of data processing such as Hawk-Eye and 3D animations shall be subject to the prior written approval of the EBU.
3. Injection/display requirements (this shall be subject to the nature of the sport and/or TV format):
  - a) The identification of the Company providing the timing service shall appear on-screen only at the same moment as information regarding a competitor's time at the finish and/or any other usually accepted moment (e.g. intermediate time) appears.
  - b) The identification of the Company providing computing and results service shall appear on-screen only with the display of the data provided by such Company.
  - c) The identification of the timing or data processing company on the television screen (signal injection) shall be as follows:

Timing: maximum of 4 seconds per identification

Amount as per Agreement

Data: maximum of 6 seconds per identification

Amount as per Agreement
4. Size and position of identifications
  - a) The height of the letters of the identification of the Companies must not exceed the maximum height of the simultaneous broadcast display of data. The display of any Company's trademark protected logo shall be subject to the EBU's prior written approval. Thereafter it shall not be changed.

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<sup>8</sup> "Federation" is defined in Part A of the EBU Rules as "the event rights holder/sports federation".

- b) Identification of the Company's logo on-screen shall be via a static graphic. Notwithstanding this, it shall be permitted for such Company's logo to appear and disappear on screen by zooming "in" and "out". No other movement of the logo, in particular any movement across the screen, shall be permitted.
- c) The maximum height of television lines for the identification of any Company shall be fixed at 23 pixels for productions in SD (1024 x 576 pixels) and at 44 pixels for productions in HD (1920 x 1080 pixels). The Company's identification shall appear either at the bottom in the centre of the screen and below that of the data display or alternatively in a central position to the right hand side of the data display.

#### 5. Wording of identifications

The Company shall be identified either by its usual trading name which may be in the font of a trade mark protected word and, if requested by the Company, the use of either of the following additional words:

- a) for timing Companies: "timing"
- b) for data processing Companies: "computer" or "data"

#### 6. Limit of Provisions

Any Company seeking an identification in a form or manner other than as specified in this document must seek and obtain the EBU's prior written approval before such identification shall be considered accepted.

### 4 The Committee's decision

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

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

The Committee noted that this appeal raised 11 points for consideration.

#### **Point 1: The BBC's editorial decisions in relation to on-air appearances of the animated Accenture logo were influenced by commercial pressures (Guideline 14.1)**

The Committee noted the relevant terms of the BBC's contract with tournament organiser Six Nations Rugby Ltd (SNRL), which in the Committee's view did not fetter the BBC's editorial discretion, because those terms were not worded in a way that overrode the BBC's Editorial Guidelines. The terms of the contract are not included within this finding as they are commercially confidential.

The Committee also noted BBC Sport's assertion that, in advance of the tournament, it had taken a "considered editorial view" as to what number and duration of credits for official data and timing suppliers would be appropriate, and had communicated this view to SNRL. The Committee also noted BBC Sport's assertion this did not amount to a binding contractual agreement, but was, rather, an indication to SNRL of BBC Sport's broadcast intentions.

In the Committee's view, it was reasonable for a sports broadcaster to indicate its intentions during pre-tournament discussions with a sports event organiser. The Committee accepted BBC Sport's assertion that it had made no binding commitment to SNRL in relation to the number and duration of on-screen data-supplier credits, and concluded that BBC Sport's advance indication of its broadcast intentions had not had the effect of fettering the BBC's editorial judgement.

The Committee then considered the manner in which BBC Sport's editorial decision was implemented in the particular instance of the Six Nations tournament.

The Committee noted that, in an email sent to BBC Sport staff and others, the Executive Producer had stated:

It is imperative that we deliver [data and timing] credits across all 15 of our matches irrespective of whether we are host or add-on! ...

The 'Accenture data' on-screen graphics ... will feature on Match Data Graphics within live match broadcasts for no less than an aggregate time of 50 on-screen seconds per televised match i.e. 10 credits x 5 seconds.

It is crucial we do not under-deliver on these commitments so if, for example, a caption is removed before its complete cycle, then please ensure an extra 'complete' graphic with associated credit is given."

In the Committee's view, this wording might have given recipients the impression that BBC Sport had made a binding commitment to SNRL, and might have been interpreted by the programme team as meaning that delivery of the specified number and duration of data supplier credits overrode any countervailing editorial considerations.

It therefore appeared to the Committee that the email could potentially have led the programme team to implement BBC Sport's editorial decision in an inflexible manner, which would have had the same practical effect of fettering the BBC's editorial judgement as if the contract had done so.

As a matter of good practice, the Committee recommended that in future an Executive Producer should explain to the programme team that BBC Sport had not entered into any binding commitments in relation to the number and duration of on-screen data or timing supplier credits, that any specified number and/or duration of such credits were merely an indication of what BBC Sport considered likely to be appropriate, and that the programme team should use their own editorial judgement in applying the BBC's Editorial Guidelines (particularly those relating to undue prominence).

The Committee therefore decided that in this case audiences could not have a well-founded confidence that the BBC's editorial decisions in relation to on-air appearances of the animated Accenture logo were not influenced by commercial pressures, contrary to Guideline 14.1, due to the interpretation that the Committee considered recipients would have placed on the internal email.

### **Finding: Point 1 upheld**

### **Point 2: The BBC has entered into an arrangement which could undermine its editorial integrity (Guideline 14.2.1)**

The Committee concluded that it followed from the preceding finding that the BBC had entered into an arrangement which could undermine its editorial integrity, because the internal email had had the same practical effect of fettering the BBC's editorial judgement as if the contract had done so, contrary to Guideline 14.2.1.

### **Finding: Point 2 upheld**

#### **Point 3: On-air appearances of the Accenture logo were not clearly editorially justified (Guidelines 14.2.5 and 14.4.4)**

The Committee noted that, whereas Accenture was known primarily as a global management consulting, technology services and outsourcing company, it appeared from Accenture's website<sup>9</sup> that data-gathering and processing were also part of its business. The webpage entitled "Data Management and Architecture: Services Overview" stated:

Our services in Data Management & Architecture support the entire data lifecycle, including how data is created, stored, moved, used and retired.

As adjudication of compliance with the EBU Rules was not within the Committee's remit, the Committee did not consider it necessary to determine whether data processing was one of Accenture's "principal" activities (as required by Part B, para 1 of the EBU Rules).

The Committee noted that the complainant disputed that Accenture had been actively involved in compiling and providing the statistical data in question. The complainant had cited Accenture's press release announcing its provision of the tournament mobile app, which in the complainant's view implied that this was the only service that Accenture was providing. However, the Committee could not agree that the content of the press release necessarily implied that Accenture was not also engaged in other activities in relation to the tournament.

The Committee noted that the Director, BBC Sport, had stated in correspondence that Accenture had provided data to all media organisations, including the BBC. The Committee also noted that the Chief Executive, SNRL, had confirmed that Accenture was actively engaged in gathering and processing official tournament data. Having considered the matters put forward by the complainant and the assurances and other evidence given in response, the Committee concluded that Accenture had been actively involved in compiling, processing and providing match data for the tournament.

The Committee noted the complainant's argument that there was a distinction to be drawn between data that required analysis (e.g., calculation of percentage possession/territory), which merited a supplier credit, and data that did not require analysis (e.g., notification of substitutions), which required no skill or expertise and did not merit a supplier credit.

The Committee also noted that BBC Sport could not see the relevance of the proposed distinction, because (as the complainant had acknowledged) the BBC was permitted to credit data-processing suppliers.

The Committee also noted that, according to the Chief Executive, SNRL: various types of sequencing and a range of sophisticated processing techniques were applied to the

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<sup>9</sup> See: <http://www.accenture.com/us-en/Pages/service-technology-data-management-architecture-overview.aspx> ("Specific Services" tab).

presentation of all match data; different types of data required different forms of processing; but all data (whether 'analysis' or 'non-analysis') was handled together.

The Committee did not consider that, in relation to the editorial justification for on-screen references, it was helpful to draw a distinction between the provision of "analysis" and "non-analysis" data.

The Committee agreed with the complainant that, in principle, data suppliers could be credited. The Committee did not consider it material that data had been provided to the BBC via a third party (namely, a specialist broadcast graphics company).

The Committee noted that it is important that the public are made aware of the origin of match data and whether it is from the accredited data supplier or not. The public are made aware that the data is credible through the crediting process.

In light of the above considerations, the Committee took the view that it was appropriate to provide on-screen credits to Accenture for supplying match data.

The Committee therefore concluded that to give Accenture on-screen credits as data-supplier was appropriate and editorially justified.

### **Finding: Point 3 not upheld**

#### **Point 4: The Accenture logo was unduly prominent, giving the impression that the BBC was promoting or endorsing Accenture, its products or services (Guidelines 14.2.3 and 14.4.4)**

The Committee noted that the Editorial Guidelines did not offer any guidance as to what number and/or duration of appearances of a commercial logo might be considered unduly prominent. This Committee noted that this is appropriate as every case must be judged on its own merits.

The Committee noted that the Accenture logo had appeared 16 times in the England v Wales<sup>10</sup> game, for less than six seconds in each case and for 72 seconds in total, during an 80-minute match and a programme of over two hours' duration. The Committee also noted that the Accenture logo had appeared 12 times in the France v Ireland<sup>11</sup> game, for less than five seconds in each case and for 50 seconds in total, during a match and programme of the same duration as England v Wales.

In the Committee's estimation, the BBC had acted reasonably within its editorial discretion in arriving at the number and duration of data supplier credits likely to be appropriate within coverage of a match.

The Committee then considered whether there were any particular features of the Accenture logo, or the context in which it was displayed, that might have made it unduly prominent. On the one hand, the Committee noted that:

- the lack of synchrony between the appearance and disappearance of the Accenture logo and the accompanying data graphics tended to draw the viewer's eye to the Accenture logo;

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<sup>10</sup> This was broadcast live on BBC One and BBC One HD on 25 February 2012.

<sup>11</sup> This was broadcast live on BBC One and BBC One HD on 4 March 2012.

- the presence of an arrow-head device above the company's name had served effectively to double the height of the box surrounding the Accenture logo, much of which was white space;
- from an audience's perspective, there was a material difference between, on the one hand, logos that were photographed on the pitch and its surroundings and, on the other hand, logos that were integral to the BBC's output. In the latter case, viewers were more likely to consider the branding to be part of the programme itself.

On the other hand, the Committee also noted that:

- in common with other major sporting events, the RBS Six Nations tournament was heavily sponsored;
- shots of the action had included commercial branding on the pitch, ball, posts, interview backdrop and hoardings, some of which was animated;
- the ECU had noted the presence of more than twelve logos on screen at certain moments of the England v Wales game;
- the Accenture logo had not been displayed as part of the BBC's feed without accompanying data graphics;
- the Accenture logo had not accompanied all match data graphics;
- the official timing supplier had been similarly credited (although fewer times);
- the Accenture logo was attached to the data graphics, rather than being 'free-floating';
- other elements of the data graphics were also animated; and
- the logo's on-screen appearance, and the manner of its animation and de-animation, were similar to those of other data suppliers' logos in the BBC's coverage of Formula One, Wimbledon and winter sports, and to the timing supplier's logo in the BBC's coverage of the RBS Six Nations Championship.

Taking all the above factors into consideration, the Committee concluded that the Accenture logo was not unduly prominent, and did not give the impression that the BBC was promoting or endorsing Accenture, its products or services. The Committee acknowledged that the evaluation of undue prominence was to a degree a matter of subjective judgement.

Having previously noted that, in the case of logos that were integral to the BBC's output, viewers were more likely to consider the branding to be part of the programme itself, the Committee commented that programme-makers should give particular consideration to matters such as the frequency, duration and attributes of such logos, and their positioning relative to the information they accompanied, so as to ensure that they did not appear to promote or endorse any company, its products and/or services.

The Committee noted that the reference in Guideline 14.4.4 to "linger[ing]" on brand names or logos, was not directly applicable to the appearance of animated logos in data graphics. However, it took the view that, in this instance, it should apply what it

considered to be the spirit of the guideline. The Committee suggested that the BBC might consider reviewing the wording of Guideline 14.4.4, in light of current and likely future technological developments.

#### **Finding: Point 4 not upheld**

**Point 5: The BBC failed to consider the potential cumulative effect when planning to feature the Accenture product, brand or service numerous times on its output over a limited period, which has led to undue prominence (Guidelines 14.3.6 and 14.4.5)**

The Committee noted that Guidelines 14.3.6 and 14.4.5 concern the cumulative effect of coverage across multiple platforms and programmes within a short time span, such as a single day, of a single subject. It also noted that the BBC had adopted these guidelines following the Committee's decision in the complainant's appeal concerning *Harry Potter Day*.<sup>12</sup>

The Committee also noted the BBC's view that Guidelines 14.3.6 and 14.4.5 were intended to address one-off events such as the publication of a best-selling novel, or the release of a blockbuster movie or a much-anticipated album by a popular music act.

The Committee took the view that there was no equivalence between the six-week duration of the RBS Six Nations championship and the one-day time span mentioned in guidelines 14.3.6 and 14.4.5, and that the tournament's duration, while being a finite period, was not a "limited period" within the meaning of the latter guideline. The Committee therefore concluded that guidelines 14.3.6 and 14.4.5 were not applicable to this complaint.

#### **Finding: Point 5 not upheld**

**Point 6: The BBC has failed to ensure that its services did not broadcast sponsored programmes or carry advertising, and the arrangements in relation to the on-screen appearance of Accenture's logo gave the impression that a BBC service was commercially sponsored (Guidelines 16.1 and 16.2.1)**

The Committee noted that the Director, BBC Sport, had stated in the complaint correspondence that there was no contractual relationship between the BBC and Accenture, and that BBC Sport had also confirmed that it had no contractual relationship with Accenture regarding this matter.

The Committee took the view that, as Accenture's contractual relationship was with SNRL, not the BBC, and as no fee or other valuable consideration had been paid to the BBC by Accenture, no question of programme sponsorship arose.

In the Committee's view, it followed from its finding under Point 4 (that the impression had not been given that the BBC was promoting Accenture, its products or services) that the arrangements in relation to the on-screen appearance of Accenture's logo had not given the impression that a BBC service was commercially sponsored.

#### **Finding: Point 6 not upheld**

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<sup>12</sup> [www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2010/may.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2010/may.pdf)

**Point 7: The BBC's editorial impartiality and integrity have been compromised by its external relationships, and the BBC has not retained editorial control of BBC output (Guideline 16.2.2)**

Having upheld Points 1 and 2, the Committee took the view that it should also uphold this point in so far as it alleged that the BBC's editorial integrity had been compromised by its external relationships.

There was, however, no evidence before the Committee to suggest that the BBC had not retained editorial control of its output.

**Finding: Point 7 upheld in part**

**Point 8: The BBC has accepted services from Accenture in exchange for broadcast coverage or publicity (Guideline 16.2.4)**

The Committee noted BBC Sport's explanation that official match data is an integral part of sports broadcasting, that its importance to the audience has increased with recent technological advances, and that official data supply and the fair and transparent crediting of the official data supplier are an integral and accepted part of the acquisition and broadcasting of sport events. Accordingly, the Committee concluded that, in all the circumstances, it was reasonable for the provision of official match data to have been dealt with as part of the contract by which the BBC acquired the rights to broadcast the tournament. Having previously concluded that the credits were clearly editorially justified, the Committee also concluded that the BBC had not used data supplier references as "currency" to pay for a service.

**Finding: Point 8 not upheld**

**Point 9: The BBC has promoted or appeared to endorse Accenture, its products, services, views or opinions. (Guideline 16.2.4)**

In the Committee's view, it followed from its finding under Point 4 that the BBC had not promoted or appeared to endorse Accenture, its products, services, views or opinions.

**Finding: Point 9 not upheld**

**Point 10: Credits to Accenture were neither fair nor editorially appropriate (Guideline 16.2.4)**

In the Committee's view, it followed from its finding under Point 3 (that giving Accenture on-screen credits as data-supplier was editorially justified) and Point 4 (the BBC had acted reasonably within its editorial discretion in arriving at the number and duration of data supplier credits) that credits to Accenture were both fair and editorially appropriate.

**Finding: Point 10 not upheld**

**Point 11: The BBC has promoted a third party event sponsor in its coverage, and on-screen appearances of Accenture's logo were unfair and unduly promotional (Guideline 16.4.44)**

In the Committee's view, it followed from its finding under Point 4 that the BBC had not promoted a third party event sponsor in its coverage, and that on-screen appearances of Accenture's logo were neither unfair nor unduly promotional.

**Finding: Point 11 not upheld**

## ***Horizon – Fukushima: Is Nuclear Power Safe?, BBC Two, 14 September 2011***

### **1. Background**

In this edition of *Horizon*, the nuclear physicist Professor Jim al-Khalili returned to Fukushima six months after the explosions at the nuclear power plant to report on what was happening on the ground and to discover where the accident had left the debate about the safety of nuclear power.

He set out his aims for the programme in the opening sequence:

I am a professor of nuclear physics. But I have no agenda. No axe to grind. I'm not in the pay of the nuclear industry, nor the environmental movement. Let me lay my cards on the table. I've always believed that nuclear power is a good thing. It provides vast amounts of cheap and reliable energy. But I want to see how it's running out in the real world. How reliable is it? How safe is it? I want to leave the politics and economics to one side and focus only on the science. After all I am a scientist. But I'm also a husband and a father and I want to know what's the safest option for my family's future - just like you.

The programme began in an energy-starved Tokyo, moved swiftly to Fukushima and then headed to Ukraine and the site of the accident 25 years earlier at Chernobyl. There were also sequences in the UK and Switzerland discussing research into the safety and viability of nuclear power.

Through the use of news archive and contemporary interviews and filming, Prof al-Khalili explained what happened at Fukushima and presented a portrait of a region in limbo with 80,000 people displaced.

The sequences in the region showed scientists measuring the levels of radiation and explained how the data they were collecting might inform the government's decision on whether to keep the exclusion zone in place, and how long it might need to remain.

The assessment of what level of radiation can be considered safe was illustrated by going to Chernobyl and interviewing former residents and healthcare professionals in the region about their experiences 25 years after the disaster there.

There were three occasions in which the programme described what happened at Fukushima as a "partial meltdown". The first was at the very start in Professor al-Khalili's opening statement; the second was also near the beginning of the programme over a montage of news headlines from the days around the disaster; and the third occasion on which "partial meltdown" was mentioned was during Prof al-Khalili's detailed scientific explanation of how a nuclear reactor works and what went wrong at Fukushima.

The complainant originally raised a number of issues on appeal in relation to the programme, which he said

"...failed to acknowledge the full range of scientific debate over the health hazards of radioactive fallout"

With the exception of the allegation relating to the use of "partial meltdown", the Head of Editorial Standards decide that none of the remaining points would have a reasonable

prospect of success were they to proceed to appeal.

The complainant was advised in writing of the Head of Editorial Standards' recommendation to proceed with only one of the points. The complainant was provided with detailed reasons for the decision and clauses from the Trust's Editorial Appeals procedure were cited.

The complainant was given the opportunity to challenge the Head of Editorial Standards' decision.

A challenge was made by the complainant. Both the Head of Editorial Standards' decision and the challenge were considered by the Editorial Standards Committee on 17 January 2013.

At this meeting the Committee decided it agreed with the Head of Editorial Standards' decision. The points which the Trust confirmed it would not hear on appeal were:

- the assertion that the programme gave a one-sided view of the debate and should have reflected the supralinear dose:response curve.
- The assertion that an earlier ESC finding from 2007 applied equally to this programme.
- the assertion that the programme was inaccurate in stating that, other than mostly treatable thyroid cancer, there was no widespread health detriment from Chernobyl
- the assertion that the programme misleadingly presenting the Chernobyl Forum Report as the rational scientific consensus on health effects.
- the assertion that the programme over-emphasised the social disruption and consequent effects on the mental health of the affected population of Chernobyl while omitting to reflect the views of those who maintain the other health effects have been and will be far greater.
- the assertion that it was misleading to say most of the radiation stayed inside

The Committee's full decision with regard to the admissibility of these points has been published and can be read here:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2013/jan.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2013/jan.pdf)

The summary of the complaint below, where it is possible to separate them out, reflects only those elements which relate to the issue which was the subject of this appeal and not to those issues which it had already been decided did not qualify to proceed to appeal.

## **2. The Complaint**

### **Stage 1**

The complainant emailed BBC Audience Services on 25 October 2011 concerning the Horizon programme on Fukushima. He said the programme failed to meet the BBC's

standards for accuracy and impartiality for a number of reasons. BBC Audience Services responded on 28 October 2011.

The complainant said that the response had addressed none of the points he had raised and appeared to be a reply to someone else's complaint. The complainant made further inquiries during November and January.

On 25 January 2012, Audience Services wrote to the complainant stating that his complaint had been sent to the escalated complaints team; a substantive response with an apology for the "very long delay" and for the inappropriate first response was sent on 30 January 2012. While it did address some of the complainant's points, this response did not address the issue which was the subject of this appeal.

## **Stage 2**

The complainant wrote to the ECU on 26 February 2012. The Complaints Director replied with the ECU's decision on 7 August 2012. The ECU did not uphold any points of the complaint.

## **Appeal to the Trust**

The complainant wrote to the BBC Trust on 17 September 2012. In his appeal the complainant stated he did not have access to either a copy of the programme or a transcript.

The BBC Trust subsequently supplied the complainant with a copy of the programme and he submitted a revised appeal on 29 October 2012.

In his appeal the complainant addressed the ECU finding:

The Editorial Complaints Unit, though not upholding my complaint agrees with me that it wasn't a good idea to use the word "partial" in calling Fukushima "a partial meltdown"; my point is that this was one of the ways in which the programme sought to reduce the gravity of the accident.

(The ECU) argues that use of the word "partial" would not have "materially misled the audience"; I could have accepted this if there had been only one or two such tendentious usages but there were dozens, which means that (the ECU) is using a reductionist technique.

## **3. Applicable Editorial Guidelines**

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

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

## **4. The Committee's decision**

The Committee noted the three occasions in the commentary where Fukushima was referred to as a *partial meltdown*:

- (1) Professor Jim al-Khalili: Fukushima North East Japan. This is as close as you can get to the site of a partial nuclear meltdown six months ago. But the events still unfolding here have consequences for us all.

Two minutes later Professor al-Khalili explains how the crisis unfolded over a montage of headlines and news footage:

(2) Professor Jim al-Khalili: I want to start by going to the heart of the place that's shattered many peoples' confidence, Fukushima. Soon after the Tsunami struck news spread that the nuclear power station had been damaged. There was a partial meltdown in one and possibly three of the reactors. The situation appeared to be running out of control. Very rapidly the perception of nuclear power began to change and governments reacted.

(3) Professor Jim al-Khalili: This was an old nuclear plant commissioned around 40 years ago. But even though there was a partial meltdown here much of the radiation was kept inside the plant.

The Committee noted the complainant's assertion at Stage 1 that:

Pr. Khalili claimed that there was one partial meltdown. This understated the gravity of the emergency, since there were in fact meltdowns accompanied by breaches to the pressure vessels in reactors one, two and three, as acknowledged by TEPCO and the Japanese nuclear regulators NISA.

The use of the word "partial" in this context also serves to diminish the seriousness of the events; no meltdown can be complete in the sense that all the reactor's contents disappear.

The Committee noted that the ECU's consideration was not simply whether something was or was not accurate, but whether it would materially mislead the audience. The ECU's research suggested that "partial meltdown" is an informal term, that there is no universally agreed definition of what constitutes a meltdown and given the risks involved in a nuclear meltdown of any kind the distinction between partial and full versions are somewhat academic. The Committee noted the ECU's comment that the use of the word "partial" would not have lessened the impact of the events in the minds of the audience and that the occasion in which partial meltdown was mentioned (in addition to the contemporary context) were alongside images and/or commentary which demonstrated the severity of the situation.

The Committee noted the ECU conclusion:

"While it would have been much better not to have referred to a "partial" meltdown at all, it does not seem to me that it would have been likely to materially mislead the audience or to give the sense that what had happened was relatively benign, or that it would otherwise have downplayed the accident or its consequences."

The Committee noted the programme producer's response for this appeal:

"Simply using the term 'meltdown' might suggest to a lay viewer that the whole reactor had literally melted away, exposing radioactive core to the air. The word 'partial' was meant to indicate that it had not been razed to the ground. It was also used to suggest that the accident was less serious than Chernobyl"

The Committee noted, as the ECU had done at Stage 2, that there appears to be no universally agreed scientific definition of partial meltdown. It is not a term generally in use

within the scientific community as it is so imprecise. Bodies such as the IAEA and the United States Nuclear Regulatory Commission use the phrase “core melt accident”:

an event or sequence of events that result in the melting of part of the fuel in the reactor core<sup>13</sup>

The Committee noted what can happen inside a nuclear reactor when its core is damaged from overheating. It noted how scientists describe the varying degrees of meltdown and that, while there is no agreed definition, a “full meltdown” is most often used to describe what happens when all the fuel in the fuel rods in a reactor has melted and is lying in a pool at the bottom of the reactor; a “partial meltdown” is most often used to describe what happens when some of the nuclear core remains intact and not all of the fuel rods inside have melted.

The Committee noted that:

- there is no scientific relationship between the extent of a meltdown and any subsequent release of radioactive material, that a full meltdown could occur with minimal leak of radioactive materials into the atmosphere and conversely a partial meltdown could occur with significant release of radioactive materials.
- there is not a specific chemical reaction that takes place when a partial meltdown becomes a full meltdown.
- partial could mean 1% of the fuel has melted, or 50% or even 99%.
- depending on the amount of fuel in a reactor at the time it melts, 50% melt in one reactor can constitute more molten radioactive fuel than a 90% melt in another reactor.

It noted the following comment made by Columbia University’s David Brenner at the time of Fukushima:

“You can contrast the two major nuclear incidents of the past: Both Chernobyl and Three Mile Island were meltdowns, but the difference in scale is enormous. Chernobyl was the equivalent of 1 million Three Mile Islands. A “meltdown” certainly is not a good thing, but the ultimate consequence is how much radioactivity is released into the environment.”

It noted too that another nuclear scientist, Professor Ron Ballinger of the Massachusetts Institute of Technology, suggests that a full meltdown would be where fuel has not only melted, but has also escaped the containment vessel. In an interview he gave as the crisis at Fukushima was unfolding, he said:

“If they don’t cool the plant, if they’re not successful... then eventually the entire core would melt. Then it would melt into the bottom of the vessel. Then you get to this theoretical point where if they can’t cool it, then eventually the vessel itself,

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<sup>13</sup> <http://www.nrc.gov/reading-rm/basic-ref/glossary/core-melt-accident.html>

the steel, would melt, and you'd end up with a bunch of melted fuel and steel on the bottom of the concrete faceplate of the plant, in the containment vessel. And then it would have to get out of there. That's what I would call a full meltdown....<sup>14</sup>

The Committee noted that there were six reactors at Fukushima; two were already shut down and emitting no heat at the time of the accident, a third contained no fuel and the remaining three experienced full meltdowns according to the plant owners, TEPCO. TEPCO characterised full meltdown as all the fuel rods melting and the fuel they contained sitting at the bottom of the reactor pressure vessel<sup>15</sup>.

The Committee noted that containment appeared to have largely worked and that the current understanding – which was also the case at the time the programme was broadcast – was that the total radioactive release from Fukushima is a tenth of Chernobyl.

The Committee noted that, by May 2011, references in the media to a “partial meltdown” to describe events at Fukushima had all but disappeared and that by July 2011 the Japanese authorities were describing what had happened in three of the reactors as a “full meltdown”<sup>16</sup>.

The Committee noted the third occasion on which the phrase was used was at the end of a detailed explanation of what happens in a nuclear reactor and what went wrong at Fukushima:

Prof al-Khalili: At Fukushima when cooling was lost the zirconium fuel rods began to overheat. They reacted with steam around them and produced hydrogen. This was vented out into the reactor building where it mixed with oxygen and exploded.

Now the reason part of the design of this particular variety of boiling water reactor at Fukushima might have contributed to the sequence of events is because it made it harder to deal with the steam building up in the reactor.

Let me explain: in a boiling water reactor, the reactor is connected to a condensation chamber which acts as relief for some of the steam. Now in an old reactor like Fukushima's this condensation chamber was probably too small. Had it been larger in size it would have been able to cope with more of the steam, giving the safety workers crucial time to deal with the problem.

This was an old nuclear plant commissioned around 40 years ago. But even though there was a partial meltdown here much of the radiation was kept inside the plant.

The Committee noted the ECU's conclusion that it would have been better not to have used the phrase “partial meltdown”, but because the programme went on to explain the

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<sup>14</sup> <http://www.thedailybeast.com/articles/2011/03/15/japan-nuclear-crisis-what-is-a-full-meltdown.html>

<sup>15</sup> <http://edition.cnn.com/2011/WORLD/asiapcf/06/06/japan.nuclear.meltdown/index.html?iref=NS1>

<sup>16</sup> <http://edition.cnn.com/2011/WORLD/asiapcf/06/06/japan.nuclear.meltdown/index.html?iref=NS1>

scale of the radioactive release from Fukushima, viewers would not have been relying on their understanding of “partial meltdown” alone to form a view on the severity of the accident and therefore would not have been materially misled.

The Committee noted the relevant sequence, in which Prof al-Khalili is shown with a team from the local university who are measuring radiation levels in the soil:

“Back in the lab they found high levels of radiation in the top 2.5cm of the soil. Other studies from nearby found levels more than 500 times higher than normal. Removing this topsoil here will be an expensive option and Iitate [a village] isn't even in the exclusion zone. Recently the Japanese government has been monitoring the radiation level across 50 sites inside the zone. They set their safety limits at 20 millisieverts a year, which is the same limit as people working in the nuclear industry in the UK. And what they found is that 35 of the sites exceeded this level. And the highest reading was 500 msv.

The tests will help decide whether these people can go home. The government has decided to keep the exclusion zone in place but that's a more complex decision than it looks. For perspective, you'd get around that level, 20msv a year, from 2 CT scans per year. On the one hand, setting such a limit protects peoples' health effectively but on the other that comes at a cost: the upheaval of 78,000 lives.”

The Committee noted how the programme assessed the likely long term health effects of the fallout out from Fukushima:

- that nobody has died as a result of radiation contamination.
- that there have been no associated radiation health risks so far.
- that, where radiation contamination caused significant levels of thyroid cancer in children after Chernobyl, in Fukushima iodine tablets were immediately made available to prevent the same thing happening there.

The Committee accepted that the uses of the term “partial meltdown” could not be considered wholly accurate in the context of what is generally understood by the term, because at the time of broadcast it was clear that the fuel rods in three of the reactors had melted completely.

However, the Committee acknowledged that there is no universally agreed definition of what the phrases “full meltdown” or “partial meltdown” mean, and that neither have any scientific legitimacy. Therefore, the Committee's consideration was whether the use of the phrase left the audience with the impression that in relative terms the accident was not serious.

The Committee noted that despite the extent of the meltdown at reactors 1, 2 and 3, the prevailing scientific consensus is of a relatively minor health impact in the long-term: the key factors determining that outcome at Fukushima are the magnitude of radioactive release and the actions of the Japanese authorities rather than the scale of meltdown.

The Committee therefore agreed with the ECU's conclusion that any ambiguity about the interpretation of the scale of the meltdown because of the use of the word “partial” was effectively guarded against by the clear presentation of the scale of radioactive contamination and the predicted health impact.

Accordingly, the Committee decided that while the term “partial meltdown” wasn’t a precise description of what happened at Fukushima it would not have misled the audience as to the gravity of the accident and therefore there had not been a breach of the guidelines on Accuracy or Impartiality.

Notwithstanding the above, the Committee agreed that although the programme was duly accurate, the audience of Horizon would expect linguistic and scientific precision from an authoritative source such as Horizon which, on this occasion, had the services of a professor of nuclear physics. The Committee made the observation that Horizon is the pre-eminent and most ambitious scientific strand on the BBC. Although communicating complex science is one of the most challenging of genres for a broadcaster, it is Horizon’s specialist subject. The Committee noted that phrases such as partial meltdown or a full meltdown are used colloquially by the public without any great understanding of the science involved. The Committee considered that this was an opportunity for the BBC in its mission to inform and educate to provide greater clarity about the science and the correct language to use in describing events of this nature in the future. However, the Committee was satisfied that there had not been a breach of the guidelines.

**Finding: Not upheld.**

# Breach Reported by the Executive

## Background

Trustees were given a verbal report by the BBC Executive on 4 October 2012 that a serious breach of the Editorial Guidelines had occurred during the production of a series for the BBC. The breach relates to the Guidelines on Privacy and Consent.

At the Editorial Standards Committee meeting on 4 October, Trustees asked the Executive to provide a formal written report on the breach for consideration at the 6 December Editorial Standards Committee meeting. The Executive report set out the details of what had occurred and the measures put in place by the Executive to prevent any similar breaches in the future.

## The Committee's decision

The Committee noted the Executive's report and agreed that this had been a serious breach of the Guidelines on Privacy and Consent. The Committee noted that a member of the production team had used a phone to record a brief video after filming for the day had ended. The member of the production team talked to and recorded an adult member of the public who was not in a position to give informed consent to be interviewed. The member of the production team had shown the footage to others in the team. The filming was reported to the BBC who interviewed those concerned. The explanation given to the BBC was that the member of the production team recorded people in day-to-day life. The member of the production team said the footage had been deleted. Those who saw the footage confirmed it was some 15 seconds in length and involved the member of the production team saying hello to the member of the public and asking how the person was. The phone was handed over to the BBC. The BBC confirmed with the people involved that no other unauthorised filming had taken place. The BBC terminated the member of the production team's contract. The BBC reported back on its actions to those who had originally authorised legitimate filming to take place.

The Committee was satisfied that appropriate action had been taken by the Executive when it had become aware of the breach. However, the Committee asked the Executive to report back on some additional questions that the Committee asked in order to better understand the events which had occurred.

The Executive reported back in February 2013. The Committee agreed that, because of the exceptional circumstances of this case and, in particular, the potential for distress to the family of the individual who had been briefly recorded, it would publish its finding on this breach in greatly reduced detail.

# 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.

## ***Empire, BBC Two, 27 February 2012***

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

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

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold his complaint regarding an edition of *Empire* in which the complainant alleged that a disproportionate amount of time was spent on Palestine and that the programme portrayed unfavourably those fighting for a Jewish state.

The complainant said that the programme had concluded with the message that the blowing up of the King David Hotel had been a prime cause for the ending of the Empire, and he felt that this would have given viewers both an inaccurate understanding of the end of the British Empire and was a reflection of the BBC's bias against Israel.

The complainant alleged that the programme did not explain why the British were being attacked and that the programme was a platform to discredit the foundation of Israel. The complainant alleged that the BBC was institutionally anti-Israel. He also enclosed an article by the Daily Mail columnist Richard Littlejohn to support his belief that many other people felt the BBC was biased against Israel.

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

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

The Senior Editorial Strategy Adviser considered the Guidelines on Accuracy and Impartiality with particular reference to the following allegations in the appeal:

- The programme gave a disproportionate amount of time to the British in Palestine.
- Viewers would have inaccurately concluded that the bombing of the King David Hotel was highly significant in terms of the end of the British Empire.
- The programme portrayed the events of the time in Palestine in a way that led to an inaccurate and biased impression of those fighting for a Jewish state and this inaccurate and biased impression was typical of an anti-Israel bias at the BBC.

The Senior Editorial Strategy Adviser felt that the opening sequence of this first programme in the series made it clear to the viewer that the theme of the programme was to examine how the British had come to believe that they were destined to rule such a large part of the world and the consequences of that. Jeremy Paxman stated that he wanted an answer to the question: "How did such a small country get such a big head?"

The Senior Editorial Strategy Adviser noted that BBC Complaints wrote to the complainant on 5 July 2012 and stated that the intention behind the series was to consider the empire thematically rather than "in a straightforward chronological way".

They wrote:

...it was not our intention to tell the whole story of the empire in the first programme, but to look at the question of how the British took and held onto power. Other episodes dealt with different themes. The situation in Palestine was relevant because it illustrated the way that Britain began to overreach itself – with disastrous consequences. The debacle there was part of the collapse of the empire – but certainly not the whole story."

She noted that BBC Complaints gave further information about this in their subsequent letter of 20 August, in which they stated:

"The section on the Middle East is not included to the exclusion of one about Indian independence. Nor is it about apportioning 'blame' for, or exploring the fundamental cause of, the breakup of the British Empire. It is about how the British, motivated by a misguided belief that they were on a divine mission in the holy land, cultivated a disastrous situation which ultimately led to their withdrawal from the region."

The Senior Editorial Strategy Adviser said that the questions of what angle the programme makers chose to view the Empire from, or whether the programme spent a disproportionate amount of time examining the British in Palestine, were not ones the BBC Trust could consider. The Senior Editorial Strategy Adviser did not consider that the programme showed a lack of impartiality on these points and she did not consider that an appeal would have a reasonable prospect of success.

The Senior Editorial Strategy Adviser also considered whether the programme was duly accurate and whether, if there were issues over inaccuracies, they may have led to a lack of impartiality.

Turning to the programme's coverage of Palestine, she noted that it began by setting out how victories in the Middle East had resulted in Britain taking control of Jerusalem. She noted Mr Paxman commented:

"And so was born the dangerous conviction that the interests of the British Empire and the will of God might be one and the same."

Mr Paxman went on to explain how Britain tried to "play God in the Holy Land" by committing to help the Jews make a home in Palestine through the Balfour Declaration. He explained that, rather than solving the problems of the world as the British had intended, this created tensions between Jews and Palestinians that escalated into violence which included the bombing of the King David Hotel.

As the Editorial Complaints Adviser noted in his letter of 5 October 2012, Mr Paxman said in this episode:

"The Middle East taught the British a lesson which all empires have to learn, sooner or later – that though you may begin with ambition, and come to believe you will last forever, one day you will have a head on collision with reality. In the end – and there is no disguising this fact – the British ran away.

...The bluff of British omnipotence had been called. It would be called again and again over the next few decades. The empire which had lasted almost two hundred years would be dismantled in scarcely twenty."

The Senior Editorial Strategy Adviser noted that a BBC Complaints Adviser wrote to the complainant:

"I recognise that there is much to say about the story of Jerusalem, events and people in the Middle East in the war years, and the eventual birth of the State of Israel. However it does not follow that all of that detail should have been included here, or that without it the programme was inaccurate."

The programme chose to use the example of Palestine as a case study to show both how Britain felt it was on a moral mission to civilise the world and how it overreached itself by trying to fulfil this self-appointed role. The Senior Editorial Strategy Adviser did not believe that the programme gave the impression that the bombing of the King David Hotel had been a prime cause for the Empire ending, but rather was an illustration of how the Empire came to be dismantled.

With regard to the complainant's concern that the programme did not explain why the British were being attacked in Palestine, the Senior Editorial Strategy Adviser noted that Mr Paxman said when looking at why tensions between Arabs and Jews had escalated into violence:

"To the Arabs, the British had broken the promise of freedom made to them by Lawrence (of Arabia). Instead, the Arabs were having to give up their land to the Jews. The Jews felt the British were failing to honour the terms of the Balfour Declaration and the promise of a national home for them. Both sides made their case with gelignite. Both sides committed appalling atrocities."

In other words, he gave the reasons why both sides were unhappy with the British. Within this context, she noted, he then looked at the bombing of the King David Hotel on 22 July 1946. This was the headquarters of the British administration in Palestine, and therefore symbolically important.

One of those Jewish militants involved in the bombing, Sara Agassi, was interviewed. She was given the opportunity to explain why she had taken part and to express her continued belief that the bombing was justified because she and others were fighting for a Jewish state and they had to do something against the British. When Jeremy Paxman put to her that, without the Balfour Declaration, there would have been no Jewish homeland, she replied that "This was also in the interest of Her Majesty's Government to be here as rulers".

The Senior Editorial Strategy Adviser believed that the programme had explained the background for Ms Agassi's motivation and the reasons why the British were being attacked by both sides. It had made clear that Jews were frustrated that the British promise to make them a home in Palestine had not been realised. Equally, it had explained that the Arabs were angry that the British had not fulfilled their promise of giving them greater freedom.

As a result, the Senior Editorial Strategy Adviser felt that the programme examined the areas it set out to explore accurately and with due regard to the evidence. She saw no evidence that suggested it was not duly accurate, nor that it was not duly impartial. She did not think that the complainant had a reasonable prospect of success on these points.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that there had been no attempt to put the Palestinian struggle into context: he said that Palestine was a very small player in the Empire and questioned whether it could be classed as part of the Empire. He said that anyone watching the programme without knowledge of the period would be falsely informed and that the BBC was therefore corrupting history.

The complainant repeated his allegation of institutional bias towards Palestine by the BBC.

He said that as the BBC receives advertising revenue from BBC World, this must also affect the BBC's impartiality. He felt that the BBC had lost the trust of most people and has too much power.

The complainant believed he had missed the deadline to ask for the Senior Editorial Strategy Adviser's decision to be reviewed but he wanted to appeal anyway.

In a subsequent email, the complainant clarified that he had missed the deadline because he had been unwell and could not leave his house, where he does not have internet access.

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

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

The Committee noted the complainant's reason for missing the deadline to ask for a review of the Senior Editorial Strategy Adviser's response to his appeal request. The Committee agreed that this short delay was reasonable in the circumstances and it proceeded to consider his request for an appeal.

The Committee noted the complainant's concern about left wing bias at the BBC and his comments about impartiality and inaccuracy with particular reference to the programme *Empire*.

The complainant said that the first programme in the series *Empire* had concluded with the message that the blowing up of the King David Hotel had been a prime cause for the ending of the Empire, and he felt that this would both have given viewers an inaccurate understanding of the end of the British Empire and was a reflection of the BBC's bias against Israel.

The Committee noted the complainant's concern that a disproportionate amount of time was spent on Palestine and his allegation that no attempt had been made to put the struggle into context, thereby giving a misleading impression to anyone without knowledge of the period.

The Committee noted that this was the first programme in a series of five. It noted the BBC's response to this complaint:

"...it was not our intention to tell the whole story of the empire in the first programme, but to look at the question of how the British took and held onto power. Other episodes dealt with different themes. The situation in Palestine was relevant because it illustrated the way that Britain began to overreach itself – with disastrous consequences. The debacle there was part of the collapse of the empire – but certainly not the whole story."

The Committee agreed that the decision relating to the proportion of the programme spent examining the British in Palestine, and the approach taken in examining the subject of this programme, were creative and editorial matters for the Executive and not for the Trust, providing the programme had not breached the Editorial Guidelines.

The Committee agreed that the evidence did not appear to support the conclusion that, in taking the approach it had, the programme breached the Editorial Guidelines on Impartiality or Accuracy. The Committee agreed with the conclusion of the Senior Editorial Strategy Adviser that the programme did not give the impression that the bombing of the King David Hotel had been a prime cause for the Empire ending, but rather that the events in Palestine were an illustration of the issues that led to the Empire being dismantled.

The Committee agreed that it was unlikely to find that the programme had not examined the areas it set out to explore accurately and with due regard to the evidence. The Committee agreed that there was not sufficient evidence presented to suggest that the programme was not duly accurate or duly impartial.

The Committee noted that the complainant had made allegations of a general anti-Israel bias at the BBC because it relied upon commercial revenues from BBC World but the Committee did not consider that sufficient evidence had been provided to lead it to consider an appeal in relation to this allegation.

The Committee agreed that there was no reasonable prospect of success for this complaint on appeal.

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

## ***Empire, BBC Two, 27 February 2012***

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

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

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold his complaint regarding the first episode of the BBC Two series *Empire*. The complainant said that the programme gave a false and misleading impression to the viewer in the section about the Arab revolt and the British capture of Palestine.

The complainant said that the programme:

- gave the impression that the Arabs fought on Britain's side on a promise they would get control of Palestine. He said that it implied the Arabs were double crossed by the Balfour Declaration which gave the land that they had fought for to the Jews.
- confused the Hashemite Bedouin of Hejaz with Arabs generally. He said that it was the Hejaz Arabs who had fought alongside the British with the promise of their own lands after that war, and that is what they got.
- suggested that Jerusalem was of greater religious significance to Muslims and Christians than it is to Jews, and that to Jews it is just a former capital city.
- gave no context for the bombing of the King David Hotel and left viewers with the impression that the Jews committed the worst atrocities against civilians and the British army during the Mandate and that the bombing was a merciless terrorist act. He said that the programme should have reflected that a clear warning was given, that the Jews of Europe were known to be in peril and the 1939 White Paper stopped Jewish immigration into Palestine just when it was needed most.
- gave the impression that Lloyd George supported the Balfour Declaration because of his love of the Jews and the Old Testament rather than because of the justice of their cause and the contribution of Zionists to the war effort.

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

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

The Senior Editorial Strategy Adviser began by making a general point about how the programme, the first in a series of five episodes about the British Empire, was described on the BBC website:

Jeremy Paxman traces the story of the greatest empire the world has ever known: the British Empire. In the first programme, he asks how such a small country got such a big head, and how a tiny island in the North Atlantic came to rule over a quarter of the world's population. He travels to India, where local soldiers and local maharajahs helped a handful of British traders to take over vast areas of

land. Spectacular displays of imperial power dazzled subject peoples and developed a cult of Queen Victoria as Empress, mother and virtual God. In Egypt, Jeremy explores the bit of Empire that never was, as Britain's temporary peace-keeping visit turned into a seventy year occupation. He travels to the desert where Lawrence of Arabia brought a touch of romance to the grim struggle of the First World War. As Britain came to believe it could solve the world's problems, he tells the story of the triumphant conquest of Palestine by Imperial troops – and Britain's role in a conflict that haunts the Middle East to this day.

She noted the shorter way that the programme had been billed:

Jeremy Paxman traces the story of the greatest empire the world has ever known: the British Empire. In the first programme, he asks how such a small country got such a big head, and how a tiny island in the North Atlantic came to rule over a quarter of the world's population.

She noted how the presenter, Jeremy Paxman, had set out the theme for this programme in the opening sequence:

"It was the Empire on which the sun never set or, as some said, on which the blood never dried. At its height, Britain ruled over a quarter of the world's population. Many convinced themselves that it was Britain's destiny to do so. Much of the Empire was built on greed and a lust for power, but the British came to believe they had a moral mission too – a mission to civilise the world."

She noted that the question Mr Paxman said he wanted to answer in the programme was: "How did such a small country get such a big head?"

The Senior Editorial Strategy Adviser said that this opening would have made clear to the viewer that the theme of the programme was to examine how the British had come to believe that they were destined to rule such a large part of the world and the consequences of that. She said that signposting and audience expectation are key factors in achieving due accuracy and due impartiality, and that "due" is defined in both the Accuracy and Impartiality guidelines as that which is:

"...adequate and appropriate to the output, taking account of the subject and nature of the content."

In this context therefore, where it was signposted to the audience that the series was looking through the prism of the British Empire, the expectation would be that the content would reflect the British perspective above all others. She said that the motivation and behaviour of the other interested parties may or may not be relevant, and the degree of detail on any one event in the narrative would be what the programme makers considered necessary to illustrate the point being discussed. The Senior Editorial Strategy Adviser said that her consideration, therefore, in responding to the request for an appeal had been to ensure that in focussing on Britain's role in events during the period in question, the programme did not misrepresent other perspectives.

The Senior Editorial Strategy Adviser considered the first point made by the complainant, regarding the allegation that the programme gave the inaccurate impression that the Arabs fought on Britain's side on a promise they would get control of Palestine. She also considered the complainant's allegation that the programme mistakenly attributed that promise to T.E. Lawrence. In considering these points, the Senior Editorial Strategy Adviser also addressed the complainant's argument that the programme confused the Bedouin tribes of Hejaz with Arabs generally.

She noted the various ways the programme had reflected the issues which the complainant had raised:

"He (Lawrence) coaxed them in to fighting with the British with the promise of their freedom once the war was over." ("them" was defined in the commentary as the Bedouin tribes of the Arabian desert)"

"Lawrence promised his Arab fighters freedom from foreign rule. They believed Palestine would be theirs. There would be many more promises made and just as many broken."

"At noon on Dec 11<sup>th</sup> 1917 British forces entered Jerusalem... in borrowed army uniform was a jubilant Lawrence. But his joy would prove short-lived. On the walls of the city Allenby ordered a solemn proclamation from the British government to be read out.

He knew, he said, that the place was sacred to three great religions, that its soil had been sanctified by prayer and pilgrimage and he promised to preserve it.

But for all his fine words Allenby had been handed a ticking time bomb. For back in London the British government had just gone even further. The Jews of Europe, scattered for centuries, had been made a remarkable offer. In the Balfour Declaration the British Foreign Secretary committed Britain to helping the Jews make a home in Palestine...

The promised land had now been promised once too often.

Over the next decade as more and more Jews arrived in Palestine, tension between them and the Arabs rose.

**Newsreel:**

**The British want peace at any price. They try to restore order. They search everybody. They act as if both sides are equally guilty.**

To the Arabs the British had broken the promise of freedom made to them by Lawrence. Instead the Arabs were having to give up their land to the Jews."

With regard to T.E. Lawrence and what was intended by the line in the commentary that "his joy would prove short-lived", the Senior Editorial Strategy Adviser said that she did not take the meaning from it the complainant did. She explained that she took it to mean that Lawrence felt he had given a personal assurance to the Arabs with whom he fought that they would gain their independence and a new Arab nation would be formed, but that it was soon to become clear that the region was to be carved up and Turkish rule was to be swapped for the most part for British and French rule. She said that the three references in the commentary to Lawrence and Arab ambitions are all in relation to their aspirations for freedom from foreign rule, not to control of Palestine. The Senior Editorial Strategy Adviser did not perceive any indication in the script that Lawrence was disappointed at the Balfour Declaration, nor that he was anti-Zionist nor that he had specifically promised Palestine to the Arabs with whom he fought. The Senior Editorial Strategy Adviser noted how T.E. Lawrence himself worded his "promise" in his memoirs:

"The Cabinet raised the Arabs to fight for us by definite promises of self-government afterwards. Arabs believe in persons, not in institutions. They saw in me a free agent of the British Government, and demanded from me an

endorsement of its written promises. So I had to join the conspiracy, and, for what my word was worth, assured the men of their reward.”

“In our two years’ partnership under fire they grew accustomed to believing me and to think my Government, like myself, sincere. In this hope they performed some fine things, but, of course, instead of being proud of what we did together, I was bitterly ashamed. It was evident from the beginning that if we won the war these promises would be dead paper...”

The Senior Editorial Strategy Adviser noted that the line of commentary, “they believed Palestine would be theirs”, is, as the ECU had pointed out, not attributed to Lawrence. She said that the reference in the script to the Arab fighters thinking they had been promised Palestine by the British High Commissioner in Cairo, Sir Henry McMahon, as part of a new Arab nation was supported by well-sourced documentary evidence and it is therefore consistent with the known facts. She said that it was not relevant in this context whether they were right to interpret McMahon’s words in the way they did. She noted, for example, the primary evidence which appears in the British historian James Barr’s account of the Arab Revolt, where the Sharif of Mecca sets out his demands for his support, and they clearly include Palestine.

“Husein made up his mind on 13 July 1915... The following day he wrote to the British high commissioner in Egypt, Sir Henry McMahon, aggressively repeating the demands ... To secure Arab friendship the British would have to recognize ‘the independence of the Arab countries.’

According to Husein, these included, in today’s terms, the entire Arabian Peninsula (except Aden, which was then British), Israel, Jordan, Iraq, Lebanon, and Syria, as well as a horizontal sliver of southern Turkey running between the Mediterranean and the Iranian border. Britain would also have to agree to an Arab caliphate, receiving preferential economic treatment in return.”

The Senior Editorial Strategy Adviser said that the final section of commentary quoted above notes Arab disappointment on two levels: that the British had not kept their side of the bargain and that in addition at least part of the land they had hoped for had been promised to someone else. She concluded that this, from an Arab perspective, would appear to be an accurate, albeit simplified, summary of where matters stood in 1929.

The Senior Editorial Strategy Adviser further noted the assertion in the appeal that:

“Lawrence encouraged the Bedouin Arabs of Hejaz to the allies’ cause with promise of their own lands after the war and that is what they got. Lawrence was not disappointed with the settlement that he played a fundamental part in arranging.”

The Senior Editorial Strategy Adviser said that the extract from Lawrence’s memoirs above made it clear that he felt bound by the promises made by the British Government, and he was aware that, in the view of those he fought alongside, those extended beyond self-government and independence for the Hejaz region. She noted Lawrence said he was “bitterly ashamed” that he knew the promises would prove worthless. She said that, as the McMahon correspondence cited by historian James Barr shows, Husein had not supported the British just to get independence for the Hejaz.

The Senior Editorial Strategy Adviser noted the complainant’s assertion that the programme confused the Bedouin of Hejaz (with whom Lawrence fought) with Arabs generally. She said it was made clear in the script that it is the Bedouins of the Arabian

desert who fought alongside Lawrence. While the interview with the Bedouin in the programme did not specifically state which tribe he belonged to, it illustrated to the Senior Editorial Strategy Adviser how Arabs, regardless of their allegiance, came to identify with the spirit of the Arab revolt. She did not think in the context of this particular programme there would be any expectation or requirement to go into greater detail on this issue. She also noted that the source of troops for the Hashemite-led campaign against Ottoman rule varied during the two years of the revolt, and depended to some extent on where the fighting was taking place at any given time.

The Senior Editorial Strategy Adviser noted that the complainant had also stated that most Arabs, including those in Palestine, fought with the Turks against the British and that the Jews of Palestine largely fought on the British side.

She noted that, as the ECU had pointed out, the programme was not about World War One but about the British Empire and there would be no expectation that allegiances of any particular group in the war would be reflected. She said that the Bedouin fighters from the Arabian desert were introduced because of their role in the Arab Revolt and how that campaign played out in relation to the British Empire.

The Senior Editorial Strategy Adviser said that the points the complainant had raised under this heading took insufficient account of the nature and scope of the programme and as such read more into the content in relation to Palestine than can be taken from what was actually said. She said she shared the conclusion of the ECU Complaints Director who said:

“The programme did not set out to explore the legitimacy of the various claims to Palestine, but the way in which Britain’s management of the situation gave rise to the troubles which followed.”

She said she was persuaded by the response which was sent to the complainant at Stage 1, which noted that it is generally accepted that British mismanagement of the expectations of all sides was partly responsible for the troubles which followed. She said that this is the dynamic that the programme explored, and it did not seem to her that in doing so it went beyond what is generally accepted to be true or supported by the evidence, or that it materially misled the audience on any point. She could see no evidence of bias in favour of any of the protagonists and did not see any prospect of success were an appeal to proceed on any of these points.

Looking at the complainant’s points in respect of the importance of Jerusalem in Judaism, the Senior Editorial Strategy Adviser noted the complainant had said that the programme gave the viewers the inaccurate impression that Jerusalem was of more religious significance to Muslims and Christians than it was to Jews.

The Senior Editorial Strategy Adviser said that she took the complainant’s point to be that the programme underplayed the religious significance of Jerusalem to Jews, in part (but not solely) by how its importance was presented in relation to the City’s significance in Islam and Christianity. For reference, she quoted what the programme said in relation to Jerusalem and its importance to the three main Abrahamic religions:

Commentary One:

“By the winter of 1917 the ultimate prize was within their grasp, the holy city itself.

And so was born the dangerous conviction that the interests of the British Empire and the will of God might be one and the same.

For Christians, Jerusalem was sacred as the site of the church of the Holy Sepulchre, venerated as the place where Christ's body was laid.

But Jerusalem was sacred to other faiths too. A thousand years before Christ it was the capital of the Jews.

Sharing the city with the Jews in relative peace were the Arabs, for whom Jerusalem was one of the holiest cities in Islam."

Commentary Two:

"On the walls of the city Allenby ordered a solemn proclamation from the British government to be read out.

He knew, he said, that the place was sacred to three great religions, that its soil had been sanctified by prayer and pilgrimage and he promised to preserve it."

Commentary Three:

"Over the next decade as more and more Jews arrived in Palestine, tension between them and the Arabs rose.

It came to a head at the Wailing Wall in the heart of old Jerusalem.

In 1929 riots broke out here at the site sacred to both Jews and Arabs."

The Senior Editorial Strategy Adviser did not consider, from this, that the viewers would have been left with the impression that to Jews, "it was just a former capital city". The context in which it is stated that Jerusalem is a former capital of the Jews is that it was *sacred* to the Jews, as well as to the Christians. And, while the reference was historic, the context was 1917 and the implication the viewer would clearly take is that in 1917 Jerusalem, which was once capital to the Jews, remained sacred to the Jews.

She noted that the second section of commentary, quoting General Allenby's speech, said that Jerusalem "was sacred to three great religions".

The third section of commentary states that rioting broke out at the site sacred to "both Jews and Arabs".

The Senior Editorial Strategy Adviser could not, therefore, accept that the programme either ignored or understated Jerusalem's religious importance to the Jews.

The Senior Editorial Strategy Adviser considered the complainant's assertion that the programme misled viewers into believing that Jerusalem is more important to Islam and Christianity than to Judaism. She noted that he cited in support of this allegation the fact that the most important sites in Islam are in Saudi Arabia and Iraq. She said that, while she did not necessarily accept the basis of this assumption, i.e. that it is either capable of being a settled question or that it is a valid comparison, she noted that the script clearly stated that Jerusalem was "one of the holiest cities in Islam".

She therefore did not believe that there would be a reasonable prospect of success were this aspect of the complaint to proceed to appeal.

The Senior Editorial Strategy Adviser then considered the fourth point made by the complainant, that "there was no context whatsoever given for the King David Hotel bombing..." and that as a result viewers were left with the impression that it was a

"merciless terrorist act". She noted the missing context which the complainant said ought to have been included.

In relation to the complainant's statement that there were many terrorist acts by Arabs against Jews of Palestine, and some by British on behalf of Arabs against Jews in Palestine, but none of this was mentioned, the Senior Editorial Strategy Adviser noted the section of the commentary which preceded the sequence at the King David Hotel:

"Over the next decade as more and more Jews arrived in Palestine, tension between them and the Arabs rose.

It came to a head at the Wailing Wall in the heart of old Jerusalem.

In 1929 riots broke out here at the site sacred to both Jews and Arabs.

The riots spread and later Arabs murdered Jews in their homes. The British police were completely outnumbered and the British authorities decided that from now on all Arab outrages would be met with real aggression.

**Newsreel:**

**The British want peace at any price. They try to restore order. They search everybody. They act as if both sides are equally guilty.**

To the Arabs the British had broken the promise of freedom made to them by Lawrence. Instead the Arabs were having to give up their land to the Jews. The Jews felt the British were failing to honour the terms of the Balfour Declaration and the promise of a national home for them. Both sides made their case with gelignite.

Both sides committed appalling atrocities.

Palestine became a posting from which many never returned. The Protestant cemetery on Mount Zion is full of British graves. Many belong to soldiers, policemen and civilians who died trying to keep apart two peoples who had previously lived relatively peaceably together."

The Senior Editorial Strategy Adviser said it was clear from this that the programme noted that atrocities were committed by all parties during the conflict.

In relation to the complainant's point that the Jews of Europe were homeless, that the land had been promised to them and that the British had broken their promise, she said this too was made clear in the script:

"The Jews of Europe, scattered for centuries, had been made a remarkable offer. In the Balfour Declaration the British Foreign Secretary committed Britain to helping the Jews make a home in Palestine."

And:

"The Jews felt the British were failing to honour the terms of the Balfour Declaration and the promise of a national home for them."

She therefore did not agree that viewers would be left with a misleading impression of the motivation of those who planted the bombs, albeit the programme did not include the precise detail the complainant would have liked to have been included.

The Senior Editorial Strategy Adviser thought it was also important to note that the sequence includes a lengthy exchange (in the context of the programme) with a member of the team who bombed the hotel, who was directly asked whether she had any regrets about the outcome:

- Jeremy Paxman: You've never been worried about what you did?
- Sara Agassi: Of course I was worried, to succeed.
- JP: But your sense of morality, your conscience hasn't bothered you since.
- SA: No, No. We fight to have a state. To do something against the British.
- JP: What do you think about it after all this time? This is over 60 years ago now. Have your views changed?
- SA: No. No. Why? It was a symbol of the British here and we hit it.

The Senior Editorial Strategy Adviser said that she was aware of claims by the Irgun that they warned someone in the Chief Secretary's office by telephone. However, according to the Israeli historian, Yoav Gelber, it is unclear when the call was made and how much time was left to evacuate the building. She noted that another historian, Michael Oren, currently Israeli Ambassador to the United States, calls it "a theory, a school of thought" but he gives the claim no greater significance. The Senior Editorial Strategy Adviser noted that both of these authoritative opinions were referred to in correspondence with an editorial adviser to the BBC Trust and were included in the background note to an appeal lodged by the complainant regarding another documentary, *The Birth of Israel*, heard by the Editorial Standards Committee in December 2009.

The Senior Editorial Strategy Adviser concluded that the programme observed due accuracy in how it reflected the context of the King David Hotel bombing and she did not think there would be a reasonable prospect of success were this aspect of the complaint to proceed to appeal.

The Senior Editorial Strategy Adviser then considered the complainant's final point, that the programme gave the impression that Lloyd George supported the Balfour Declaration because of his love of the Jews and the Old Testament rather than because of the justice of their cause and the contribution of Zionists to the war effort.

She noted the relevant section of the programme:

"By the winter of 1917 the ultimate prize was within their grasp, the holy city itself. And so was born the dangerous conviction that the interests of the British Empire and the will of God might be one and the same.

For Christians, Jerusalem was sacred as the site of the church of the Holy Sepulchre, venerated as the place where Christ's body was laid.

But Jerusalem was sacred to other faiths too. A thousand years before Christ it was the capital of the Jews.

Sharing the city with the Jews in relative peace were the Arabs, for whom Jerusalem was one of the holiest cities in Islam.

For the British Prime Minister Lloyd George the Empire now began to feel like a divine mission.

Most British political leaders had been brought up on the bible. They were steeped in its geography. And as for its history, Lloyd George claimed that as a boy he knew the names of the kings of Israel long before he knew the names of the kings of England.

At noon on Dec 11 1917 British forces entered Jerusalem. In a show stage-managed from London, for this imperial victory the trappings of power were discarded. Commander in Chief General Edmund Allenby dismounted his horse and entered the city on foot. To a watching world Allenby was proclaiming that he came not as a conqueror but as a pilgrim.

Behind him in borrowed army uniform was a jubilant Lawrence. But his joy would prove short-lived. On the walls of the city Allenby ordered a solemn proclamation from the British government to be read out.

He knew, he said, that the place was sacred to three great religions, that its soil had been sanctified by prayer and pilgrimage and he promised to preserve it. But for all his fine words Allenby had been handed a ticking time bomb.

For back in London the British government had just gone even further. The Jews of Europe, scattered for centuries, had been made a remarkable offer. In the Balfour Declaration the British Foreign Secretary committed Britain to helping the Jews make a home in Palestine. Playing God in the holy land was an astonishing gesture. The British had come to feel they were agents of destiny. They had become powerful enough and you might say, well-meaning enough, to believe they could solve the problems of the world."

The Senior Editorial Strategy Adviser said the programme did not suggest any explanation of the reason why Britain made the Balfour Declaration, although it was hinted at in Sara Agassi's comment to Jeremy Paxman when she said:

JP: Do you not feel any thanks at all to the British? Without the Balfour Declaration there would have been no Jewish homeland in this part of the world.

SA: This was also in the interest of Her Majesty's Government to be here as rulers.

The Senior Editorial Strategy Adviser said she was aware that the reasons the British Government supported the Zionist cause in 1917 and the precise meaning of what the Declaration promised remains a matter of considerable debate. She did not believe the way in which the programme reflected the issue, including the points it made about Lloyd George, precluded the range of reasons that the complainant had suggested and for which he had attached documentary evidence in support. She explained that, as the complainant knew from previous complaints, the choice of what to include is a matter of editorial judgement. She did not think that, on this occasion, greater detail about the Balfour Declaration was required to ensure the programme fulfilled the obligation to be duly accurate and duly impartial.

The Senior Editorial Strategy Adviser therefore did not think an appeal on this point would have a reasonable prospect of success.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He disagreed with the Senior Editorial Strategy Adviser's decisions on each of the points of his complaint and he provided further reasoning and documentary evidence to support his arguments that:

- T.E. Lawrence knew about the Sykes-Picot agreement when he made his assurance to the Arabs with whom he fought that they would gain their independence and a new Arab nation would be formed. His pleasure at the capture of Jerusalem was not short-lived. He may have felt guilty at having deceived the Arabs who fought with him, but he did it knowingly.
- most Arabs considered the British to be infidel and totally opposed them, and most certainly did not identify with those Arabs who fought with the British.
- it was clearly implied that the Arabs fought on Britain's side on a promise from Lawrence they would get control of Palestine (west of the Jordan).
- there never was a promise to the Arabs that Palestine would be theirs after the war, yet the programme gave the distinct impression that such a promise had been made and that those who fought with Lawrence believed that they were fighting for an Arab Palestine.
- the centrality of Jerusalem in the Jewish religion was completely downplayed.
- Failure to mention the reasons for the Jewish reaction against the British Mandate authorities heavily prejudiced the programme. To take the reaction of the Jews against the British Mandate authorities, particularly the bombing of the King David Hotel, without mentioning the terrible betrayal of the Jewish people that led to the bombing, lost all balance and made the Jews appear to be terrorists without showing that whatever was done at the King David Hotel was as nothing compared to what had been done to them.
- the decision to issue the Balfour Declaration was not made, as the programme implied, to fulfil a divine mission.

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

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

The Committee noted the detailed arguments made by the complainant in support of his points, both in his original appeal request and in his response to the Senior Editorial Strategy Adviser's decision.

The Committee agreed that the theme of the programme was to look at how the British had come to believe that they were destined to rule such a large part of the world and the consequences of that. The Committee agreed that it was in this context that the requirements for due accuracy and due impartiality should be considered.

The Committee agreed that it would not be likely to conclude that the programme's references to Arab disappointment were other than an accurate, albeit simplified, summary of where matters stood in 1929. Nor would it be likely to conclude that the reference to T.E. Lawrence's joy being short-lived was other than duly accurate. The Committee agreed with the Senior Editorial Strategy Adviser's view that, in the context of this particular programme, there would be no expectation or requirement that the programme should have gone into greater detail about the allegiances of different Arab groups at the time. The Committee also agreed that the programme was not about World War One but about the British Empire and there would be no expectation that allegiances of any particular group in the war would be reflected.

The Committee agreed that there was no evidence of bias in favour of any of the protagonists and there was no reasonable prospect of success for an appeal on these grounds.

The Committee agreed that the programme did not ignore or understate Jerusalem's importance to the Jews or overstate its importance to Islam and nor did it imply that Jerusalem was more important to Islam and Christianity than to Judaism. The Committee considered that there was no reasonable prospect of success for these points of the appeal.

The Committee noted that the programme had stated explicitly that atrocities were committed by all parties during the conflict and had also provided context for Jewish sentiments at the time. The Committee agreed that the viewers would not have been left with a misleading impression of the motivation of those who had planted the bomb at the King David Hotel. The Committee agreed that, given the subject of the programme, there was no requirement to include the precise details that the complainant had raised.

The Committee concluded that it would not be likely to uphold an appeal with regard to the accuracy or impartiality of the section dealing with the King David Hotel bombing.

The Committee was satisfied that the way the programme had presented the reasons why the British government had supported the Zionist cause in 1917 did not preclude the range of reasons that the complainant had put forward or suggest that what had been included was inaccurate or biased. The Committee agreed that greater detail about the decision to issue the Balfour Declaration was not required to ensure the programme fulfilled the obligation to be duly accurate and duly impartial.

The Committee concluded that there was no reasonable prospect of success for this point on appeal.

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

## ***Country Tracks*, BBC One, 8 April 2012**

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

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

The complainant wrote to the BBC Trust regarding the decision by the BBC not to investigate his complaint because it was made more than 30 days after the date of the broadcast. His complaint concerns alleged bias in *Country Tracks* towards Irish culture and identity to the total exclusion of the Ulster-Scots culture and identity.

The complainant said that he was not aware of a 30 day deadline in making his complaint and wanted his concerns to be considered.

The complainant cited a number of examples in *Country Tracks* to illustrate his allegation of bias, including an Irish folk music session, a discussion about how the Irish language was taken to Scotland, the use of an electric car with an Irish Republic registration plate, a commentary about the car with somebody from the Irish Republic, and a sequence about Scrabo Tower being built in memory of Lord Londonderry because of his contribution to the area during the Irish Famine.

The complainant went on to suggest a number of different items the programme could have included from the region to illustrate its Ulster Scots culture.

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

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

The Senior Editorial Strategy Adviser said that, having read through the correspondence, it seemed that there was some confusion over the complaint. She said this may be because the complainant made written complaints both to the Director-General's office and to BBC Northern Ireland, and had also contacted BBC Complaints (BBC Audience Services).

The Senior Editorial Strategy Adviser set out in detail the timing of the complainant's correspondence with the BBC. She noted that his initial contact with the BBC had been dated 27 June 2012 (received on 5 July), with a telephone call to BBC Audience Services on 6 July.

She noted that the first response the complainant received from BBC Complaints seems to have been in answer to his phone call. It made the point that there was no note of the programme's title or broadcast date. Nonetheless the response did correctly identify the programme and it stated:

"This particular episode sees presenter Ellie Harrison take a journey that weaves a line across the border between Northern Ireland and Eire. I can assure you it was never our intention to appear biased in any way, it is not always possible or practical to reflect all the different opinions on a subject within individual programmes. Editors are charged to ensure that over a reasonable period they

reflect the range of significant views, opinions and trends in their subject area.”

The Senior Editorial Strategy Adviser noted the response also included a link to the BBC Complaints website which sets out the time frames for complaints and complaints handling.

The Senior Editorial Strategy Adviser noted that on 19 July, the complainant received a response to his letter to the Director-General, which stated that his complaint would not be considered because it had been made too late.

The Senior Editorial Strategy Adviser noted that the complainant also had an exchange of correspondence with BBC Northern Ireland which ended with the BBC closing down the correspondence on 3 October, on the basis it was out of time.

The Senior Editorial Strategy Adviser said that the BBC Complaints Procedure requires complaints to be made within 30 working days of broadcast or publication. She noted that the complainant said he was late because he was busy and was unaware of the time limit until the complaints procedure was sent to him.

The Senior Editorial Strategy Adviser explained that the time frames are set down because it is increasingly difficult to answer complaints that are made a long time after a programme is transmitted – programme teams change and the amount of time and effort spent answering inquiries becomes disproportionately expensive.

Having looked at the dates, the Senior Editorial Strategy Adviser concluded that the complainant was out of time when he complained and that the BBC was therefore correct to close him down. She did not think the fact that he was busy constituted a sufficiently good reason that the BBC should have made an exception and taken his appeal.

The Senior Editorial Strategy Adviser explained that appeals to the Trust should be made within 20 working days of the last correspondence with the BBC, and she noted that again he was out of time as he complained on the 30th working day. However, she took into account that he was not told in letters directly either that he could appeal to the Trust or what the time limit was. She apologised that the complainant was not told directly (despite asking) that he could appeal to the Trust against the decision not to take his complaint, although he was provided with links to the complaints framework which did explain this process. She said that a copy of this letter would be provided to the Complaints and Appeals Board of the Trust so that the Trustees could note this issue.

The Senior Editorial Strategy Adviser explained that it is open to the Trust to consider returning appeals to the BBC Executive, even though the Executive has correctly judged them to be out of time, because of the seriousness of the complaint made. The Senior Editorial Strategy Adviser therefore considered whether the complaint raised issues with regard to the BBC's Editorial Guidelines on Impartiality. She quoted the relevant section of the Editorial Guidelines and explained that the requirements for impartiality will vary from programme to programme, so that there is a far greater onus on a news programme than there is, say, on a comedy panel show.

The Senior Editorial Strategy Adviser noted from the BBC's website that *Country Tracks* is listed as a programme which is “celebrating the British countryside” rather than offering a detailed examination of the culture or identity of a particular region. It is a series which mixes archive footage from the BBC's *Countryfile* with newly filmed sequences to create a different journey through the United Kingdom each week.

She said that this programme was no exception. She noted that the *Countryfile* films that

were used included items on seaweed and oyster farming recorded at Strangford Lough in September 2006, the Hillsborough Oyster Festival recorded in 2005, the Carnlough annual gig boat race recorded in 2007, the tourist boom in Ballycastle and the Giant's Causeway recorded in 2006 and the netting of wild salmon off the Antrim coast recorded in 2003.

The Senior Editorial Strategy Adviser noted that the presenter drove between Comber and Portrush recording short pieces to link each of these films together. These included looking at potato farming in the area, a cooking lesson on how to make a pot of champ, an explanation of why Scrabo Tower was built, a journey along the Antrim Coast road in an electric car, a short walk around Glenariff Forest Park looking for a rare snail, an archaeological dig at Dunluce Castle and concluded with folk music from a pub in Portrush.

She said that, in a number of these sequences, the area's close links with Scotland were made clear. The film on tourism in Ballycastle was introduced in the following way:

"This part of Ireland has a deep rooted connection with the west coast of Scotland. In fact, the shortest crossing is only 12 miles and, at one time, both coastlines were part of the same kingdom.

"It was called Dalraida and it came into being in the third century encompassing quite a large area of west Scotland and the north east coastal area of Ireland. Strong cultural and economic links were formed between the two halves of the kingdom and these continued for five hundred years or so until the Irish side of Dalraida went into decline."

Following this film, the presenter visited an archaeological dig at Dunluce Castle. She began her report by saying:

"Just a few miles further north from the Giant's Causeway, the dramatic ruins of Dunluce castle loom into view. A prime location for any aspiring warlord, the ruins have sat on the north Antrim cliffs for centuries. It was originally built by Richard de Burgh but is best known for its long association with the Scottish Macdonald clan."

At the end of her journey, the presenter arrived at Portrush where she attended a folk music session. She began by saying:

"I have left Dunluce Castle behind and travelled on to Portrush where I end my journey in a pub and with music.

"The music of this part of Ireland has a strong connection with the traditional music of Scotland and indeed this regular session here in Portrush is organised by Scotsman Dick Glasgow."

Examining the complainant's other concerns, the Senior Editorial Strategy Adviser said that no comment was made about the electric car having an Irish Republic registration, though it was shown. She said that there was an exchange about the difficulties of charging electric cars in the countryside and also their lack of noise, but there was no link to Irish culture or identity. The Senior Editorial Strategy Adviser noted that the Scrabo Tower sequence was a short link between two archive *Countryfiles* which explained how local people had built the edifice in memory of Lord Londonderry as he had offered them assistance during the Potato Famine.

The Senior Editorial Strategy Adviser reiterated that the programme's primary aim was to

look at rural and environmental issues in the area, and she could see no evidence of bias towards Irish culture and identity, noting that the programme did refer to Northern Ireland's close ties with Scotland on several occasions.

The Senior Editorial Strategy Adviser noted that the complainant had suggested a number of items that he felt the programme could have included to illustrate better Ulster-Scottish culture, but she also noted that the treatment and content of a programme and what examples it uses are matters of editorial and creative direction.

The Senior Editorial Strategy Adviser did not consider that the complainant's appeal against the close down of his complaint by the BBC on the grounds that it was outside the time limit had a reasonable prospect of success and she did not propose to put the appeal before Trustees. She did not consider the complainant had provided exceptional reasons as to why the BBC should take the complaint outside the time limit; nor did she consider that the issues raised were in themselves so serious that the BBC should take them.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that there was clear evidence of bias in favour of the Irish culture and identity to the total exclusion of the Ulster Scots culture and identity. He said the evidence of lack of impartiality in the programme was most tellingly indicated by the continuous use of words such as "Ireland" and "Irish" along with a lack of usage of the words "Ulster" and "Ulster Scots".

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

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

The Committee noted that the complaint had been sent to the Director-General and BBC Northern Ireland on 27 June 2012, 53 working days after the broadcast on 8 April 2012. The complainant had first raised the matter with BBC Audience Services on 6 July 2012, 60 working days after broadcast.

The Committee noted the complainant's concern at the decision by the BBC not to consider his complaint outside the 30 day time limit. The Committee was satisfied that the complainant had not demonstrated that there had been a breach of the Editorial Guidelines so as to lead it to conclude that the normal 30 day time limit for complaints to be raised with the BBC should be extended in this instance.

The Committee noted the complainant's original complaint and his view that the programme was biased in favour of Irish culture and identity to the exclusion of the Ulster Scots' culture and identity.

The Committee was satisfied that no evidence had been presented which suggested that a complaint of bias towards Irish culture and identity would have a reasonable prospect of success. It agreed with the Senior Editorial Strategy Adviser that the programme did refer to the area's close ties with Scotland on several occasions. The Committee noted the complainant's view that better examples could have been included to illustrate Ulster Scottish culture but it agreed that the choice of content in a programme is an editorial and creative matter for the BBC Executive and not for the Trust, providing the programme had not breached the Editorial Guidelines. The Committee did not consider that there was a reasonable prospect of success for a complaint alleging a breach of Editorial Guidelines on Impartiality in this instance.

**The Committee agreed that there was no reasonable prospect of success for this complaint on appeal.**

## ***BBC Reporting Scotland, BBC One (Scotland), 27 August 2012***

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

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

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold her complaint about being filmed by *BBC Reporting Scotland* and her appearance broadcast without her permission.

The complainant said that, although she had been aware of the camera in the Edinburgh Solicitors' Property Centre, she had deliberately kept out of the way of it. She had noted at the time that several people had been asked if they would give their permission to be filmed and that they had declined to give their permission. The complainant believed that the film crew chose to film her "rather surreptitiously" without seeking her permission first.

The complainant felt that this was insensitive and in some circumstances could have caused difficulties for the person involved. She said that far from being a background crowd scene, she was clearly visible in the film, and that friends had instantly recognised her. The complainant wanted recognition that this filming should not have taken place without her express permission.

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

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

The Senior Editorial Strategy Adviser said she was very sorry that the incident had caused the complainant such concern and said she had been assured by BBC Scotland that they would not have filmed the complainant, or broadcast the item in question, if they had been aware of her reservations.

The Senior Editorial Strategy Adviser considered the Guidelines on Privacy in relation to this appeal:

When filming openly in public and semi-public places, we do not normally obtain express consent from individuals who are incidentally caught on camera as part of the general scene, unless they are engaged in an activity where they have a legitimate expectation of privacy.

However, if an individual or organisation asks us to stop filming or recording because of a concern about privacy, we should normally do so unless it is editorially justified.

In this context the Senior Editorial Strategy Adviser did not believe there was any realistic prospect of the Trust agreeing that the filming in question could be considered a breach

of the Privacy guideline. The Edinburgh Solicitors' Property Centre was clearly a venue that could be described as a public or semi-public place, and the BBC Guidelines do not require film makers to seek explicit permission to film members of the public in these situations. The only caveat is where individuals are engaged in activity where they have a reasonable expectation of privacy. On this point the Senior Editorial Strategy Adviser believed that the BBC's response to the complainant was a fair and reasonable one: that the footage of the complainant browsing in the property centre did not portray anything particularly private or sensitive. The Senior Editorial Strategy Adviser noted that the Complaints Director had made this point in his letter of 9 November to the complainant in which he wrote:

"I'm afraid I cannot agree that looking at the details of property for sale in a semi-public place amounts to the kind of confidential or sensitive activity which would give rise to any such expectation of privacy."

Nevertheless, the Senior Editorial Strategy Adviser sought further information from BBC Scotland to explain why some people were approached for permission to film and not others. They said that they were filming at the location with the express permission of the owners and while they attempted, out of courtesy, to seek people's approval, it would have been impractical to do so in every case given the sheer numbers coming in and out of the centre. In relation to the complainant's view that the filming of herself had been deliberately surreptitious, they said that all the filming was done openly and that, having reviewed the footage to reassure themselves of this point, they had discovered a shot of the complainant looking directly to camera at one point. The Senior Editorial Strategy Adviser hoped the complainant would be reassured to know that *BBC Reporting Scotland* had confirmed that they had taken steps to ensure the shots of the complainant would not be re-broadcast in any form.

The complainant requested that the Trustees review the decision not to proceed with her appeal. She said that some of the points made by the Senior Editorial Strategy Adviser in her letter of 14 January 2013 were inaccurate.

In particular the complainant referred to the information obtained from BBC Scotland and stated:

1. The ESPC showroom was not busy; it was extremely quiet.
2. It appeared BBC Scotland had sought to obtain permission from other customers but had been refused and therefore the complainant felt she was deliberately filmed without her permission in case she too refused.
3. The complainant said the filming was not done openly and she had not looked directly at the camera; she reasoned that had she done so she would not have spent time pursuing her complaint.

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

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

The Committee noted the complainant's concern about her privacy being breached during filming by *BBC Reporting Scotland* and its subsequent broadcast. The Committee also noted her concern about possible repeat broadcasts of this footage in the future.

The Committee agreed that there was a public interest in showing pictures of people browsing for property in illustrating a story about the effect of a drop in the cost of mortgages on first time buyers.

The Committee was satisfied that in accordance with the Editorial Guidelines on Privacy, the complainant's expectation of privacy in the ESPC showroom was limited given that it could be described as a public or semi-public place and that she was not engaged in an activity which would have given her a legitimate expectation of privacy which would have outweighed the public interest in filming her.

The Committee noted that BBC Scotland had been asked by the Senior Editorial Strategy Adviser to explain why they had sought permission to film some people in the ESPC and not others, and that *BBC Reporting Scotland's* perception of the location was that it had been too busy to ask permission of everyone in there. BBC Scotland also maintained that the filming had taken place openly and in full view of the complainant. BBC Scotland stated in evidence of this that they had recorded a shot of her looking directly into the camera at one point.

The Committee noted that the complainant disagreed with *BBC Reporting Scotland's* perception of what had taken place arguing that it was quiet and that she had not been aware of the camera.

The Committee agreed that whether or not she had been aware of the filming, the complainant did not have a reasonable expectation of privacy in a semi-public environment such as the ESPC showroom when she was browsing a public display of properties. Therefore the Committee was satisfied that there would be no reasonable prospect of success for an appeal.

The Committee noted that the Senior Editorial Strategy Adviser, on behalf of the Trust, had apologised to the complainant for the concern which the filming had caused her and further noted that BBC Scotland had given their assurances that the footage would not be re-broadcast in the future.

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

## ***The Politics Show, BBC One, 9 October 2011***

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

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

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold his complaint regarding the use of the expression "pissed off" by a studio guest in an edition of *The Politics Show*, which the complainant considered inappropriate and offensive.

The complainant said that the ECU had failed to explain the following matters:

1. The programme had been broadcast at Sunday lunchtime, when families were traditionally together. Although the programme was not aimed at children, it was reasonable for children to be present at such a time. Editorial Guideline 5.4.7 states that all programmes broadcast between 5.30am and 9pm must be suitable for a general audience including children.

The complainant construed the principle expressed in the above guideline that "[t]he earlier in the evening a programme is placed, the more suitable it should be for children to watch without an older person" as applying to the lunchtime slot in which the programme was broadcast.

2. There was no expectation of swearing, and the programme had not previously included swearing. This was supported by the fact that the time of broadcast fell within the pre-watershed period. The complainant noted that BBC Audience Services had stated that the studio guest's comment was totally out of character and unexpected, as the guest had not previously sworn on television.
3. Appropriate information should have been provided in accordance with rule 2.3 of the Ofcom Broadcasting Code, to enable viewers to make an informed decision as to the programme's suitability.
4. Ofcom's findings in its research on swearing in broadcasts (the Ofcom Report) were unreliable. The Ofcom Report had ascertained that many respondents thought the so-called 'F word' should only rarely be broadcast and that the 'C word' should never be broadcast. The complainant argued that these findings were "conveniently disregarded for the benefit of broadcasters".
5. The complainant requested clarification of the ECU's statement that the swearing was towards the edge of acceptability. In the complainant's view, for viewers to make informed decisions, it was vital that they should be informed of the criteria used in preparation of the broadcasting rules.
6. The complainant queried whether the ECU's view was that, because swearing might be included without warning at any time in any programme and against the normal rules and expectation in respect of pre-watershed programmes, people offended by swearing were to be precluded from watching television and would therefore miss important, informative

programmes such as *The Politics Show*. In the complainant's view, this was discriminatory.

7. The complainant asked for an explanation of how rule 2.3 of the Ofcom Broadcasting Code had been applied in this instance. In his view, the purpose of that rule is to allow viewers to make informed choices, and the rule does not apply only to so-called 'strong language' programmes (which in any case cannot be broadcast before the watershed). The complainant noted that the BBC's Editorial Guidelines also required that this rule be followed, and he felt that the ECU had "overruled" the Editorial Guidelines in this instance.
8. Although the fact that the broadcast was live had been cited in mitigation, the normal pre-watershed rules applied to all pre-watershed programmes.
9. The complainant noted that the Ofcom Report had stated that viewers agreed that the swearword in question was unacceptable for use in output made for and aimed at children. Although the ECU had noted that *The Politics Show* was not aimed at children, it had failed to note that the BBC's Editorial Guidelines must be complied with, including the requirements imposed by Editorial Guideline 5.4.7 on all programmes broadcast between 5.30am and 9pm.

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

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

The Senior Editorial Strategy Adviser considered the complaint in relation to the Guidelines on Harm and Offence.

She noted that the comment which is the subject of the complaint was made in a live studio discussion about the political future of the then Secretary of State for Defence Dr Liam Fox MP. The presenter, Jon Sopel, was with two studio guests, the LBC journalist James O'Brien and the Evening Standard journalist Sarah Sands. They were discussing Dr Fox's political future in the wake of news stories about his close friend and adviser, Andrew Werritty. Talking about the possibility of him remaining Secretary of State for Defence, Ms Sands said:

"...It's also, you need a support base and, unfortunately, he's sort of pissed off the Prime Minister, hasn't he, over Libya and other issues and possibly, sort of, leaked memos, and so, you know, he's a bit on his own on this, isn't he?"

The Senior Editorial Strategy Adviser explained that, in terms of evaluating the suitability of programme content, the BBC is required to apply "generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material". She said that the Editorial Guidelines on Harm and Offence give further clarification on this:

The understanding of what constitutes 'generally accepted standards' will evolve over time and will be informed by relevant research. Applying 'generally accepted

standards' is a matter of judgement, taking account of the content, the context in which it appears and editorial justification.

The Senior Editorial Strategy adviser said that this means the BBC must be mindful of the expectations of its audience when evaluating what content is appropriate. She said that the ECU had already explained that the BBC's Editorial Guidelines do not require programme makers to never cause offence – which would be impossible to achieve – but require the suitability of content to be evaluated by reference to the time of broadcast and the audience's likely expectations and also require programme makers to bear in mind relevant research.

The Senior Editorial Strategy Adviser said that one of the ways the BBC evaluates audience expectations is by looking at relevant research. The Ofcom Report, published in 2010, considered the audience's response to strong language. The Senior Editorial Strategy Adviser noted that the ECU Complaints Director acknowledged the strength of the complainant's feelings – and also tried to explain how some language which is considered offensive by some might, nonetheless, be transmitted before the watershed.

She noted that, referring to the Ofcom research, the ECU's Complaints Director had said:

"I recognise that you find the word used deeply offensive, but I must say I do not believe your interpretation of the level of offence associated with it would be universally shared. Ofcom, the broadcast regulator, has published guidance on language, based on extensive audience research which grouped words according to the level of offence associated with them by the people polled. The word which caused you concern was considered to be in 'Group 2' of words aired before the watershed, meaning that it had 'Higher acceptability to some/medium acceptability to others'."

The Senior Editorial Strategy Adviser observed that the ECU Complaints Director had noted that this language was considered by the report's participants to be the second most acceptable group of potentially offensive expressions, and he went on to state:

"The only context in which the viewers quoted in the report considered this word unacceptable for broadcast was in output made for and aimed at children, and even in that context, there was no sense that it was broadly agreed to be offensive."

The Senior Editorial Strategy Adviser therefore considered that in answer to the first element of the complaint, there was not a requirement for this phrase not to have been broadcast before the watershed.

The Senior Editorial Strategy Adviser noted that the ECU's Complaints Director had stated:

"Clearly, The Politics Show is not aimed at children, and I do not think it likely that young people would have been watching."

The Senior Editorial Strategy Adviser considered that the Complaints Director was right to point out that the programme is aimed at an adult audience and she did not consider that the audience expectations as a whole would have been exceeded by this comment. Therefore, she did not consider the first element of the complaint had a reasonable prospect of success and she did not propose to put it before the Trustees.

Regarding the second point of complaint, the Senior Editorial Strategy Adviser said the statement that the programme does not generally include strong language is certainly

accurate, and she was sure the Trustees would be pleased that the BBC had apologised for the offence caused to the complainant by the use of this language. However, she explained that does not mean that the comment made by Ms Sands exceeded 'general audience expectations' and therefore she did not consider that on this point either the complaint had a reasonable prospect of success.

The Senior Editorial Strategy Adviser noted that the third point of complaint related to an alleged failure to alert viewers to the possibility of strong language. The Senior Editorial Strategy Adviser noted that BBC Complaints and the ECU Complaints Director had referred to the fact that this was a live broadcast. As the programme was broadcast live, it would therefore have been impossible for an alert to have been given in advance of the programme. The Senior Editorial Strategy Adviser said that she considered that the term used would not have exceeded audience expectations for this programme, and it followed therefore that on this point too the complaint did not have a reasonable prospect of success. The Senior Editorial Strategy Adviser did not propose to put it before Trustees.

With regard to the fourth point of complaint, in which the complainant questioned the Ofcom research referred to by the Complaints Director, the Senior Editorial Strategy Adviser said that she had not seen any evidence to suggest that the research is not robust. She said that this is an area in which Ofcom has been commissioning research for some years. Therefore she did not consider the complaint likely to succeed on that point either.

The Senior Editorial Strategy Adviser noted that, in the fifth point of complaint, the complainant had asked for clarification of the ECU's view that: "... what was said was towards the edge of what would be acceptable in this context, rather than over it".

The Senior Editorial Strategy Adviser said this was the ECU's explanation of its application of the relevant editorial test (i.e., the ECU's assessment of the suitability of the words that had offended the complainant, by reference to the time of broadcast and the audience's likely expectations, bearing in mind relevant research). The Senior Editorial Strategy Adviser said that decisions about what might cause offence are matters of editorial judgment – what one person finds offensive, another person would be impervious to. She said that the test for what might be considered offensive will depend on what the offensive content is, the context in which it is used and the likely audience expectations. While the total number of complaints does not determine whether there has been a breach of Guidelines, it does give an insight into whether a programme has overstepped what its audience would consider acceptable. The Senior Editorial Strategy Adviser did not consider that there was evidence that this had happened here and she did not therefore believe the complaint had a reasonable prospect of success on that point.

The Senior Editorial Strategy Adviser considered the complainant's sixth point, that the effect of the ECU's decision was to discriminate against viewers who found the expression offensive.

The Senior Editorial Strategy Adviser said she had not seen any evidence of regular or repeated use of strong language on *The Politics Show*. indeed, the complainant had acknowledged that such language had not previously been used in the programme. The Senior Editorial Strategy Adviser said that all live programmes involve an element of risk and, although contributors are generally reminded to keep strong language in check, the complainant was right that it may not be possible to avoid all strong language. The Senior Editorial Strategy Adviser noted, as explained above, that the Guidelines require programme makers to bear in mind "generally accepted standards" rather than requiring them to remove all strong language that might be offensive. Therefore she did not consider the complaint was likely to be successful on that point and she did not propose

to put it before the Trustees.

The Senior Editorial Strategy Adviser noted the remaining points made by the complainant:

- that Ofcom's Code requires audiences to be allowed to make informed choices.
- that although the programme was live it was pre-watershed.
- that although not aimed at children, as a pre-watershed programme children may well have been watching.

She said that these all related to the same reasoning that she had set out in response to the complainant's sixth point. This was that the editorial judgment which programme makers are required to make under the Guidelines relates to "generally accepted standards", bearing in mind that most people would not feel as strongly as the complainant about the term that was used and that the programme it was used on was aimed primarily at adults. Therefore, for the same reasons, the Senior Editorial Strategy Adviser did not consider these points had a realistic prospect of success and she did not propose to put them before the Trustees.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He challenged the points of response put by the Senior Editorial Strategy Adviser in some detail and said that the BBC had breached rules under both the Ofcom Broadcasting Code and the BBC's Editorial Guidelines by including swearing in *The Politics Show* at a time when a family audience which may have included children would be watching. He also complained that no on-air apology was given after the swearing had been broadcast, and that adequate information was not provided by the broadcaster to enable viewers to make an informed decision whether or not to view the broadcast.

The complainant referred to the quoted findings of Ofcom research (which he alleged that broadcasters had a tendency to ignore). He said that the swearword used in *The Politics Show* had most certainly not been identified in research as falling into the category of generally acceptable standards.

The complainant referred to the Ofcom Guideline on Protecting the Under-Eighteens, where rule 1.16 states:

"Offensive language must not be broadcast before the watershed **or** when children are likely to be listening".

The complainant said that mention of the above Ofcom guideline had been omitted from the Senior Editorial Strategy Adviser's letter, although BBC Guidelines had been quoted.

He said that the "or" in the above guideline was an important distinction, and should not be confused with "and".

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

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

The Committee noted the complainant's concern about swearing in a daytime programme

and the expectations of the likely audience for *The Politics Show*.

The Committee also noted that no on-air apology was offered.

The Committee agreed that all live programmes involve an element of risk and, although contributors are generally reminded to keep strong language in check, it may not be possible to avoid all strong language.

The Committee noted that the Guidelines require programme makers to bear in mind "generally accepted standards" rather than requiring them to remove all strong language that might be offensive. The Committee agreed with the ECU's view that "what was said was towards the edge of what would be acceptable in this context, rather than over it".

The Committee also noted the comments made by the complainant regarding the Ofcom research on audience attitudes towards offensive language.

The Committee noted the complainant's comment in relation to rule 1.16 of the Ofcom Broadcasting Code. The Committee was mindful of the full wording of this rule:

Offensive language must not be broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.

The Committee was mindful, in particular, that the reference to the likelihood of children listening was specifically in relation to radio, and that the rule was qualified by the statement "unless it is justified by the context". The Committee considered that this rule did not mean that there was a blanket ban on the use of offensive language before the watershed.

The Committee was mindful that its remit is to hold the BBC to account for its compliance with the Editorial Guidelines. These Guidelines are drafted by the BBC Executive and approved by the Trust, taking into account factors including Ofcom and other research. While the Editorial Guidelines are intended to reflect, as a minimum standard, the requirements of Ofcom's Broadcasting Code (where these apply to the BBC), complaints against the Broadcasting Code are properly for Ofcom to consider rather than the Trust. The Committee was mindful that the complainant had the option of requesting that Ofcom consider his complaints about a breach of its Code.

The Committee agreed that it was not likely to find that the unexpected use of the phrase "pissed off" in this programme amounted to a breach of the Guidelines on Harm and Offence.

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

## Application of Expedited Complaint Handling Procedure at Stage 1

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

### Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision by the Head of Communications and Complaints that the BBC would apply the Expedited Complaints Procedure to future Stage 1 complaints from the complainant. The effect of the procedure is that, for a period of up to two years, future correspondence is read but not necessarily replied to unless it raises an issue of a breach of any relevant Guidelines or Policies and does not fall within the criteria set out in paragraph 2 of Annex B of the Complaints Framework, which deals with the Expedited Complaints Procedure<sup>17</sup>. The Trust Unit referred the letter to Stage 1. The Head of Communications and Complaints wrote giving his reasons for applying the Expedited Complaints Procedure.

The complainant appealed to the Trust about the manner in which he had been informed of the application of the Expedited Complaints Procedure, and he set out substantive grounds of appeal. The volume of paperwork submitted by the complainant was voluminous. It would not be proportionate to address all of his points in detail for the purpose of this decision. Nor would it be proportionate (or necessary under the Procedure) to go through each of the complaints and set out which aspect of paragraph 2(a) of Annex B each one falls under. The Trustees were provided with the relevant paperwork. The Trustees noted that the complainant annexed:

- a personal story concerning a BBC journalist whom he met during his childhood in South Africa and whom he felt would have supported him in his dealings with the BBC;
- previous correspondence in this complaint, with his comments; and
- a list of examples of previous dealings with the BBC which he considered to be more representative than the list cited by the Head of Communications and Complaints in his communication of 5 October 2012.

The complainant noted that (according to information gleaned from a request under the Freedom of Information Act 2000) the BBC Trust had applied the Expedited Complaints Procedure "only" five times in the past three years. He expressed concern that the lack of availability of corresponding information from the BBC Executive made it impossible to gauge whether the Expedited Complaints Procedure was being applied appropriately or arbitrarily.

The complainant described the email of 2 October 2012 from the Head of Communications and Complaints as "curt" and felt that it notified him of the "summary imposition" of the Expedited Complaints Procedure. He complained that, having written to the BBC Trust on 3 October 2012, he had expected to receive a reply from the Trust, not the Head of Communications and Complaints, the content and tone of whose response of 5 October 2012 did not in his view appropriately reflect the gravity of the measures taken

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[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/e3\\_complaints\\_framework.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/e3_complaints_framework.pdf)

against him. He argued that the Trust was not scrutinising the Executive effectively, there being in his view little or no “firewall” or arm’s-length relationship between the two bodies.

The complainant said that:

- the email of 2 October 2012 from the Head of Communications and Complaints, was not the explanation it purported to be, but was an “imposition being activated”;
- the Head of Communications and Complaints had failed to inform the complainant of the terms of paragraph 3(a)(ii)–(iv),(b)(i), (ii) of Annex B to the Complaints Framework; and
- in his response of 5 October 2012, the Head of Communications and Complaints had cited an unrepresentative selection of the complaints.

The complainant argued that:

- he had not been “vexatious” in his dealings with the BBC;
- the BBC’s “slanted coverage” of political issues and its victimisation of him, a licence-payer who adduced factual evidence of bias, were intolerable;
- a ‘fobbing-off’ culture permeated the entire BBC and it was seeking to silence legitimate scrutiny;
- he had been subjected to the BBC’s default position of obfuscation, obstruction and/or equivocation when legitimately seeking information or registering his concerns;
- in many instances, he had queried why his questions and/or complaints had been deemed inconsequential, unreasonable, irrelevant, vexatious, impudent, or frivolous, etc, but had received no response;
- in light of the BBC’s alleged financial profligacy, he described as “grotesque” the suggestion that it was necessary to protect expenditure for more important matters than having productive dialogue with licence-fee payers;
- clarification, or a working definition, was required of the length of the ‘cycle’, ‘period’ or ‘timeframe’ in the context of which the impartiality of the BBC’s output was to be judged.

With reference to the Head of Communications and Complaints’ email of 2 October 2012, the complainant queried whether:

- the alleged failure of the Head of Communications and Complaints to provide a readily identifiable reference point in a chain of correspondence; and
- his reference to the Complaints Framework, rather than specifically to Annex B, accorded with the Trust’s view of best practice. He also queried whether the Trust considered the content and tone of that email to be acceptable.

### **The Trust Unit’s decision**

The Trust’s Senior Editorial Strategy Adviser replied to the complainant explaining that at her request, an independent editorial adviser had reviewed the Stage 1 correspondence in six of the complainant’s most recent complaints. For reasons of proportionality and cost-effectiveness, she had taken these as a specimen sample of the far larger number of complaints that he had previously made. She annexed a summary of specimen complaints to her letter.

The Senior Editorial Strategy Adviser said that, having taken into account all relevant matters, she did not consider that the appeal had a reasonable prospect of success. She therefore did not propose to proceed in putting the appeal to the Trustees.

The Senior Editorial Strategy Adviser said that she had first considered the manner in which the complainant was informed of the application of the Expedited Complaints Procedure. In her view, there was nothing inappropriate in the content, tone or mode of delivery of any of the BBC's communications, and she did not believe there was any evidence upon which the Trustees might uphold this point of complaint.

Next, she considered whether the pre-conditions for the application of the Expedited Complaints Procedure had been met.

She noted that the Expedited Complaints Procedure may be used at any stage of the complaints process, but only where a complainant has a history of persistently or repeatedly making complaints which (among other things):

- are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
- fail to raise an issue of breach of any relevant Guidelines or Policies; or
- are shown on investigation to have no reasonable prospect of success.

The Senior Editorial Strategy Adviser noted that, in his email to the complainant of 2 October 2012, the Head of Communications and Complaints stated that BBC Audience Services had replied to a "significant number" of complaints from him. He expanded on this in his email of 5 October 2012, stating that the complainant had contacted the BBC over 100 times to make Stage 1 complaints or escalations since August 2010. According to him, the complainant had contacted the BBC over 14 times at Stage 1 during July and August 2012, either to make new complaints or to escalate issues about previous ones, and the complainant had made further complaints since then.

The Senior Editorial Strategy Adviser noted that the Head of Communications went on to explain that, between 1 July 2012 and the end of August 2012, the complainant had made complaints concerning at least seven issues, of which five had been made in July and two were continuations of existing complaints. According to the Head of Communications and Complaints, five of those complaints concerned the complainant's belief that there had been inadequate coverage of some issues by BBC News or were enquiries about the extent of such coverage. He stated that some of the complaints alleged censorship, and that all suggested that the BBC had various agendas which shaped its coverage. He also stated that most of the recent complaints had alleged bias, either because the complainant believed the BBC had given insufficient coverage or because he did not know what coverage had actually occurred and had requested further details.

The Senior Editorial Strategy Adviser also noted that the Head of Communications and Complaints stated in his email of 2 October 2012 that BBC Audience Services considered that the volume and continuing frequency of the complaints made disproportionate demands on the licence fee. He amplified this in his email of 5 October, asserting that the investigation of the recent complaints had required considerable staff time, and that, being dissatisfied with BBC Audience Services' responses, the complainant had frequently escalated both editorial and non-editorial issues at Stage 1.

The Senior Editorial Strategy Adviser noted that, according to the Head of Communications and Complaints, the way in which the complainant had conducted his recent complaints corresponded to the general pattern of the previous complaints.

The Senior Editorial Strategy Adviser also noted that, according to the Head of Communications and Complaints, in addition to the complaints made since July 2012, the complainant had escalated many other complaints on editorial matters over a considerable period of time, which in the BBC's view had not suggested evidence of

possible breaches of the Editorial Guidelines. The Head of Communications and Complaints also stated that those complaints had not been upheld after escalation.

The Senior Editorial Strategy Adviser also noted that, according to the Head of Communications and Complaints, the complainant had received full apologies for all complaint-handling errors and delays at Stage 1.

She noted that, on 3 October 2012, the BBC Complaints Adviser wrote:

“It’s not the role of BBC Audience Services to explain in detail the internal workings of the BBC or to provide assurances in respect of future output that has not yet been broadcast. Likewise it’s not part of our remit, nor an appropriate use of Licence Fee resources, to answer the questions you have posed given that we do not believe you have provided specific evidence of a serious inaccuracy or other breach of the BBC’s Editorial Guidelines which would justify further investigation.”

The Senior Editorial Strategy Adviser considered that this was a reasonable explanation of the role of BBC Audience Services and she also noted that the Expedited Complaints Procedure is currently being applied to certain types of complaint brought by the complainant by BBC News at Stage 2 of the complaints process and by the BBC Trust at Stage 3.

In her view, there was no evidence to suggest that the Head of Communications and Complaints had not accurately represented the subject matter, nature, frequency, volume or pattern of conduct of complaints made by the complainant at Stage 1. She did not consider the list of previous dealings between the complainant and the BBC, cited in Appendix 4 of his appeal to the Trust, to be any more representative of his complaint history than the recent complaints cited by the Head of Communications and Complaints, six of which had been summarised in the annex to her letter. In her view, none of those complaints raised a matter of substance and, taken together, they would be sufficient in themselves (i.e. without any reference to the previous complaint history) to warrant the application of the Expedited Complaints Procedure.

The Senior Editorial Strategy Adviser therefore believed there was ample evidence to suggest that the complainant had a history of persistently or repeatedly making complaints which are trivial, misconceived, hypothetical, repetitious or otherwise vexatious (this being the ground on which the Expedited Complaints Procedure was applied in this instance), which fail to raise an issue of breach of any relevant Guidelines or Policies, or which are shown on investigation to have no reasonable prospect of success. She therefore decided that the pre-conditions for the application of the Expedited Complaints Procedure had been met.

Next, the Senior Editorial Strategy Adviser considered whether the complainant was correctly notified of the decision to apply the Expedited Complaints Procedure.

She noted that sub-paragraph 3(a) of Annex B to the Complaints Framework requires that the complainant be notified in writing of the application of the procedure to their future complaints, and specifies that such notification should include:

- i. a copy of the Expedited Complaints Procedure (via a web link or in hard copy);
- ii. the reasons why the Procedure was being applied;
- iii. for how long this Procedure would be imposed (the maximum limit being two years); and
- iv. that the complainant may appeal to the Trust against the decision to apply the procedure within 20 working days of being informed of that decision.

She noted that the complainant, in his appeal to the Trust, complained that requirements (ii)–(iv) had not been met.

She noted that the Head of Communications and Complaints' initial notification of 2 October 2012 did not include the information required under points (ii)–(iv), but that this omission was remedied in respect of points (ii) and (iv) by his further notification of 5 October 2012<sup>18</sup>.

With regard to the omission of the information required under point (iii), the Senior Editorial Strategy Adviser considered that the failure to inform the complainant of the duration of the imposition of the Expedited Complaints Procedure, while regrettable, was not sufficiently serious to invalidate the Head of Communications and Complaints' decision [see footnote 18, below].

The Senior Editorial Strategy Adviser said she would ask the Head of Communications and Complaints to provide the complainant with this information without delay. If, having received this information, the complainant considered the duration of the imposition of the Expedited Complaints Procedure to be excessive, he may appeal to the Trust [see footnote 18, below].

The Senior Editorial Strategy Adviser noted that, in his letter to the Trust of 3 October 2012, the complainant said that the Head of Communications and Complaints had referred in his email of 2 October 2012 to the BBC Complaints Framework in general, but not to Annex B in particular. She considered this point of the complaint to be both trivial and unwarranted. In her view, this citation was neither discourteous nor obstructive, as the complainant had claimed, given that the Complaints Framework is a mere nine pages long.

The complainant also said in his appeal to the Trust that he had not been informed of the ramifications of sub-paragraph 3(b)(i), (ii) of Annex B to the Complaints Framework. Sub-paragraph 3(b) concerns the BBC's handling of future complaints, and is not information that is required to be included in the written notification under sub-paragraph 3(a).

For all these reasons, the Senior Editorial Strategy Adviser had decided that there was no reasonable prospect that the appeal about the application of the Expedited Complaints Procedure to future complaints at Stage 1 of the complaints process would be upheld by the Trustees. Nor did she consider it to be appropriate, proportionate or cost-effective for the Trustees to consider this point of appeal.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the core matter was the legitimacy of a measure which effectively prohibited him from enjoying the exercise of his rights as a licence fee payer. He expressed the view that the procedure had not been applied to him dispassionately but had been applied vengefully. The complainant also raised a concern about monitoring of the application of the procedure, and suggested that not to do so was a failure of accountability.

The complainant repeated questions relating to the impartiality of the BBC which he had previously asked in his complaints to the BBC and as part of his appeal to the Trust against the application of the Expedited Procedure.

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<sup>18</sup> In fact, the notification of 5 October 2012 also included the details of the period for which the procedure would be applied.

## **The Committee's decision**

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

The Committee noted the complainant's concern about his rights as a licence fee payer. It was mindful that these rights had to be balanced with the expectations of other licence fee payers that the BBC's resources would be used appropriately. The Committee considered that the purpose of Annex B (the Expedited Procedure) was to help the BBC avoid a disproportionate use of its available resources answering repeated complaints which, for example, were trivial, misconceived or otherwise vexatious. The Committee was mindful that the application of the Expedited Procedure did not mean that the complainant could not make complaints over the period for which it was applied or that such complaints would not be read, but that the BBC was not obliged to enter into correspondence if the complaints fell within the conditions in paragraph 2 of Annex B and did not raise an issue of a breach of any relevant Guidelines or Policies. The Committee noted that the Procedure specifically requires the BBC to investigate complaints which raise an issue of a breach of any relevant Guidelines or Policies, even if they are made within the period for which the Procedure is applied.

The Committee could see no evidence to support the complainant's view that the Procedure had been applied to him for any reason other than that his correspondence had met the conditions. It did not agree that there was evidence that the Procedure had been applied vengefully.

The Committee noted the complainant's comments about monitoring of the application of the Expedited Procedure. The Committee considered that the right of appeal to the Trust was a safeguard against the inappropriate or arbitrary application of the Procedure. The Committee was also mindful that the effects of changes to the Complaints Framework introduced in 2012 were under review as part of the Trust's follow up work.

The Committee was satisfied that any initial deficiencies in the way the application of the Expedited Procedure had been communicated to the complainant were rectified by subsequent correspondence. It did not consider that these errors negated the reasons for applying the procedure.

The Committee noted the complainant's questions relating to the substance of his complaint against the BBC (regarding impartiality); however, it was mindful that the matter before it was whether it was likely to uphold an appeal against the application of the Expedited Procedure. In this context, the Committee did not consider the substance of the complaint but noted that the BBC had previously set out its position on the issues raised by the complainant. The Committee noted the sample of the correspondence which had been provided in the Annex to the Senior Editorial Strategy Adviser's decision. It also took into account the complainant's comments in response. The Committee was satisfied that there was no reasonable prospect that it would find that the complainant had not met the conditions for the application of the Expedited Procedure by BBC Audience Services. The Committee also noted that the complainant had requested that an independent decision maker in the form of someone outside the Trust should take the decision on whether the expedited procedure should be applied. The Committee noted that the Trust is the final arbiter of the decision of whether to take an appeal and does not refer its own decisions to outside bodies to consider.

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