

# Editorial Standards Findings

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

March 2013 issued May 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

## ***Morning Briefing, BBC Radio Scotland, 28 July 2011***

The complainant said that the presenter of *Morning Briefing* was wrongly given permission to appear in a television advertisement, and that Morning Briefing's news agenda was, as a result, distorted on 28 July 2011. The complainant also raised issues with the handling of his complaint by BBC Scotland.

The Committee concluded:

- that it was clear from the Guidelines that the presenter should not have been given permission to appear in the advertisement because of the potential conflict of interest with his news presenting.
- that no blame attached to the presenter himself: he had requested permission and, when he was granted it by a senior BBC person, had then, quite reasonably, gone ahead with appearing in the advertisement.
- that there had been a clear breach of the Guidelines on Conflicts of Interest as the news agenda of Morning Briefing had been distorted to take account of the presenter's appearance in a television advertisement.
- that, while not false, the effect of a statement made by the BBC with regard to the intervention of a senior manager was to mislead the complainant.
- that the delays experienced by the complainant at various stages of the BBC's handling had been unacceptable.

The complaint was upheld.

For the finding in full see pages 6 to 11.

## ***The Last Explorers, BBC Four, 14 August 2012***

he complainant alleged that in two places, the commentary summed up the history of Africa in ways that were inaccurate and biased.

The Committee concluded:

- that the programme script had been explicit in relating comments about exploitation specifically to the period known as The Scramble for Africa.
- that there was ample evidence that the colonial powers had used the process for their own advantages during the period known as The Scramble for Africa, and the use of the phrase "exploitation" in this context had been duly accurate.
- that, in the context of Livingstone's hopes and ambitions for the continent, clearly signposted throughout the programme, the commentary had been adequate and appropriate to the output.
- that the comparison of the period of the Scramble for Africa with the slave trade, although expressed in creative language, was a fair summary of contemporary opinion and was appropriate particularly when expressed following a detailed

account of Livingstone's horror at the slave trade. The phrase in question had clearly arisen out of that narrative and as such did not require further expansion into a wider perspective of African history.

- that a second phrase which the complainant had raised was a specific reference to Zambia and did not suggest that what followed across Africa was "a period of unalloyed freedom for its people" as the complainant had alleged.
- that, in the context of the sequence as broadcast, there was no requirement for an alternative view about the long-term consequence of independence in either Zambia or Africa as a whole.

The complaint was not upheld.

For the finding in full see pages 12 to 17.

### ***Thinking Allowed, BBC Radio 4, 4pm 25 April 2012***

The complainant objected to the programme host reading out an email which used the term "cox-sackers". The complainant believed that most viewers would have interpreted this as an offensive term and, as such, it was unsuitable to be transmitted at a time when children may be listening.

The Committee concluded:

- that the phrase "cox sackers" was intended to be a play-on-words and if the words had been articulated clearly, the phrase would have been within the expectation of the programme's audience.
- that the phrase was not articulated clearly enough and could easily have been misheard for the offensive word "cocksuckers" by the majority of the audience.
- that, as it was highly likely that a significant part of the audience misheard the pronunciation of the phrase "cox sackers" and believed that a seriously offensive word had been used in its place, the content was in breach of the Guidelines on Harm and Offence.
- that the word "cocksuckers", due to its offensive nature, was inappropriate within the context of this programme at any time of day, but the Committee was concerned that the content was broadcast at a time when a significant number of children are available to listen to the radio and are more likely to be travelling in cars where Radio 4 might be on during the "school run".

The complaint was upheld.

For the finding in full see pages 18 to 23.

### ***"All UK 'must be on DNA database'", BBC News Online***

This is a first party complaint from Sir Stephen Sedley about an article reporting an interview that he gave to the *Today* programme on 5 September 2007. The complaint was about the accuracy of the headline as well as some of the text in the article. In the

course of correspondence with the BBC Executive, references were also made to the accuracy of the commentary in the *Today* broadcast. The points made by the complainant in the context of the *Today* broadcast, while out of time for consideration on appeal, are equally applicable to a second online article, which the Committee also considered as part of this appeal.

The Committee concluded:

- that the thrust of an article in the London Review of Books which reproduced a lecture given by Sir Stephen in November 2004 was to set out the logical case for moving to a UK DNA data base and that this is what had been at the heart of the *Today* interview with Sir Stephen.
- that neither in the article in the London Review of Books or in the *Today* programme had Sir Stephen used the exact words in single quotes in the title of the online article title "All UK 'must be on DNA database'".
- that the use of single quotes in the headline was a journalistic device to denote that the reader is being given a summary of the sense of a key point in the article below and, while the headline was not a verbatim quotation of what the complainant had said, it did not stand alone, separate from the lines that followed it.
- that, in respect of the headline, readers would not have been misled with regards to the views of Sir Stephen. Nor had there had been a failure to comply with the guideline which requires material to be "well sourced" and "based on sound evidence".
- that, while the approach taken was duly accurate, the Committee agreed that it would have been clearer if quotation marks in the headline had not been used around words that the complainant had not actually said.
- that the essence of Sir Stephen's argument had been that a universal DNA database was the only logical option of the three options he had advanced in his London Review of Books article. The Committee was therefore satisfied that the wording used in the body of the first BBC article was duly accurate and that there had been no breach of the Editorial Guidelines on Accuracy.
- that, with regard to the second BBC article, in common understanding, the words the complainant had used in the London Review of Books article might well be interpreted as arguing for, supporting, advocating, or calling for, the outcome he proposed, and that therefore the BBC had observed "due accuracy" in using the expression "call for".
- that the editing of an interview with Sir Stephen as broadcast on the *Today* programme would not have misled the audience with regard to the substance of Sir Stephen's views.

The complaint was not upheld.

For the finding in full see pages 24 to 36.

# Appeal Findings

## *Morning Briefing*, BBC Radio Scotland, 28 July 2011

### 1. Background

Between April and November 2011 BBC Scotland employed a freelance journalist, Colin Kelly, to present the early morning radio news programme, *Morning Briefing*.

During the period he was presenting *Morning Briefing*, Mr Kelly also appeared in a TV advertisement on STV, the Scottish commercial channel. The advertisement was transmitted in the week beginning 25 July 2011 and it featured an event at the Glasgow Science Centre on Saturday 30 July 2011.

The complainant said that Mr Kelly, as a regular news presenter, should not have been given permission by BBC Scotland management to appear in the advertisement.

On 28 July 2011, the BBC News website and some other news outlets, including BBC Radio Scotland for part of the day, carried a story about the Glasgow Science Centre.

The story concerned continuing technical problems with Glasgow Science Centre's rotating tower. Sandra White, MSP for Glasgow Kelvin, was questioning why the tower was again closed to visitors during a busy time of the year, and she called for an inquiry.

The Glasgow Science Centre tower story was not reported by *Morning Briefing*. The programme was presented that day by Mr Kelly. The absence of the story, the complainant said, was connected with the fact that Mr Kelly had been appearing in the STV ad for the Science Centre.

The complainant also said his complaint was poorly dealt with.

### 2. The complaint

#### Stage 1

The complainant contacted the BBC on 28 July 2011 to complain that the presenter of the *Morning Briefing* programme, Colin Kelly, had been "allowed to front TV adverts for the Glasgow Science Centre". This was a "breach of editorial guidelines," he said. He asked whether there was any connection between this and the fact that the show "failed to carry a negative story about the Science Centre" that morning. The story had been covered prominently across the rest of BBC Scotland's output, he said.

The complainant chased a response on 18 October 2011. On 7 November 2011 a reply from BBC Scotland's Managing Editor, News and Current Affairs was relayed to the complainant by BBC Audience Services. The response included the following points:

- Mr Kelly was employed on a freelance basis.
- The BBC did not want to place unnecessary restrictions on "talent" but it was essential that promotional activities did not undermine the integrity of the BBC, the presenter or the programmes with which they were associated.
- When engaging freelance talent, consideration was given to existing advertising or promotional commitments and a judgement was made on

whether any such commitments would have an undue influence on any news programme's editorial agenda.

- Clearly there were fundamental risks to the editorial integrity of a programme if a presenter's promotional activities could distort its agenda by forcing the omission of items or changing what it covered.
- Mr Kelly had asked for and was given permission to take part in the advert because it had been felt that it did not in any way undermine the BBC's integrity.
- The Science Centre story had not been particularly significant, in any case, and had not featured as prominently elsewhere on the BBC as the complainant had suggested.

The complainant responded on 9 November 2011, saying he was not satisfied because the response had not addressed the issues he had raised. He said it was clear the Editorial Guidelines had been breached.

The complainant chased a response on 6 January 2012. On 12 January 2012, Audience Services replied, apologising for the delay. It relayed a further response from BBC Scotland's Managing Editor, News and Current Affairs, which included the following points:

- Mr Kelly was not a "regular news presenter" as defined in the Guidelines. He was freelance and part-time, and the BBC had honoured his pre-existing freelance commitments.
- Further investigation had now shown that Mr Kelly was not in an advertisement for the Science Centre. The ad was for the STV programme "The Hour", in which Mr Kelly was a freelance presenter as the "gadget expert".
- With the BBC, Mr Kelly was on radio and in news; with STV he was on TV and in features.

The complainant said on 13 January 2012 that he was still not satisfied and wished to escalate the complaint.

## **Stage 2**

The Head of Public Policy and Corporate Affairs, BBC Scotland, responded on 19 January 2012. He said he considered the responses the complainant had received adequately addressed the issues raised. The complainant was advised to contact the BBC Trust if he wanted to take things further.

On 20 January 2012 the complainant set out his appeal (see next section). As part of this appeal, he said he had information that the producer of *Morning Briefing* had been instructed by a senior member of management to omit the Science Centre story from the programme on 28 July 2011.

On 8 February 2012 the complainant chased the appeal. The Trust Unit replied that day, apologising for the delay, and explaining that the appeal correspondence had been passed back to the Head of Public Policy and Corporate Affairs, BBC Scotland, for him to provide a response on new points raised. This response would go directly to the complainant, said the Trust Unit, and the complainant could then re-submit his appeal if he wished.

The complainant chased a further response during March and April 2012.

The Head of Public Policy and Corporate Affairs, BBC Scotland, sent a reply to the complainant on 9 May 2012 (although the complainant said he did not receive this until it was forwarded by the Trust on 17 May 2012 from Audience Services records).

The response included an apology for the delay and the following statement:

"I have spoken to the Head of News and Current Affairs, BBC Scotland, on this issue and he has confirmed to me that there is no truth in the allegation [that a senior member of BBC Scotland management instructed the programme producer to omit the Science Centre story from that morning's programme]."

The Trust Unit made further enquiries and told the BBC Executive that the Trust planned to carry out some preliminary investigations. The BBC's Chief Complaints Editor decided to ask the Head of the Editorial Complaints Unit (ECU) to carry out some further investigation on behalf of the Executive before the Trust made its enquiries. The Trust Unit passed the complaint back again to the Executive. The complainant was informed about this on 12 July 2012.

On 7 December 2012, the Head of the ECU responded substantively. He apologised to the complainant for the delay and said his investigations had concluded that there had, indeed, been an intervention in relation to omitting the Science Centre story from that morning's programme. However, the intervention had been a "legitimate exercise of editorial judgment by someone authorised to exercise it". The Head of the ECU's findings included the following:

- The Producer of *Morning Briefing* had decided the previous evening to include the Science Centre story the following morning.
- She had received a call later that night from the Assignments Editor, News and Current Affairs, who had suggested the item should not be included.
- There was agreement that the suggestion was made "in the light of the presenter's activities in connection with the Science Centre at the time". The Assignments Editor recalled his intention was to "avoid any appearance of conflict of interest".
- There was clarity at the time that the story would run on other BBC Scotland news outlets during that morning, which it did.
- The Producer "saw fit to follow through with the suggestion".

### **Appeal to the Trust**

The complainant wrote to the BBC Trust on 8 December 2012, saying that he wanted to progress his appeal. His main areas of concern included the following:

- BBC management should not have given permission for one of its regular news presenters to appear in a TV advertisement promoting the Science Centre. This was a clear breach of the Guidelines.
- The same week, *Morning Briefing* did not carry a negative story about the Science Centre, which was carried with some prominence on other BBC Scotland news outlets.

- The ECU had found that the news agenda had been distorted in exactly the way that the Guidelines warned was a danger. This was “a very serious lapse in editorial judgement,” said the complainant.
- On the handling of his complaint, various false assertions and delays led him to conclude that “BBC Scotland cannot be trusted to investigate complaints with any competence or integrity, nor to do so in a timely manner...”

The complainant raised the following two points in relation to the Editorial Guidelines on Conflicts of Interest:

- First element of the appeal: That Colin Kelly, as a regular news presenter, should not have been permitted by BBC management to appear in a TV advertisement promoting the Glasgow Science Centre.
- Second element of the appeal: That the news agenda of Morning Briefing on 28 July 2011 was distorted to take account of the presenter’s appearance in the TV ad, in that a story about the Science Centre was dropped from the news list that morning.

The complainant raised the following point in relation to the Accountability guidelines, specifically those on complaints handling:

- Third element of the appeal: The quality of responses was poor, in that they contained false assertions, and that responses were not made in a timely manner.

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

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

The sections on Conflicts of Interest (Section 15) and Accountability (Section 19) are relevant to this case.

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

<http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidance-conflicts-off-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 all the available evidence, including (but not limited to) the Editorial Adviser’s report and further comments from the complainant and the BBC.

#### First element of the appeal

The Committee considered the first element of the complainant’s appeal: that Colin Kelly, as a regular news presenter, should not have been permitted by BBC management to appear in a TV advertisement promoting the Glasgow Science Centre.

The Committee noted that BBC Scotland now said the following:

“On reflection we accept that the length of his [Mr Kelly’s] tenure on Morning Briefing may at that time have been sufficient to identify him as [a] ‘regular’ [news presenter]...

Had he been considered to be a regular presenter, then BBC Scotland would not have allowed him to undertake activities outwith the duties connected with that post...”

The Committee considered the Editorial Guidelines on Conflicts of Interest and concluded that on a common sense view and even if Mr Kelly had worked on the programme for a shorter time, it was clear from the Guidelines that Mr Kelly should not have been given permission to appear in the advertisement because of the potential conflict of interest with his news presenting.

The Committee wished to emphasise that no blame attached to Mr Kelly himself: he had requested permission and, when he was granted it by a senior BBC person, had then, quite reasonably, gone ahead with appearing in the advertisement.

The Committee noted that BBC Scotland now also accepted that the STV advertisement in question was for the Science Centre and not for STV’s programme, *The Hour*, as had previously been stated to the complainant. The Committee further noted that the individual who had asserted that the advert was for *The Hour* had not actually viewed it for herself at that stage.

In conclusion, on this first element of the appeal, the Committee agreed that there had been a clear breach of the Guidelines on Conflicts of Interest.

#### Second element of the appeal

The Committee then turned to the second element of the appeal: that the news agenda of *Morning Briefing* on 28 July 2011 was distorted to take account of the presenter’s appearance in the TV advertisement, in that a story about the Science Centre was dropped from the news list that morning.

The Committee considered the evidence collected for the appeal, and the statements from the various parties involved. The Committee noted that the Producer of the programme said it had been her intention to include the Science Centre story in that morning’s programme. It further noted that the Newsgathering Editor, supported by the Head of News and Current Affairs, had made the decision that the item should not run on *Morning Briefing*, but should be considered “on merit” for the news programme that followed and that, accordingly, he had instructed the Producer not to use the Science Centre story on *Morning Briefing*.

The Committee understood that this action was intended to avoid the risk of the perception of a conflict of interest, since the Newsgathering Editor recognised that listeners might also have seen Mr Kelly, the programme’s presenter, in an advertisement for the Science Centre. Nevertheless, the Committee’s view was that other options were available, which would not have involved dropping the item from the Morning Briefing news list, including deploying another presenter to cover the story. Furthermore, the Committee agreed that the effect of omitting the item and changing what the programme covered was that the programme’s agenda had been distorted to take account of Mr Kelly’s promotional activities, thereby allowing these to influence the BBC’s editorial judgements.

In this second element of the appeal, the Committee agreed that there had been a clear breach of the Guidelines on Conflicts of Interest. The news agenda of *Morning Briefing* had been distorted to take account of the presenter's appearance in a TV advertisement; it was beside the point, the Committee concluded, that the Science Centre story had run on the programme that followed.

### Third element of the appeal

The Committee considered the third element of the appeal, concerning the handling of the complaint. This involved consideration of the Guidelines on Accountability, in particular the section on feedback and complaints.

The complainant said that the quality of the responses he received from BBC Scotland was poor, in that they had contained false assertions, and that responses had not been made in a timely manner.

On the false assertions, the Committee noted that the complainant considered there had been two particular instances of these: the assertion that the TV advertisement had not been for the Science Centre, but for the STV programme *The Hour*; and the assertion that there was "no truth in the allegation" that a senior manager had asked for the item on the Science Centre to be dropped from *Morning Briefing*.

The Committee was mindful that the BBC had already accepted it had been mistaken in its assertion about the nature of the advertisement. On the question of the intervention by senior management, the Committee did not accept the BBC's argument that the Newsgathering Editor was not defined as "senior management" and was, instead, a senior member of the news management team meaning there was "no truth" in the alleged intervention. The Committee agreed that the complainant could not have been expected to take account of the inner workings of the BBC when phrasing his complaint. Moreover, it had demonstrably been the case that a news editor had, indeed, intervened. Whilst the BBC considered it was not false to assert there was "no truth" in the allegation, the Committee agreed that the effect of the statement was to mislead the complainant.

On the delays the complainant had experienced at various stages of the BBC's handling, the Committee agreed that these delays had been unacceptable. The Committee was dismayed to note the extremely long time – since the end of July 2011 – that the complainant had been pursuing these issues.

Having regard to the Editorial Guidelines on Accountability, the Committee concluded that there had been clear breaches of those Guidelines in relation to the handling of this complaint.

### **Finding: Upheld.**

## ***The Last Explorers, BBC Four, 14 August 2012***

### **1. Background**

*The Last Explorers* was a four-part documentary series, repeated on BBC Four in August 2012, in which the broadcaster and historian Neil Oliver charted the story of four Scottish explorers “who planted ideas rather than flags”. This was the first of the series, in which Mr Oliver travelled down the Zambezi River to reveal how David Livingstone used the faith of his nation and exploited his celebrity to end the slave trade. His was a moral mission: to reshape British values and “bring commerce, Christianity and civilisation to the African continent.”

The complainant took issue with two sections of the commentary from Neil Oliver:

“The Scramble for Africa was an opportunity, and also a ruse to throw tribal populations under the yoke and create a system of exploitation that was every bit as shameful as the slave trade”.

And

“Zambia was one of those new nations. By 1964 they were very glad indeed to be free of the Imperialist yoke. They celebrated.”

### **2. The complaint**

#### **Stage 1**

The complainant contacted BBC Information to complain about the programme summing up the history of Africa in the 20th century as “a period of exploitation and oppression” with no redeeming features, a comment which he considered to be of no direct relevance to the programme.

He also complained about what he described as a reference to post-colonial Africa as “a period of joyous liberty” ignoring what he described as a “grim” record of horrors in numerous countries.

The BBC’s final response at this stage stated that it had not been in the programme’s remit to explore at length the relative merits of colonialism versus independence – but that the brief references had been entirely appropriate.

#### **Stage 2**

The complainant wrote to the Editorial Complaints Unit on 24 September 2012 to escalate his complaint.

The Editorial Complaints Unit did not uphold the complaint and referred the complainant to the BBC Trust at the next stage of the process.

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

The complainant appealed to the ESC on 4 December 2012 re-stating the two principal points from his correspondence with the ECU.

#### **Commentary A**

The complainant said that the line:

“The Scramble for Africa was an opportunity, and also a ruse to throw tribal populations under the yoke and create a system of exploitation that was every bit as shameful as the slave trade”

Could only be read as a comment on the whole period of colonial history and was not limited to the period of the Scramble for Africa as the BBC had said. The Complainant also believed it was wrong and biased to have made the comparison to the slave trade and to have ignored many positive consequences of colonisation.

### ***Commentary B***

The complainant said that the later line “Zambia was one of those nations. By 1964 they were glad indeed to be free of the Imperialist yoke. They celebrated.”, though referring to Zambia, was intended to convey the message that post-colonial Africa was a continent of people contented and happy at having thrown off the colonial yoke. The complainant believed this line would be taken as a comment on all African independence and not just events in Zambia. He thought this was biased and ignored the many horrors of African history after the past 50 years. He also said that in Zambia, however much people celebrated at the time, they had plenty to complain about later.

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

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

The sections on Accuracy (Section 3) and Impartiality (Section 4) are relevant to this case.

### **4. The Committee’s decision**

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

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

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

The Committee considered whether the requirements for due accuracy had been met taking into account the subject and nature of the content and the likely audience expectation. It also considered whether the BBC had demonstrated that the content was well sourced, presented in clear and precise language and whether it knowingly and materially misled its audiences.

The Committee also considered whether due impartiality had been achieved in a way that was adequate and appropriate to the output, taking into account the subject and nature of the content and the likely audience expectation, and if the BBC had demonstrated it was fair and open-minded when examining evidence and weighing material facts.

### ***Commentary A***

The Committee considered the first part of the commentary raised by the complainant:

“But what followed was less attractive; other European empires became interested in Africa. At least in part because explorers like Livingstone had mapped great swathes of it. The Scramble for Africa was an opportunity, and also a ruse to throw tribal populations under the yoke and create a system of exploitation that was every bit as shameful as the slave trade. Livingstone’s fame had drawn all Europe’s eyes to Africa. He’s made their maps for them. So it is altogether a blessing that he couldn’t see the ugly future when he died that night in 1873.”

The Committee noted that the complainant objected to the characterisation of what had occurred solely as a system of exploitation, and he also objected to the comparison with the slave trade.

The Committee noted the complainant’s view that this part of the programme did not only refer to the period described as “the Scramble for Africa”, and that he considered the commentary to be a slur on the British colonial record in general.

The Committee noted that the complainant thought the commentary should have been balanced by including references to the achievements made during the colonial and post-colonial periods as, in his view, the commentary was critical of the period from the colonisation of Africa through to the present day.

The Committee noted the BBC’s response that it had not been in the programme’s remit to explore at length the relative merits of colonialism versus independence and that it had been appropriate to include this commentary as a precursor to the final sequence of the programme which had looked at how Livingstone had been one of the relatively few Europeans who remains a celebrated figure in Africa.

The Committee noted that the Editorial Complaints Unit had said that it was a matter of record that colonisation in this period had resulted in the exploitation of the indigenous population and natural resources. The ECU did not agree that the commentary referred only to the British colonial record but, rather, that it had been about European colonisation as a whole.

The Committee noted that the ECU had concluded that it was clear the script was about a period known as “the Scramble for Africa”, from 1880 to 1914, and that it was not a comment on the complainant’s post-colonial service. The ECU also concluded that it did not follow from the script that there had been no benefits from the process.

The Committee noted that the ECU had found that the commentary had not been an attempt to sum up the history of colonial Africa and that it had been duly accurate.

In considering this element of the complaint, the Committee noted the phrase “the Scramble for Africa” and considered how that is generally interpreted. The Committee noted that there is no settled view on the exact timeframe for this period, but that the Berlin Conference of 1884-85 called by Otto von Bismarck began the process of dividing African land amongst the European powers. This produced the General Act of Berlin in 1885 which, although it produced no definitive carve-up of the lands, did initiate “the scramble” for partitioning the continent<sup>4</sup>.

The Committee noted that the ECU had quoted a source as suggesting that the Scramble for Africa continued until 1908 [Colonialism in Africa]. The Committee noted that the Trust

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<sup>4</sup> <http://www.gresham.ac.uk/lectures-and-events/the-scramble-for-africa>

Unit's investigation had found no authoritative sources which placed the end of the period after the start of World War I. The Committee was of the view that specific start and end dates did not need to be determined in order to judge this element of the complaint, but it agreed that the period is widely understood to have started in the early 1880s and come to an end no later than the start of World War 1.

The Committee considered that the programme script had been explicit in relating the comments about exploitation specifically to the period known as The Scramble for Africa.

The Committee concluded that it could not agree with the complainant, who believed it was a comment on the work of him and any of his colleagues working in the colonial service beyond that period, and in his case, specifically the 1950s.

The Committee considered that a central point when considering whether there was due accuracy was the word "exploitation".

The Committee noted in particular three descriptions of the use of forced labour during the period known as the Scramble for Africa:

"Forced labour was omnipresent under colonial rule. European administrations were in urgent need of cheap resources to build up systems of transport and communication within the newly conquered regions of the African continent, to create and maintain an infrastructure". [Source: Humboldt University paper]

"Forced labour was an integral ingredient of systems of European colonial domination on the African continent .....Moreover, earlier mechanisms through which the state directly offered forced labour to privately owned plantations came to be replaced by more subtle forms – for example through vagrancy laws by which Africans categorized as "unemployed" had to accept extended contracts on plantations as the only alternative to imprisonment or punishment through labour on public works". [Source: paper to 8th Iberian congress of African studies 2012]

"The King gave free rein to the Belgian businessmen to go in and exploit it. They had wide latitude in running the colony, with no accountability to anyone except the King whose only interest seems to have been timely royalty payments. Exploitation was extensive and brutal; forced labour was rampant. Virtual slavery existed, as Africans who resisted being drafted to work or who did not work hard enough were flogged in public or had their hands and ears cut off. This regime was subject to a commission of investigation by the Belgian government in 1904." [Source – Pearson Higher Education Paper]

The Committee considered that the word "exploitation" generally implied the use of people or resources for one's own ends and it agreed that it was understood that the process of colonisation, in the period referred to, had involved just that.

The Committee agreed that there was ample evidence that the colonial powers had used the process for their own advantages during the period known as The Scramble for Africa, and the use of the phrase "exploitation" in this context had been duly accurate.

The Committee then considered the complainant's view that the commentary had also failed to achieve due impartiality because it did not acknowledge any of the benefits that colonisation had brought. The Committee took into account the guideline requirement for material to achieve due impartiality by being adequate and appropriate for the subject and nature of the programme.

The Committee considered that it was appropriate to conclude a programme on Livingstone and his legacy by briefly summarising what happened after his death. The programme did not, in the Committee's view, attempt to provide a detailed and balanced view of the history of colonial Africa – nor was it a requirement for the Editorial Guidelines for the programme to have done so. The Committee agreed that, in the context of Livingstone's hopes and ambitions for the continent, clearly signposted throughout the programme, the commentary had been adequate and appropriate to the output.

The Committee looked at the complainant's assertion that the comparison with the earlier slave trade was itself an example of a desire by the programme makers to present a false impression of African history which was one-sided.

The Committee believed that the comparison of the period of the Scramble for Africa with the slave trade, although expressed in creative language, was a fair summary of contemporary opinion and was appropriate particularly when expressed following a detailed account of Livingstone's horror at the slave trade. The Committee concluded that the phrase had clearly arisen out of that narrative and as such did not require further expansion into a wider perspective of African history.

The Committee concluded, having regard to the Editorial Guidelines on Accuracy and Impartiality, that there was no breach of those Guidelines in the first part of the commentary identified by the complainant.

### ***Commentary B***

The Committee next considered the complainant's objections to the second phrase:

"Zambia was one of those new nations. By 1964 they were very glad indeed to be free of the Imperialist yoke. They celebrated."

The Committee noted that the complainant had said that this could only be read as describing the history of post-colonial Africa "as a period of unalloyed freedom for its people". He contrasted this with examples of tyranny and corruption in other African countries, and specific criticism of post-independence government in Zambia.

The Committee noted that the Editorial Complaints Unit had not agreed with the meaning that the complainant had taken from the phrase, and had concluded that it was a specific reference to Zambia which did not have the effect that the complainant assigned to it.

The Committee noted that the programme moved on to a Zambian village in the country where it stated that there had been "one of Zambia's first great celebrations" at independence. The Committee considered this reinforced the view that the commentary was referring to Zambia rather than Africa as a whole.

The Committee did not believe that the general audience would have shared the complainant's view that the sequence suggested that what followed across Africa was "a period of unalloyed freedom for its people". Nor, in the context of the sequence as broadcast, was there any requirement for an alternative view about the long-term consequence of independence in either Zambia or Africa as a whole.

The Committee considered the Editorial Guidelines on Accuracy and Impartiality and concluded that this second part of the commentary was duly accurate and duly impartial; and it found there had been no breach of the Guidelines with regard to this second part of the complaint.

**Finding: Not upheld.**

## ***Thinking Allowed, BBC Radio 4, 4pm 25 April 2012***

### **1. The programme**

The BBC website describes the BBC Radio 4 series *Thinking Allowed* in the following terms:

"Laurie Taylor explores the latest research into how society works and discusses current ideas on how we live today."

The programme has been running since 1998 and is hosted by Laurie Taylor, formerly a Professor of Sociology at the University of York.

### **2. The complaint**

The complainant objected to "a grossly offensive play on words" in this edition of *Thinking Allowed*. The host, Laurie Taylor, read out an email from an audience member which used the term "cox sackers". This referred to an item the previous week of the sacking of a cox from a rowing team. The complainant believed that most listeners would have interpreted this as an offensive term and it was unsuitable to be transmitted in a programme broadcast at 4pm when children may be listening.

#### **Stage 1**

The complainant contacted the BBC on 25 May 2012 to complain about the use of "the crude and offensive words read out by the presenter" of *Thinking Allowed*. BBC Audience Services' final reply was sent on 12 June 2012, including a response from the programme team who said that the phrase used was "cox sackers", but this should have been pronounced more clearly.

#### **Stage 2**

The complainant escalated her complaint to the Editorial Complaints Unit (ECU) on 21 June 2012, adding a concern about the way the complaint had been handled and that she had not been advised that she could take her complaint further.

The ECU informed the complainant that her concerns about the handling of her reply had been forwarded to the Head of Editorial Standards for BBC Audio and Music who would respond directly.

In response to the complaint about the item broadcast, the ECU concluded that "it is the kind of joke which is not to everyone's taste and may well upset some listeners", but it was not a breach of the Editorial Guidelines.

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

The complainant wrote to the BBC Trust on 29 September 2012 to ask the Editorial Standards Committee (ESC) to review the ECU's finding. The complainant felt that "a grossly offensive play-on-words" had not been dealt with satisfactorily. The complainant believed that most listeners would have interpreted Laurie Taylor's reading of "cox sackers" as an offensive term.

In reply, the Trust Unit explained that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

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

The complainant said that her case for reconsideration was based on the following points:

- “The words used were deliberately intended to be identified as a crude sexual expression...” The fact these were not “the actual words used by the writer of the e-mail and aired by the presenter of the programme is not a justifiable reason to consider the item acceptable”. The intention of the writer to respond to an item on the previous week’s programme was “beside the point and an attempt only to legitimate a crude and offensive action”.
- This item was broadcast at 4.30pm when older children aged eleven or twelve may have been listening and might have considered it “a suitable phrase to use themselves”. Young children may not have understood the pun, but older children may have.
- There was no ‘signposting’ of the item.
- There seem to be contradictory views about the pronunciation of the words between the producers and the ECU and the Trust. The producers acknowledge that the words should have been “separated and enunciated rather more clearly” whilst the ECU and the Trust describe the ‘a’ in sackers as being “very carefully sounded”.
- “Mr Taylor and his producer should have been taken to task for their actions before any listener had complained about the item in question. The fact that this was not done shows a deficiency in those we trust to carry out this work.”
- This is “the thin end of the wedge with regards to the broadcasting of sexual material by the BBC and that limits to what is acceptable in terms of crude sexual references will soon disappear”.

The Committee reviewed the decision not to accept the appeal at its meeting on 16 January 2013. At that meeting the Committee decided that the complaint did qualify for consideration on appeal.

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

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

The section on Harm and Offence (Section 5) is relevant to this case.

### **4. The Committee’s decision**

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

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

The Committee noted that the Guidelines relating to Harm and Offence are relevant to this appeal. The Committee noted that the Guidelines require the BBC to apply generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. In considering whether the BBC had met generally accepted standards regarding the use of apparently offensive language in this case, the Committee noted this is a matter of judgment, taking into account the content, the context in which it appears and editorial justification. In this case, this included the Committee considering the particular content in question, the time it was broadcast, the service on which it was broadcast, the potential audience, likely audience expectation, and whether any offence was likely to be caused by the inclusion of this particular content in this programme. In considering whether the appropriate standard had been met the Committee also considered whether the BBC had met the standards required for radio which include reference to the extra care that must be taken in scheduling an item when different generations may be listening together, for example during afternoon school runs.

The Committee noted the context in which the email containing the phrase "cox sackers" was read out. The presenter had read out the email in relation to an item broadcast in the previous show on 18 April 2012. This concerned an article published in the British Journal of Sociology about the importance of achieving the correct rhythm when rowing. The presenter interviewed one of the authors, who explained that they had studied the Cambridge Boat Race crew to find out how they achieved their rhythm when rowing. They had found that political and social factors came into play, as well as physical technique, and it was very important to have social harmony within the rowing team. There had been conflicts in the team, which had resulted in the coach being replaced and the cox being sacked. There was nothing wrong with the cox and his skills, but this team decision had brought them closer together. After this decision, the team's stroke improved and they went on to win the race that year.

The following week the presenter read out the email from a listener in New York responding to this item. The email appeared to be making fun of this pseudo-scientific approach to what was apparently a straightforward physical skill. The email read:

"Many thanks to your contributors for their insight into the social dynamics of the Cambridge Boat Race crew ... 'Heavens to Betsy' what a bunch of cox sackers."

The Committee noted that at Stage 1 the programme team stated that "the actual words were cox sackers. But although these words should have been separated and enunciated rather more clearly, we realise they weren't." Although an offensive phrase was not used, they apologised for any offence caused.

The Committee noted the following points made by the Complaints Director of the ECU:

- "...any offence caused derives from the fact that a potentially offensive phrase is only suggested by its similarity to the phrase used. The offensive words themselves are not actually used."
- "...the words were actually enunciated with a considerable degree of care and that, particularly, the 'a' in 'sackers' was very carefully sounded so that the word actually being used was quite clear."
- "...the effect is much softened by the fact that it is used in a light-hearted and humorous manner, and not at all aggressively or angrily".
- "Radio 4 is essentially an adult radio channel" and would "tailor its output – including its humour- accordingly".

- The same edition had carried an item on prostitution in India.
- The joke required “a degree of sexual knowledge to understand the pun being made” and would “have been completely lost on any young children” if listening.

The Committee noted the audience research about listeners’ attitudes to offensive language on radio and specifically the potential offensiveness of the word ‘cocksuckers’.

An Ofcom report researched offensive language on television and radio and found that radio was perceived differently to television:

“Radio is often described as a much more personal medium than television. Many people listen to radio when they are by themselves. For most of the listeners in our research, content on radio simply does not present a problem. Most, including the teenage groups, said they were not offended by what they heard on those radio stations they choose to listen to. The key difference between radio and television appears to be that radio stations are by their nature more ‘targeted’ than television channels and listeners are less likely to encounter surprising or offensive material ‘by chance’.

The minority who had been offended were nearly all parents, who have been offended by something played on the radio, usually during the school run.” (This mainly concerned song lyrics.)

The report also carried out research on the use of specific words and found that “cocksucker” was seen as offensive across all audience groups:

“For most this is strong and offensive, especially when used as an insult to women.”

This report, *Language and Sexual Imagery in Broadcasting: A Contextual Investigation* (Ofcom 2005), is available at <http://stakeholders.ofcom.org.uk/binaries/research/radio-research/language.pdf>

A BBC research report, *Taste, Standards and the BBC (2009)*, found that radio is of less concern than television in the area of standards, but if offensive material is broadcast in scripted programmes then that is considered more problematic.

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

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

“Like the issue of scripting in TV, recorded radio programmes are more problematic, and they are judged more harshly if it is felt the programme could have been edited to remove offensive content. However, this is not a blanket judgement on behalf of the audience - an example of an archive recording of an interview with John Lennon, in which he repeatedly uses the ‘f-word’ at 9am on Radio 4, was seen as acceptable to most listeners as he clearly uses strong

language to express his depth of feeling and those who are familiar with him are more likely to know what to expect.”

The report stated that higher standards are expected of all BBC national and local radio stations and, specifically, with reference to Radio 4:

“Radio 4, amongst the listeners we spoke to, is also considered to have high standards of morality, values and behaviour, although its listeners are more likely to find the occasional use of strong language or sexual reference acceptable if the programme requires it.”

The report is available at

[http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/taste\\_standards\\_key\\_findings.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/taste_standards_key_findings.pdf)

The Committee noted that the BBC had published an Editorial Policy Newsletter on 26 January 2012 which reported on recent Ofcom guidance about strong language on radio. There were no changes to the Ofcom Code, but the BBC drew attention to the following:

“The guidance does however urge care 'when children are particularly likely to be listening'. Ofcom considers this means radio broadcasters should have particular regard to their content from 6am to 9am and 3pm to 7pm on term-time weekdays, and from 6am to 7pm on weekends and school holidays. However, the extent to which children are 'particularly likely to be listening' may still vary from radio station to radio station - and Ofcom says it will take account of 'all relevant information available' when determining likely audience composition.”

This Newsletter is available at

<http://www.bbc.co.uk/guidelines/editorialguidelines/newsletters/8/>.

The Committee noted that there are no audience figures available for children listening to this programme as sample sizes are too low to establish how many children were listening. There were an average of 615,000 children aged 10-14 listening to all radio output during this time slot each week in April to June 2012.

The Committee considered that the phrase “cox sackers” was intended to be a play-on-words and if the words had been articulated clearly, the phrase would have been within the expectation of the programme’s audience. However, having listened carefully to the pronunciation of the phrase, the Committee believed the phrase was not articulated clearly enough and could easily have been misheard for the offensive word “cocksuckers” by the majority of the audience. On this point, the Committee agreed with the programme team that the words should have been “enunciated rather more clearly” and noted their apology to the complainant at Stage 1.

Having concluded there was a strong likelihood that the audience would have misheard the phrase, the Committee noted that the word “cocksuckers” is considered to be a seriously offensive word across all audience groups. On this basis, the Committee considered that in this type of programme, where there would be little expectation of strong language, the pronunciation of “cox sackers” in this broadcast would exceed generally accepted standards. The Committee believed that the word “cocksuckers”, due to its offensive nature, was inappropriate within the context of this programme at any time of day. The Committee noted that the particular pronunciation of the phrase “cox sackers”, which the Committee had concluded was highly likely to have been misheard by a significant part of the audience as “cocksuckers”, was broadcast at around 4.15pm. Although the Committee took into account that very few children listen to Radio 4, the Committee was concerned that the content was broadcast at a time when a significant

number of children are available to listen to the radio and are more likely to be travelling in cars where Radio 4 might be on during the "school run".

Having regard to the Editorial Guidelines on Harm and Offence, the Committee concluded that the programme was in breach of those Guidelines. 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 material. As it was highly likely that a significant part of the audience misheard the pronunciation of the phrase "cox sackers" and believed that a seriously offensive word had been used in its place, the content was in breach of the Guidelines. The Committee wished to apologise for any offence caused by this broadcast.

The Committee agreed that it did not expect this segment to be featured in any repeat broadcast of this programme.

**Finding: Upheld.**

# "All UK 'must be on DNA database'", BBC News Online

## 1. Background.

### Context

This is a first party complaint from Sir Stephen Sedley about an article (referred to in this finding as "the first article") reporting an interview that he gave to the *Today* programme on 5 September 2007. The first article can be found here: <http://news.bbc.co.uk/1/hi/uk/6979138.stm>.

The *Today* programme on 5 September 2007 included a long item based around an interview with Sir Stephen. This is the piece that is the basis for the first article which triggered this complaint. The *Today* programme also included a cut down version of the piece which was used in the news bulletins, and a section of the interview was used again before an interview with Tony McNulty, the then responsible Home Office minister.

The interview on the *Today* programme related to the need for a UK database, a topic that had been addressed by Sir Stephen in a lecture in November 2004. The lecture was then reproduced in the London Review of Books in January 2005 and again in Sir Stephen's book: *Ashes and Sparks: Essays On Law and Justice* (Cambridge University Press 2011).

The first article was written on the same day as the interview on the *Today* programme was transmitted but it was only noticed by Sir Stephen in August 2012.

Sir Stephen's complaint about the first article was about the accuracy of the headline as well as some of the text in the online article. The complainant requested that the first online article be corrected and said that reference to it continues to be made in a Wikipedia entry concerning him. In the course of correspondence with the Executive, references were also made to the accuracy of the commentary in the *Today* broadcast. The point made by the complainant in the context of the *Today* broadcast are equally applicable to a second online article (referred to throughout as "the second article") which can be found here: (<http://news.bbc.co.uk/1/hi/uk/6979490.stm>).

## 2. The complaint

### Stage 1

The complainant first wrote to the BBC on 28 August 2012 asking for a correction to the first article and said:

"The posting is materially misleading. It carries a headline [All UK 'must be on DNA database] which is unsupported by anything in the text, and is unfairly selective in what the text contains."

Following correspondence in which Sir Stephen expressed his concern about the original *Today* item as well, the Assistant Editor of the *Today* programme stood by the item and the article and its headline, saying that he saw no problem with the words used:

"I'm afraid I still cannot see any substantive difference between the extract of the interview listeners heard and the interpretation placed on it by our correspondent, other colleagues in the BBC and journalists elsewhere."

## Stage 2

The complainant said that the online article:

"...by its headline ("must be") and in its text ("the only option") attributes to me an extreme position which I have never taken."

And that the:

"...attempt to defend it by citing the Today programme's coverage of the interview on which it was based faces the difficulty that the coverage also attributed to me something I had not said."

The Editorial Complaints' Unit considered the complaint under the "due accuracy" guideline. The ECU concluded that the article in question accurately represented the complainant's views and it declined to uphold the complaint.

In his final letter to the complainant, the ECU Complaints Director said:

"I accepted that you did not state, as a matter of fact, that there was only one option available. What you did say, it seemed to me, was that there was only one option which should be adopted and that was the option of a national DNA register. It is plain to me that this is the meaning the article intends to convey and I cannot agree that it unfairly represents the views you expressed."

## Stage 3

The complainant appealed to the BBC Trust and said:

"As can be seen, [the Complaints Director] has admitted that the headline on the website is inaccurate but declines to do anything about it. I am also concerned that the content of the posting is one-sided."

The complainant added that the:

"...sensationalising by the BBC of what I had hoped was a sane discussion of the pros and cons of a universal DNA register"

means that he no longer accepts invitations to be interviewed by the BBC.

The complainant raised the following points in relation to the accuracy of the online content and Today programme broadcast:

- Point (A) - the headline used in the first article is not duly accurate. The title read *All UK 'must be on DNA database'*. (Sir Stephen states that he never said that all UK "must be" on DNA database);
- Point (B) - the text in the body of the first article which reads "he said the only option was to expand the database to cover the whole population" is inaccurate, as he did not say this; and
- Point (C) - in relying on the *Today* programme item to defend the article the BBC were wrong, as the *Today* programme did not accurately report what he said (Sir Stephen objected to the use of the phrase "calling for").

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

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

The sections on Accuracy (Section 3) are relevant to this case.

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

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

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

#### **Point (A) - the headline used in the first article is not duly accurate (Sir Stephen states that he never said that all UK "must be" on DNA database).**

The Committee noted that Sir Stephen objected to the words 'must be' in the headline of the first online article *All UK 'must be on DNA database'* (and the use in the text of the wording 'the only option was to expand the database to cover the whole population and all those who visited the UK, even for a weekend') because he considered this attributed to him an extreme view which he had never taken.

The Committee noted that the complainant said he was laying out the options rather than proclaiming a call to action and:

"...that we were in a legally untenable situation from which the escape was either to abandon DNA record-keeping or make it universal".

The Committee noted the position of the Today programme that:

"It could perhaps be argued that there is some distinction between "must" and "should", but we see this headline as a summary of the view that, to achieve fairness, everyone must be on the DNA database"

The Committee considered the headline complained about in the first article and the text directly beneath it:

#### **All UK 'must be on DNA database'**

The whole population and every UK visitor should be added to the national DNA database, a senior judge has said. The present database in England and Wales holds details of 4m people who are guilty or cleared of crime.

Lord Justice Sedley said this was indefensible and biased against ethnic minorities, and it would be fairer to include everyone guilty or innocent

...

Lord Justice Sedley, who is one of England's most experienced appeal court judges, said: "We have a situation where if you happen to have been in the hands of the police then your DNA is on permanent record. If you haven't, it isn't.

"It means where there is ethnic profiling going on disproportionate numbers of ethnic minorities get onto the database.

"It also means that a great many people who are walking the streets and whose DNA would show them guilty of crimes, go free."

He said the only option was to expand the database to cover the whole population and all those who visited the UK, even for a weekend.

"Going forwards has very serious but manageable implications," he insisted. It means that everybody, guilty or innocent, should expect their DNA to be on file for the absolutely rigorously restricted purpose of crime detection and prevention."

The Committee considered whether the guideline on Accuracy had been breached. In particular the Committee considered whether the BBC had demonstrated that the content:

- was well sourced
- based on sound evidence
- presented in clear, precise language

The Committee noted that the complainant felt that the relevant question was not, "whether the headline was 'presented in clear, precise language'. It is whether its perfectly clear and precise attribution to me of something it is agreed I never said is 'well sourced' and 'based on sound evidence' – or, in more common parlance, truthful."

The Committee considered the text of the article in the London Review of Books. In particular it noted these passages:

"...what I am concerned with here are the human rights and civil liberties implications of the procedures. My argument is that the case is growing for a national database holding the DNA profile of everyone living in or entering the country.

The present system, sanctioned by legislation, is that the police may take and keep a DNA sample from everyone they arrest, whether or not the person is charged or convicted. This has the unfortunate effect of putting the innocent on a par with the guilty. It draws a not very logical line between innocent people who have and have not passed through the hands of the police. But it does not follow that the law should be moved back to what it once was, so as to require the police to destroy their DNA records of everyone not eventually convicted. What follows no less logically is that the taking and retention of an individual's DNA profile should not depend at all on whether he or she happens to have come into the hands of the police...

When the question of the police retention of samples was before the appellate committee of the House of Lords last July, evidence was given that, of some 130,000 retained DNA profiles of people who had not been convicted, around 6000 had been subsequently linked to samples found at scenes of crimes, which included 86 murders or attempted murders and 94 rapes. This is not, of course, to say that the match solved the crime: there could have been many innocent

explanations. But in each case it was a start. We now know that the burglary detection rate almost quadruples when DNA is recovered from the scene of the crime.

... The situation the courts were and still are facing under the present legislation, however, is an illogical halfway house between the retention only of the profiles of those convicted – a manifestly inadequate measure – and the sampling of the whole population, a measure which Parliament has so far not addressed...

What is the rationale of objection to a comprehensive national DNA database? ...the justification [for collecting DNA data] would have been plainer and more logical still if the logging of people's DNA profiles did not depend on the fortuity of their having passed through the hands of the police.

...members of some ethnic minorities face a disproportionately high chance of getting on to the police DNA database without being convicted of anything. A universal and uniform database will at least resolve this problem.

...where at present the only identifiable DNA will belong to people who have been arrested, with the associated risk that only the usual suspects will fall under suspicion, a universal database will ensure that the process of elimination starts from the full range of potential suspects.

What is more troubling is that everyone whose DNA is identified at the scene of a crime comes under a degree of pressure to establish their innocence. This is already true of both convicted and unconvicted people on the existing police database. But if it is a price society is ready to see paid, it should arguably be paid by all its members equally. This is the big issue that Parliament needs to debate and decide. The principal task of the courts will continue to be to ensure that, whatever the range of admissible evidence, coincidence is not confused with proof...

There is, in other words, no gain without risk; but in a society disturbed not only by serious crime but by the possibility of people being mistakenly acquitted or convicted of it, the potential gain represented by a comprehensive national DNA register is considerable; and the risks, so long as they are confronted, are controllable. I make no case for or against the introduction of compulsory identity cards; but a society which feels able, as ours does, to give serious consideration to such a step ought not to turn its face away from the case for a universal DNA register as part of a modern criminal justice system.

The Committee noted that both the BBC and the complainant accepted that the article in the London Review of Books represented the complainant's views. They also noted Sir Stephen's view as expressed on the *Today* programme, bearing in mind the concerns that he raised about the broadcast item.

The Committee noted that the article in the London Review of Books included three options. The first was to maintain the then current system which included retaining the DNA of those who had not been found guilty of crimes but who had been arrested and had their DNA sampled. The second was to wipe all DNA records. The third was to proceed to a universal data base.

With regard to the first option, the Committee noted that Sir Stephen's view in the London Review of Books article was that the then current position drew "a not very logical line between innocent people who have and have not passed through the hands of the

police". The Committee also noted that Sir Stephen referred to the ethnic imbalance in those arrested and that a universal data base would resolve this problem. On the *Today* programme he described the then current situation as "indefensible".

With regard to the second option, the Committee noted that Sir Stephen argued in the article in the London Review of Books that "it does not follow that the law should be moved back to what it once was, so as to require the police to destroy their DNA records of everyone not eventually convicted" and that he noted in the article some of the crimes which had been solved by access to the DNA records of those who had not previously been convicted but who had been arrested and had had a sample of DNA taken from them. On the *Today* programme he described the option as "ridiculous".

With regard to the third option – the establishment of a DNA database - the Committee noted that the article advanced the logical arguments for such a database and cogently disposed of several arguments against such a database such as the risk of planting false DNA evidence. On the *Today* programme, Sir Stephen said:

"Going forwards has very serious but, I think, manageable implications. It means that everybody, guilty or innocent, should expect their DNA to be on file, for the absolutely rigorously restricted purpose of crime detection and prevention."

The Committee agreed that the thrust of the article in the London Review of Books was to set out the logical case for moving to a UK DNA data base and that this is what had been at the heart of the *Today* interview with Sir Stephen.

The Committee agreed that neither in the article in the London Review of Books or in the *Today* programme had Sir Stephen used the exact words in single quotes in the title of the online article title 'All UK 'must be on DNA database'".

However, the Committee noted that the BBC is not required to achieve absolute accuracy but is required to achieve "due accuracy" and that the term due means that "*the accuracy must be adequate and appropriate to the output taking into account the subject and the nature of the content, [and] the likely audience expectation...*"

In this case, the Committee noted that the first article was a news article and accordingly, the level of accuracy due would be higher than for non-news output. However, the Committee also noted that the BBC had a duty to distil the essence of a story into straightforward language to engage with online readers and that the accuracy applied to an online article would not be the same as that expected of a scholarly article such as the one in the London Review of Books.

The Committee considered that concern may have arisen over the use of single quote marks in the title. Single quote marks may be used to indicate a quote. However, the Committee was aware that it is also common journalistic practice to use single quotes in headlines to denote that the reader is being given a summary of the sense of a key point in the article below. This was clearly not a quote from the article as the words were not used in the article. In the Committee's view this was a journalistic device. The Committee considered the wording carefully and concluded that the headline captured the essence of Sir Stephen's position and that it was not misleading with regard to the views that Sir Stephen had put forward.

The Committee agreed that the headline in the first article was not a verbatim quotation of what the complainant had said. However, the Committee considered that the headline did not stand alone, separate from the lines that followed it. The Committee noted that the first article explained Sir Stephen's views succinctly immediately after the headline:

"The present database in England and Wales holds details of 4m people who are guilty or cleared of a crime.

Lord Justice Sedley said this was indefensible and biased against ethnic minorities, and it would be fairer to include everyone, guilty or innocent."

For the reasons outlined above, the Committee was satisfied that there had not been a breach of the Accuracy Guidelines in relation to Point A and it did not consider that, in this instance, readers would have been misled with regards to the views of Sir Stephen. Nor did it consider there had been a failure to comply with the guideline which requires material to be "well sourced" and "based on sound evidence".

However, although the Committee was satisfied that the approach taken was duly accurate, the Committee agreed that it would have been clearer if quotation marks in the headline in the first article had not been used around words that the complainant had not actually said.

**Point B: the text in the body of the first article "he said the only option was to expand the database to cover the whole population" is inaccurate as he did not say this.**

The Committee then moved on to consider the wording used in the body of the first article with which the complainant had taken issue:

"He said the only option was to expand the database to cover the whole population and all those who visited the UK, even for a weekend."

The Committee noted that the complainant had commented:

"perhaps you could tell me where in the interview I said this."

In relation to Point B, the Committee noted that the *Today* programme had stated as follows:

"The line you quote - "the only option was to expand the database to cover the whole population" - is a paraphrase, again in the context of the assertion that the existing system is unfair."

The Committee noted the comment by the ECU that:

"I accepted that you did not state, as a matter of fact, that there was only one option available. What you did say, it seemed to me, was that there was only one option which should be adopted and that was the option of a national DNA register. It is plain to me that this is the meaning the article intends to convey and I cannot agree that it unfairly represents the views you expressed."

The Committee noted that Sir Stephen had not expressly stated that this was the only option and this had been acknowledged by the ECU. However, the Committee agreed that the essence of Sir Stephen's argument had been that this was the only logical option of the three options he had advanced in his article. The Committee was therefore satisfied that the wording used in the body of the first article was duly accurate and that there had been no breach of the Editorial Guidelines on Accuracy.

**Point (C) - and in relying on the Today programme item to defend the article the BBC were wrong as the Today programme did not accurately report what he said (Sir Stephen objected to the use of the phrase "calling for").**

Preliminary Decision

The Committee noted that in the course of his complaint, Sir Stephen had expressed concerns about the *Today* programme broadcast in 2007. He had acknowledged that he had been aware of the issue at the time but had not complained at the time as "*there was no way of undoing the broadcast words*". The Committee noted that there is currently a limit of 20 working days (which at that time was 12 weeks) for complaints about broadcast items, but that there is no such limit on first party complaints about online articles. The Committee noted that the second article also included the wording 'called for' which Sir Stephen objected to as being inaccurate in the *Today* broadcast. (<http://news.bbc.co.uk/1/hi/uk/6979490.stm>).

The Committee agreed that it would not consider the *Today* programme as broadcast (as the complaint was not in time) but would consider the second article in terms of accuracy in relation to the phrase "called for".

The Committee noted the pertinent parts of the long *Today* item based around an interview with Sir Stephen (relevant wording emphasised):

Introduction: A senior Appeal Court Judge, Lord Justice Sedley, is **calling for** the national DNA data base to be expanded to include everyone living here and everyone visiting this country. Sir Stephen Sedley has told BBC News that the current position is "indefensible" because ethnic minorities are disproportionately represented and people who have evaded arrest are not on the database.

The chairman of the DNA database strategy board, Chief Constable Tony Lake, says there is a need for a debate about the future of the database but has suggested that samples should be held for limited periods of time along the lines of the system for collecting driving licence points. Our home affairs correspondent, Danny Shaw, reports:

...

Sedley: The starting point is that where we are at the moment is indefensible

Script: Sir Stephen Sedley is one of England's most experienced Appeal Court Judges. He says the database puts the innocent on a par with the guilty and includes a disproportionate number of ethnic minorities. To make it fairer, Sir Stephen says the database should be widened to include everyone who lives and sets foot in the UK:

Sedley: "Everybody, guilty or innocent should expect their DNA to be on file for the absolutely rigorously restricted purpose of crime detection and prevention, and no other purpose. That would require a very careful guarding of the data. (edit) Visitors to this country would have to expect to give their DNA too"

Shaw: Every visitor to the country?  
Sedley: Yes.  
Shaw: Even someone who is here for a weekend?  
Sedley: Yes.

(Other interviews)

Script: Lord Justice Sedley says removing DNA details from the database would simply give offenders the opportunity to escape detection. However he is aware that his own proposal for database expansion would be viewed as a step on the road to a police state.

Sedley: It is an authoritarian measure to the extent that it demands that people part with some further measure of their autonomy and privacy and it's got to be justified, it's got to be proportionate to a real pressing social need. The European Convention on Human Rights says so and I'd be the first to defend that.

The Committee considered the second article, which can be found here: <http://news.bbc.co.uk/1/hi/uk/6979490.stm>. The Committee noted that it described the complainant as having "called for" a UK DNA database to include everyone living in or visiting the UK. The article began (relevant wording emphasised):

### **"DNA database call prompts concern**

A debate has broken out after a senior judge **called for** the national DNA database to be expanded to include everyone living in or visiting the UK.

Lord Justice Sedley said it would be fairer if the England and Wales database, which holds DNA from crime scenes and suspects, were universal."

The Committee noted that during the course of the complaint Sir Stephen had objected to the introduction to the Today item (and wording of the second article) on which the first article was based which said:

"A senior appeal court judge Lord Justice Sedley is calling for the national DNA database to be expanded to include everyone living here and everyone visiting the country."

The Committee noted that the complainant stated:

'...the assertion that I had "called for" a universal DNA register was untrue'.

The Committee noted the position taken by the Today programme on this point in relation to the words 'calling for'

"...that it describes someone's wish based on their assessment of the competing arguments. It is obviously not the only course of action, but it is the one favoured by the person making the statement."

The Committee noted the wording of the article in the London Review of Books, which said:

"There is, in other words, no gain without risk; but in a society disturbed not only by serious crime but by the possibility of people being mistakenly acquitted or convicted of it, the potential gain represented by a comprehensive national DNA register is considerable; and the risks, so long as they are confronted, are controllable. I make no case for or against the introduction of compulsory identity cards; but a society which feels able, as ours does, to give serious consideration to such a step ought not to turn its face away from the case for a universal DNA register as part of a modern criminal justice system."

and that the *Today* programme stated that the above wording

"...seems to me to justify the phrase "calling for", an interpretation supported by the title of the article 'The case for a National DNA register' and by the closing paragraph of your piece".

The Committee also noted that the ECU had concluded that:

"it does seem to me that the inevitable conclusion to be drawn from it is that you were inviting the adoption of a national DNA register...and that it is neither inaccurate or unfair to represent you as having 'called for' such a register."

The Committee noted that the complainant said he was laying out options, examining the status quo and coming up with proposals. The Committee noted he said that, while he agreed that he favoured one outcome over another, this did not mean that he was either campaigning or calling for specific action.

The Committee noted that the BBC Executive had responded that this was too subtle a distinction to be realistic in the circumstances and that the complainant, by his conclusion that one option was better than the alternatives, was essentially advocating or "calling for" it.

The Committee decided that it was not necessary for the complainant to have actually issued a call to action for his words and opinions to be described as "calling for". The Committee agreed that "calling for" was a figure of speech that need not necessarily be as tightly defined as it had been by the complainant. The Committee's view was that, in common understanding, the words the complainant had used might well be interpreted as arguing for, supporting, advocating, or calling for, the outcome he proposed, and that therefore the BBC had observed "due accuracy" in using the expression "call for".

The Committee concluded that the article was not in breach of the Accuracy Guidelines.

### **Additional Point**

The Committee also noted that Sir Stephen had also raised a point concerning an edit made during the Today broadcast. Sir Stephen stated:

"I would be obliged if you would listen to the edited and broadcast version of what I said on tape (which itself cut out, for example, the fact that it was the

interviewer who had raised the issue of foreign visitors) and point out to me where I had called for a universal database or said it was the only way forward".

Sir Stephen also stated:

"the interpolation "(edit)" [in the transcript ] which can be seen in just before the sentence "Visitors to this country would have to expect to give their DNA too" represents the editorial excision of a specific question from Mr Shaw about visitors. It was not something I was arguing (or "calling") for but a consequence which he was following up in a perfectly professional way...those responsible for the Today broadcast and webpage will (or should ) have been aware that the point was prompted by a specific question, not gratuitously volunteered."

Sir Stephen also said:

"My previous email pointed out that the parenthesis "(edit)" signifies the excision of a specific question from Danny Shaw about visitors to the UK. What I said about the logic of including visitors was a response to a perfectly sensible question; I was not advancing some kind of campaign agenda".

The Committee noted the edit in question:

Sedley: "Everybody, guilty or innocent should expect their DNA to be on file for the absolutely rigorously restricted purpose of crime detection and prevention, and no other purpose. That would require a very careful guarding of the data. **(edit)** Visitors to this country would have to expect to give their DNA too"

Shaw: Every visitor to the country?

Sedley: Yes.

Shaw: Even someone who is here for a weekend?

Sedley: Yes.

The rushes of this interview no longer exist due to the passage of time. However the Committee noted a version of this exchange without the edit in question was also broadcast on the *Today* programme just before the interview with Tony McNulty (the relevant minister).

...

**SS:** You have certainly got to go in one direction or another from where we are now. To go backwards would be to wipe, from the database, the DNA of everybody who has not been convicted. That would be ridiculous. ... going backwards would be a disaster. Going forwards has very serious but, I think, manageable implications. It means that everybody, guilty or innocent, should expect their DNA to be on file, for the absolutely rigorously restricted purpose of crime detection and prevention. **(edit)**

**DS:** What about those who say, well, this will be useful for the police to have sixty million samples on there?

**SS:** More than sixty million.

**DS:** More than sixty million?

**SS:** I think visitors to this country would have to expect to give their DNA too.

**DS:** Every visitor to the country?

**SS:** Yes.

**DS:** Even someone who is here for a weekend?

**SS:** Yes.

...

The Committee did not consider that the effect of the edit was such that it would give the impression that Sir Stephen was "advancing some kind of campaign agenda" in terms of getting visitors to give their DNA to a database. Nor did the Committee consider that audiences would be misled as a result of the edit as to the substance of Sir Stephen's views.

The Committee were satisfied that there had been no breach of the guidelines in relation to this aspect of the complaint.

**Finding: Not upheld.**



# Rejected Appeals

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

## Bias against Rangers FC

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

### Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit ("ECU") not to uphold his complaint regarding alleged general bias by BBC Scotland against Rangers FC.

In his correspondence to the ECU of 4 October 2012, the complainant had listed the following allegations in support of his complaint:

- Tampering with an interview with the Rangers manager
- Regular snide comments from news and sports reporters on BBC Scotland
- Biased and inaccurate comments from BBC Radio Scotland presenters
- Repeated factual inaccuracies
- A failure to consider or in any way investigate other institutions
- A lack of regard, consideration or empathy for the traumatic content of the Rangers saga to employees, shareholders and fans throughout the past year or more

In his appeal to the Trust on 22 November 2012, the complainant requested the Trust investigate BBC Scotland whom he believed "has become a serial abuser of Rangers, its staff and its support."

### The Trust Unit's decision

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

The Trust's Adviser noted that the complainant had written to the ECU on 29 October 2012 and had accepted its provisional finding not to uphold his complaint relating to the opening sequence of *Sportscene* that had been broadcast by BBC One Scotland on 26 September 2012.

The Trust's Adviser noted that the complainant was, however, unhappy with the responses he had received from BBC Scotland in relation to his allegation of general anti-Rangers bias, and, on 22 November 2012, the complainant wrote to the Trust asking it to investigate BBC Scotland whom he considered "has become a serial abuser of Rangers, its staff and its support."

The Trust's Adviser said that the applicable Editorial Guidelines were those relating to Impartiality. She also said that for a complaint of general bias to have a reasonable prospect of success on appeal, there would have to be evidence relating to specific broadcasts to support it.

The Trust's Adviser noted that BBC Scotland's Head of Corporate Affairs did not accept the complaint of bias and that on 9 November 2012 he wrote to the complainant addressing the complaint of 'historic bias' as follows:

"...where there have, in the past, been occasions when reporting standards have not matched the BBC's rigorous demands for impartiality and fairness in its output, irrespective of the story or issue being covered, those matters have been dealt with quickly and appropriately."

The Trust's Adviser explained that the Trust had considered a complaint of bias against Rangers by BBC Scotland in the past and, in that instance, although there were elements of BBC output that were in breach of the Guidelines, the Trustees did not consider there was evidence of general bias against Rangers. The complaint was not, therefore, upheld.

She provided a link to the relevant finding:

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2010/oct.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2010/oct.pdf)

The Trust's Adviser explained that she had tried to trace the broadcasts and "historic items" referred to in the complainant's letter to the ECU of 4 October 2012.

Regarding the interview with Ally McCoist that addressed sectarianism, she understood this complaint to relate to an interview broadcast in 2011. The Trust's Adviser noted that BBC Scotland had accepted that the editing has been a mistake and was open to misinterpretation and had apologised for it. The Trust's Adviser also said that she understood that Mr McCoist had accepted this apology. The Trust's Adviser considered that the Trustees would therefore conclude that this matter had been resolved.

Since the ESC finding referred to above, the Trust's Adviser could not recall that any similar complaints had been upheld by the BBC Trust, Ofcom or the BBC's Editorial Complaints Unit, which might have led Trustees to consider there was possible evidence of bias. She did not have enough information from the complainant's email to be able to trace the other output which he referred to.

The Trust's Adviser noted that complainant had referred to comments made by Jim Traynor about the BBC's coverage of Rangers. The Trust's Adviser said the Trust would only be able to consider output by the BBC, rather than opinions about its output voiced by other journalists. However, she noted from Rangers' website that Mr Traynor was appointed the club's Head of Communications shortly before Christmas.

For the above reasons the Senior Editorial Strategy Adviser did not consider that the complainant's appeal had a reasonable prospect of success and she did not propose to put it to the ESC.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He still felt the BBC in Scotland was guilty of on-going bias.

The complainant noted that the Trust's Adviser had admitted she had not been able to trace all the items to which he had referred but had chosen not to contact him for further information before making her decision. He repeated his view that there is on-going and

wide-ranging bias against Rangers FC and its supporters perpetuated by BBC Scotland.

The complainant referred back to issues with the *Sportscene* title sequence and an interview with Ally McCoist which had both led to BBC apologies.

The complainant listed further broadcast items as evidence of bias, including another instance when the BBC had issued an apology for "incorrect comments on the Rangers situation".

The complainant felt that evidence of bias was proved by the three apologies by the BBC referenced above which he said were made over a very short timeframe.

The complainant questioned the Trust's Adviser's comment regarding James Traynor working at Rangers. He said that at the time of his communication quoting Mr Traynor, Mr Traynor was a BBC employee who also did some journalistic work for Trinity Mirror Group.

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

The Committee was provided with the complainant's appeal to the Trust, the response of the Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the complainant's previous correspondence with the BBC at Stages 1 and 2.

The Committee noted the complainant's allegations of on-going and wide-ranging bias against Rangers FC. It noted the responses that the complainant had received from the BBC and the Trust's Adviser. The Committee considered that there was insufficient evidence to suggest a breach of the Editorial Guidelines on Impartiality. The Committee noted the broadcast items and the BBC apologies referred to by the complainant in his letter to the Trust asking for a review of the decision not to proceed with his appeal. However, the Committee agreed that, while there had been individual lapses which had been acknowledged and apologised for by the BBC, there was no persuasive evidence to support the allegation that the BBC is institutionally biased against Rangers Football Club or its supporters.

Regarding the interview with Ally McCoist that addressed sectarianism, the Committee noted that BBC Scotland had accepted that the interview was open to misinterpretation and had apologised for it. The Committee concluded it was likely to find that this matter had been resolved.

The Committee noted the complainant's view that the Trust's Adviser should have asked him for more information in order to trace some of the items to which he had referred in his complaint. The Committee did not agree, however, that the specific examples which the complainant had provided in support of his allegation constituted sufficient evidence to justify the in-depth investigation that would be required to substantiate such claims.

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

## ***The Stephen Nolan Show, BBC Radio Ulster, 1 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 Head of Corporate and Community Affairs, BBC Northern Ireland not to uphold his complaint regarding a report on *The Stephen Nolan Show*.

The complainant considered that the report was a "total abuse of BBC resources" by Stephen Nolan because he had, in the complainant's view, conducted an investigation "on behalf of his mother and her best friend Betty". Because of Mr Nolan's personal interest in the matter, the complainant considered this was a breach of the BBC's guidelines and displayed lack of editorial control in relation to the show.

The complainant made a number allegations relating to his belief that the report was personally-motivated, including a suggestion that the report would improve the presenter's ratings.

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

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

The Trust's Adviser said that the applicable Editorial Guidelines were those relating to Conflicts of Interest. She agreed with the complainant that Mr Nolan could be said to have had a personal interest, albeit at one step removed, in that his own mother had signed a connection agreement with the company which was the subject of Mr Nolan's report. However, she said that she could not see evidence that he acted for his own financial gain. The Trust's Adviser further noted that Mr Nolan's personal interest was fully declared at the start of the programme, and she produced a quote of what Mr Nolan had said. Mr Nolan said "[A]t the very top of the programme", because he said "he needed everything to be transparent" that the story had come to his attention after a utility company representative visited his mother. Mr Nolan said he "came home that night to discover that she had signed a legally binding document, and I had some concerns." Mr Nolan said he "brought that information to the BBC and we have established through other people some details that we wanted to check" with the company. He went on to say that: "The story that you are about to hear is an allegation from someone who actually knows my mum, but who was completely independent, in terms of the sales rep called at her house in a separate manner". He said "the story goes" that the company "is asking people, in this case a very elderly person who lived alone, to sign an agreement..."

The Trust's Adviser also noted the assurances that the Head of Corporate and Community Affairs, BBC Northern Ireland, received from the programme's editor that Mr Nolan's personal interest was discussed ahead of the broadcast and the decision had been taken by the production team that there were legitimate journalistic reasons for covering the story. The Trust's Adviser said that the show regularly covers consumer issues of a similar

nature, and in a comparably robust manner. The Trust's Adviser said that, as the Head of Corporate and Community Affairs had explained that the decision not to debar Mr Nolan from reporting on the issue was contingent on "...a requirement to provide listeners with clarity about his interests" in the story and "absolute fairness in his handling of the story."

The Trust's Adviser considered it likely that the ESC would consider the first of these requirements had been fulfilled. As to fairness in the handling of the story, again she thought it likely the ESC would consider that the company had been given an opportunity to put its side of the story.

The Trust's Adviser noted that the programme makers felt there were legitimate journalistic reasons for covering this story. She also said she had listened back to the programme and noted that the spokesman for the NI Consumer Council had described the company's actions as "totally inappropriate and unethical". The Trust's Adviser also noted that several callers contacted the programme with their own experiences, which were very similar to those of Mr Nolan's mother. She considered, therefore, that there was a strong editorial justification for running this story.

Although the Trust's Adviser did not think this appeal had a reasonable prospect of success, she did think the complainant had raised some important issues and noted that the Head of Corporate and Community Affairs had written the following to the complainant:

"Whilst I don't believe that there was anything wrong either in the decision to broadcast this item, or its treatment on air, it is my view that the necessary references to Stephen's position viz what was being discussed may have distracted from the substantive issues involved. To this extent, a different approach could, perhaps, have been more effective in achieving our intended editorial purpose. We take issues around actual and perceived conflicts of interest extremely seriously. The points which you have raised have been discussed with relevant staff, taking account of the clear guidance contained within the BBC's Editorial Guidelines."

The BBC Trust also takes conflict of interest issues very seriously and the Senior Editorial Strategy Adviser considered that this complaint acted as a reminder to all those involved that vigilance is always needed to guard against such conflicts, whether they are actual or perceived.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that there was no need whatsoever for Mr Nolan to report on the issue as BBC Northern Ireland had other programmes which could have dealt with the matter in a more professional way, such as the BBC NI consumer programme "On Your Behalf" which airs on Saturday mornings, when it is more likely that relatives of vulnerable elderly would have been listening and they could have then checked whether it affected their relatives. He referred to the likely audience for the Nolan radio show which is broadcast at 9.00 am on weekdays. He also emphasised his allegation that the item was "seized upon by Nolan to improve his ratings and 'big himself up' to his Mothers Friends."

### **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 view that there was no need for Stephen Nolan to run the story. The Committee also noted that the complainant felt that the story had

been deliberately chosen by Mr Nolan for personal interests including to improve his ratings.

However, the Committee agreed with the Trust's Adviser that there was strong editorial justification for covering the story and noted that Mr Nolan had fully declared his personal interest with regard to his mother and his mother's friend at the start of the programme. The Committee agreed that there was no evidence that Mr Nolan acted for financial or personal gain, and that there was no evidence of a breach of the Editorial Guidelines.

The Committee noted that this was not a first party complaint, so it could not be considered under the Editorial Guidelines on Fairness, but the Committee, having been provided with the programme, agreed with the Trust's Adviser that it would appear that the utility company had been given an opportunity to put its side of the story and the reporting had been handled fairly.

The Committee noted that the complainant had said that the story could have been better covered in a different part of BBC Northern Ireland's output. The Committee was mindful that the BBC's Royal Charter draws a distinction between matters that are for the Trust and matters that relate to the direction of the BBC's editorial and creative output, which are the responsibility of the BBC Executive. The Committee agreed that on the evidence provided it was not likely to find that the Editorial Guidelines had been breached and the choice of programme content was, therefore, not a matter for the Trust.

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

## **Stephen Nolan, BBC Radio 5 live, 10pm 17 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 his complaint regarding a discussion about free speech, abusive comments and online controls. He alleged that a contributor on the programme was rude, offensive and sexist, and went beyond what one could expect, even for a late night radio programme. He felt the presenter's handling of this behaviour was inadequate and ineffective.

He complained that the BBC had not taken any of the follow up action he had requested which included enabling the complainant to debate with the contributor on a future programme; obtaining an on air apology from the contributor, and rewriting BBC guidance about terminating inappropriate calls on air. He also complained that the BBC had breached its own guidelines, for example those dealing with the protection of children, and that his complaint had not been handled with the respect, empathy and sensitivity due to it.

Finally he complained that the BBC was allowing an individual with dangerous views an audience.

In a letter to the ECU following their decision at Stage 2, which the complainant asked the Trust to take into account alongside his letter of appeal, in addition to reiterating some of the above complaints, he stated that he believed the BBC should ban the contributor from future BBC appearances; complained about BBC guidelines on Live Output, and made a number of other complaints regarding the BBC's failure to address certain other questions he had raised during the complaints process.

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

The Trust's Senior Editorial Strategy Adviser replied to the complainant explaining that she had reviewed the correspondence and listened to 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 *Stephen Nolan* programme was a late night phone-in talk show on Radio 5 Live, whose remit, as described on the BBC Website, was to host "fierce topical debate" about the issues of the day. The two speakers on this occasion were Kate Smurthwaite, a campaigning writer and comedy performer with a reputation for being an outspoken feminist; and Dr Sean Gabb, Director of Libertarian Alliance. Each held strong and opposing views about what was acceptable on social media. Kate Smurthwaite described how she regularly received rape and death threats online while Dr Gabb's view was that comments might be "vulgar and hurtful", but if they were made without a real sense of threat, they fell within what was acceptable as free speech. The debate between them arose out of comments made by Jeremy Clarkson earlier that day complaining about abuse he had received via the internet.

The Trust's Adviser noted that the complainant accepted that Ms Smurthwaite did not at any point appear upset by the way she was spoken to, but nevertheless the complainant himself was offended by the way she was treated in the interview and noted that Dr Gabb referred to her as "woman" rather than using her name; for example, he stated, "if you ask questions, woman, can you at least be quiet so they can be answered?"

The ECU had explained to the complainant that the guidelines which were relevant to this complaint were those regarding Harm and Offence.

The Trust's Adviser noted that the way the Director of Libertarian Alliance, Dr Gabb, addressed the woman speaker did cause offence to some of the programme's audience, including the complainant, (the programme later referred to listeners who had contacted the programme to complain about Dr Gabb's behaviour). The Trust's Adviser considered, however, that the discussion was clearly editorially justified given the fact that the question of internet censorship was in the news that day.

She considered that, although the way Dr Gabb spoke to his fellow participant may have been offensive to some, it fell within the boundaries of "fierce topical debate" and therefore would have been within audience expectations for the show. She did not consider that the programme content breached generally accepted standards, taking account of the programme content, the context and balancing this against the editorial justification for including a contribution from Dr Gabb.

In terms of whether the presenter had reacted appropriately or firmly enough the Trust's Adviser noted the Complaints Director had addressed this in his letter of 7 November, stating:

"At the point Dr Gabb suggested that it would be very difficult to abuse Ms Smurthwaite "because you never shut up", Mr Nolan immediately interjected and said "Hold on a second. Let's actually treat each other with a modicum of decency and respect". This was a clear request to ensure the subsequent debate was conducted appropriately and drew attention to the nature and tone of Dr Gabb's comment. When Dr Gabb then referred to Ms Smurthwaite as "woman", Mr Nolan responded by saying "This lady's name is Kate" and then ended the discussion by saying to Dr Gabb "I do think you should consider just how you are talking to people when you are on this programme. This lady has a name and it is Kate". It seems to me that Mr Nolan's intervention was prompt and appropriate and so I cannot conclude that his handling of the debate was inadequate or lacking."

The Trust's Adviser agreed with that analysis and also noted that Stephen Nolan had intervened a number of times when he felt Dr Gabb had overstepped acceptable boundaries and been rude towards Ms Smurthwaite. She was satisfied that he handled Dr Gabb sufficiently firmly whilst himself remaining calm and polite throughout, and she did not agree with the complainant that Mr Nolan should have required an apology on air. Nor did she agree with the complainant that the words he used to reproach Dr Gabb: "Hold on a second. Let's actually treat each other with a modicum of decency and respect" – gave the impression that both participants were equally abusive. The Trust's Adviser noted that under the complaints framework, a complaint about an interviewee being treated unfairly will only be entertained if it comes directly from the person involved and not a third party.

It followed from the above considerations that the Trust's Adviser did not consider the appeal would have a reasonable prospect of success if placed before Trustees on grounds of breach of the Editorial Guidelines on Harm and Offence.

Turning to the complainant's view that he should have been afforded an opportunity to go on air and debate with the Director of Libertarian Alliance, the Trust's Adviser noted that decisions on programme content were entirely within the remit of the BBC Executive, and were not open to scrutiny by the Trust except insofar as Editorial Guidelines were engaged following broadcast, therefore this was not a question on which the Trust had jurisdiction.

The Trust's Adviser also noted the complainant's comments on the adequacy of the BBC Guidelines regarding protection of children and live output, and she noted that this was a late night programme when children would not be expected to be listening. The Trust's Adviser did not consider that this element of the complaint had a reasonable prospect of success. In her view, the complainant had not made out a case that the Guidelines were inadequate or unfit for purpose.

The complainant had made a number of other points. For example, he had asked for the BBC's response on a number of issues such as the psychological effect of internet abuse; whether it was acceptable for internet trolls to make comments about rape and for Dr Gabb to say that women should "take it on the chin"; and whether his views were dangerous for children. The Trust's Adviser noted that the role of the Trust in the complaints process was to investigate and adjudicate upon potential breaches of BBC Guidelines and as no Guidelines (or other BBC standards) were engaged by these questions it was not appropriate and would be a disproportionate use of the licence fee for the Trust to respond on them further.

With regard to the complainant's view that Dr Gabb should be banned from the BBC, the Trust's Adviser noted that decisions relating to who should appear on BBC programmes were matters for the Executive and the Trust had no remit to direct the BBC Executive regarding who could or could not appear on its output.

Finally the Trust's Adviser considered the complainant's allegation that the ECU had not treated his complaint with the respect, empathy and sensitivity it deserved but on reviewing the correspondence with the ECU, considered its responses had been reasonable and could find no grounds to suggest this complaint would have a likelihood of success if placed before Trustees.

The Trust's Adviser considered, in conclusion, that the appeal did not have a reasonable prospect of success and should not be placed before the ESC.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He felt that the Trust's Adviser had not taken time to understand and recognise the reasons behind his complaints and how the actions requested could benefit the public and society at large. The complainant was also shocked and offended to be told by the Trust's Adviser that his case was a relatively minor matter.

The complainant disagreed that his appeal did not have a chance of success. He reiterated the points of his appeal with supporting comments as evidence of his complaint being a matter of substance.

The complainant also said that the Trust's Adviser had failed to address four points that he had raised in his appeal:

- The editorial team did not direct a more robust editorial approach
- Mr Nolan failed to seek appropriate apology from Dr Gabb
- Neither the BBC editorial team nor the ECU have taken or proposed to take any follow up action

- The BBC Trust needs to improve the Editorial Guidelines on terminating controversial callers during a show

The complainant quoted BBC Guidance on Live Output concerning monitoring of live output and referral to a senior editorial figure when a significant risk is identified. He felt that someone should be available to monitor the output of Stephen Nolan at all times and that it was a breach of Guidelines not to have this in place. The complainant wanted to remind the Trust that no apology was given by Dr Gabb for his comments, and nor was one sought by Mr Nolan; nor did the editorial team do anything to apologise or distance the BBC from Dr Gabb's comments.

The complainant asked the Trust to accept that the BBC should have done more to stop Dr Gabb from behaving towards Ms Smurthwaite in the way he had. The complainant felt that there were grounds for appeal under Section 5 of the Guidelines (Harm and Offence) because the complainant, and others, were offended by Dr Gabb's comments during the interview.

The complainant asked the Trust to consider his complaint that Dr Gabb's contribution went beyond what could be regarded as generally acceptable in a programme of this kind. He brought this part of his appeal under the heading: Section 5 (Harm and Offence), Section 4 (Impartiality), Section 18 (The Law), and failure to follow BBC Guidelines.

The complainant made several points in relation to Section 9 of the Guidelines (Children and Young People as Contributors). He felt this was relevant as he alleged that Dr Gabb dismissed the need to consider children in the debate on internet free speech, when Ms Smurthwaite said "*What about our children?*"

The complaint said that during the show Dr Gabb was too easily allowed to cut off Ms Smurthwaite, and that Dr Gabb's views are psychologically dangerous to children as well as adult society.

The complainant felt that by allowing Dr Gabb to make the comments he did about rape and by allowing his comment "I don't think the law should get involved. It's called vulgar abuse, you take it on the chin", the BBC is contributing to breaking the law. He quoted the Malicious Communications Act 1998/Telecommunications Act 1984; The Communications Act 2003; Criminal Justice and Public Order Act 1994. He also quoted Section 18 of the Editorial Guidelines.

The complainant asked the Trust to uphold his complaints and to ensure presenters and editorial teams are sufficiently cognisant with the Law to recognise the need to challenge in such situations.

The complainant also asked the Trust to uphold that he was unfairly treated by the show on a subsequent occasion and has been unfairly treated by the BBC's curtailment of his complaint. His grounds for this are Section 4 Impartiality, Section 6 Fairness and BBC Complaints Framework procedure no. 1, clause 1.5.

The complainant made several additional complaints about the complaints process and what he considered were errors in following the Editorial Guidelines and Guidance during the handling of his complaint. He felt that following the letter from the Trust's Adviser, it was clear his complaint had not been handled correctly and that he had grounds for complaint under BBC Guidance 1.2.11 Accountability. He felt the most significant impact of this was that his request for Dr Gabb to be banned had not been referred to the BBC Executive. He questioned the Trust's Adviser's decision that it was not within the Trust's

remit to consider a ban on Dr Gabb appearing in BBC programmes.

### **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 an email dated 4 March 2013 which the complainant sent following his challenge, and the relevant sections of the programme in question.

The Committee noted that the complainant had made the following points in his appeal to the BBC Trust:

1. Dr Gabb's contribution to the show was rude, offensive, and sexist in nature
2. Dr Gabb's comments went beyond what one could expect, even for a late night radio programme
3. Mr Nolan's challenge was inadequate and ineffective, and the editorial team did not direct a more robust approach.
4. Mr Nolan failed to seek an appropriate apology from Dr Gabb
5. Neither the BBC editorial team, nor the ECU had taken, or proposed to take any follow up action
6. The complainant was denied the opportunity to debate with Dr Gabb on a subsequent show
7. That the BBC failed during the show, and by not taking action since, to follow its own guidance regarding protection of and duty of care to children
8. The complaint has not been treated with the respect, empathy and sensitivity it deserved by the ECU
9. That the BBC Trust should review, and ban Dr Gabb from BBC programmes
10. That the BBC Trust need to improve their guidelines on terminating controversial callers during a show
11. The BBC are allowing an individual with dangerous views an audience

The Committee noted that the complainant disagreed with the Trust's Adviser's decision that the complaint should not proceed to appeal. He said that the Trust's Adviser had not addressed four of his points, and he provided further arguments why his points should be taken on appeal. The Committee noted that the complainant had also raised 10 complaint handling points relating to the responses he had been given by the BBC and the BBC Trust.

The Committee noted that the volume of paperwork for the appeal and review request was voluminous. It would not be proportionate to reference all of the points raised in that paperwork in detail here. However the Trustees did consider all the points made by the complainant in detail.

The Committee concluded as follows:

1. Dr Gabb's contribution to the show was rude, offensive, and sexist in nature

The Committee noted the complainant's concerns about the way Dr Gabb spoke to his fellow participant in a studio debate about internet censorship, but did not consider that it went beyond standards which could be regarded as generally acceptable in a programme of this kind. The Committee considered that this was a late night programme intended for an adult audience and often included discussions of contentious and challenging subjects. The Committee further noted that the BBC has a tradition of allowing expression of individual opinion. The Committee did not consider that there were sufficient grounds to conclude that Dr Gabb's comments amounted to a breach of Editorial Guidelines on Harm and Offence. The Committee noted the complainant's personal circumstances and agreed that, although the way Dr Gabb spoke to his fellow participant may have been offensive to the complainant, and others, it was editorially justified in the context of "fierce topical debate" and, additionally, in the context of a debate about free speech.

The Committee did not consider that there was a reasonable prospect of success on appeal for this point.

2. Dr Gabb's comments went beyond what one could expect, even for a late night radio programme

As with point 1 above, the Committee had regard to the Editorial Guideline on Harm and Offence, and did not consider that the item went beyond standards which could be regarded as generally acceptable in a programme of this kind. Again, it noted the fact that this was a late night programme intended for an adult audience and it considered that the audience would expect to hear robust opinions on contentious subjects. It did not consider that there was a reasonable prospect of success on appeal for this point.

3. Mr Nolan's challenge was inadequate and ineffective, and the editorial team did not direct a more robust approach.

The Committee noted that it was evident that Mr Nolan had interjected promptly several times during the debate, objecting to the way in which Dr Gabb had addressed Ms Smurthwaite. The Committee considered that Mr Nolan had handled the discussion appropriately and effectively, and had intervened promptly and appropriately.

The Committee did not see anything in the way in which Mr Nolan dealt with the situation to suggest there had been a breach of the Editorial Guidelines on Impartiality, Harm and Offence, or The Law and did not consider that these aspects of the complaint had a reasonable prospect of success of being upheld on appeal.

As the Committee considered that the actions of Mr Nolan had been adequate and appropriate, it did not consider that there were grounds to support an appeal with regard to the approach directed by the editorial team.

4. Mr Nolan failed to seek an appropriate apology from Dr Gabb

As with point 3, the Committee agreed with the Trust's Adviser that Mr Nolan handled Dr Gabb sufficiently firmly whilst himself remaining calm and polite throughout. The Committee did not agree with the complainant that Mr Nolan should have required Dr Gabb to make an on air apology.

The Committee noted that the complainant had asked whether a member of the

production team was monitoring the broadcast. The Committee was mindful that it was not for the Committee to consider complaints relating to adherence to Guidance as this is an operational matter, except where there had been a breach of the Editorial Guidelines. The Committee agreed that in this case they had seen no evidence to suggest a breach of the Editorial Guidelines in Mr Nolan's handling of Dr Gabb.

5. Neither the BBC editorial team, nor the ECU had taken, or proposed to take any follow up action

The Committee considered that this aspect of the complaint did not relate to a breach of the Editorial Guidelines and the Committee did not, therefore, consider that there were grounds for considering an appeal in relation to follow up action taken by the BBC Executive.

6. The complainant was denied the opportunity to debate with Dr Gabb on a subsequent show

The Committee agreed that the choice of guests is an operational matter for which the BBC Executive has ultimate responsibility and it is not within the Trust's remit to get involved in such decisions. The Committee further agreed that this point did not engage any Editorial Guidelines and that there was no reasonable prospect of success for this point on appeal.

7. That the BBC failed during the show, and by not taking action since, to follow its own guidance regarding protection of and duty of care to children

The Committee noted the complainant's argument that Dr Gabb's views are dangerous to children and vulnerable people. The Committee sympathised with the complainant's personal experiences but it considered that the BBC should be free to explore the range of views on any particular subject. It considered that Dr Gabb had been adequately challenged by Mr Nolan and there was no reasonable prospect of success for an appeal on the grounds that the programme had breached the Guidelines on Harm and Offence. The Committee noted that the complainant had also raised Section 9 (Children and Young People as Contributors) and Section 18 (The Law). The Committee agreed that there was nothing to suggest a potential breach of either of these sections of the Editorial Guidelines in the material broadcast and that neither of these sections were pertinent to the complaint. The Committee did not consider that the complainant had put forward sufficient evidence or arguments to suggest that these Guidelines were inadequate.

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

8. The complaint has not been treated with the respect, empathy and sensitivity it deserved by the ECU

In considering the complainant's argument that his complaint has not been treated with the respect, empathy and sensitivity it deserved, the Committee noted the complainant's particular circumstances and his statement that both his wife and daughter had suffered trauma as a result of the issues which were the subject of the discussion. The Committee considered the correspondence which had been provided as part of the complainant's appeal to the Trust. However, it could see no evidence that the responses the complainant had received from the BBC were anything less than courteous and respectful. The Committee considered that it and the Trust Unit had taken the allegations very seriously and had considered his complaint in detail. However, there was not, in the Committee's view a reasonable prospect of the complaint being upheld as a breach of the

Editorial Guidelines and for this reason it did not qualify for appeal.

9. That the BBC Trust should review, and ban Dr Gabb from BBC programmes

The Committee confirmed that decisions relating to who should appear on BBC programmes are matters for the BBC Executive and the Trust has no remit to direct the Executive about who can or cannot appear on its output.

10. That the BBC Trust need to improve their guidelines on terminating controversial callers during a show

The Committee noted that the complainant considered the guidelines on terminating callers during a show to be inadequate. The Committee was mindful of its view that the discussion on the programme had been handled appropriately by Mr Nolan and that it did not consider that there were grounds for considering this point on appeal. The Committee again noted that the complainant had asked whether a member of the production team was monitoring the broadcast. The Committee was mindful that it was not for the Committee to consider complaints relating to adherence to Guidance as this is an operational matter, except where there had been a breach of the Editorial Guidelines. In this case, the Committee agreed they had seen nothing to suggest a breach of the Guidelines in the way Dr Gabb had been handled. The Committee was also satisfied that the Guidelines were adequate in this respect, and it therefore agreed that there was no reasonable prospect of success for this point on appeal.

11. The BBC are allowing an individual with dangerous views an audience

The Committee noted the complainant's strong belief that Dr Gabb's views were dangerous to both adults and children, and that he should not have been allowed to contribute to the programme. As with point 7, the Committee considered that the BBC should be free to explore the range of views on any particular subject. The Committee had regard to the Editorial Guidelines and concluded that although many of the listeners would have found Dr Gabb's views objectionable, the Committee did not consider that there were sufficient grounds for considering that the views expressed by Dr Gabb on the programme breached the Guidelines on Harm and Offence. The Committee noted that the complainant had referred in his correspondence on this point to internet material and publications which were not BBC output and which did not, therefore, fall within the Committee's remit

Complaint handling

The Committee noted that the complainant had also raised 10 complaint handling points relating to the responses he had been given by the BBC and the BBC Trust.

With regard to those complaints relating to the initial responses from the BBC at stages 1 and 2, which included a complaint of delay at stage 1 and a failure by the BBC complaints team or the ECU to tell the complainant to write to the Executive about non-editorial matters, the Committee noted that these complaints were made for the first time to the Trust. It agreed that these complaints should have been addressed to the BBC Executive in the first instance and that they were not a matter for the Trust at this stage.

With regard to the complaint relating to the Trust's Adviser's statement that the issue of the complainant not being included in a subsequent broadcast could not be considered by the Trust, the Committee noted that the complainant had said this was wrong because it could be heard by the Complaints and Appeals Board. The Committee was clear that the choice of who to include in programmes is an operational matter and therefore not within

the Trust's remit to consider even as a general complaint (this is because the Complaints and Appeals Board can only deal with general complaints falling in the Trust's remit). The Committee noted that complainants had the opportunity to ask Trustees to review decisions by the Trust Unit that complaints did not have a reasonable prospect of success so that handling errors by the Trust Unit at the admissibility stage could be rectified by Trustees. However, in this instance the Committee did not agree with the complainant that the Adviser had made a mistake.

With regard to the complainant's allegation that his complaint had not been handled correctly in that his request for Dr Gabb to be banned had not been referred to the BBC Executive, the Committee reiterated that it is not within the Trust's remit to consider a ban on a programme contributor appearing in BBC programmes, as this is a matter of creative and editorial direction. The complainant had made his views about Dr Gabb known to the Executive and the Committee noted that this finding would also be provided to the Executive so that they would be aware of his views. The Committee did not accept that there was any evidence to suggest there had been a breach of Guidelines on Accountability and it did not consider that this aspect of the complaint had a reasonable prospect of success of being upheld on appeal.

With regard to the complainant's concern that he had been treated unfairly by the BBC's curtailment of his complaint, the Committee was satisfied that the BBC's responses to the complainant had been appropriate and it agreed that there was no reasonable prospect of success for an appeal.

In summary, the Committee was satisfied, having listened to the relevant parts of the programme and having considered in detail the points raised by the complainant, that there was no reasonable prospect that it would find a breach of the BBC's Editorial Guidelines had occurred. The Committee was clear that it considered that Mr Nolan and the programme team had handled the debate in a perfectly appropriate way.

The Committee acknowledged that the complainant had a particular reason for feeling offended by the views expressed by Dr Gabb, and it could understand why the complainant had such strong views on the matter. The Committee did not consider, however, that in allowing Dr Gabb to express his views the BBC had endorsed them or that, in its response to the complainant, the BBC had denigrated the complainant's personal experience.

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

## ***Sunday Morning Live, BBC One, 26 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 ("ECU") not to uphold his complaint regarding his alleged poor treatment as a programme contributor on *Sunday Morning Live*.

The complainant escalated his complaint to the BBC Trust, saying that the main point of his complaint had not been addressed. The complainant had been a contributor via webcam on *Sunday Morning Live*. He felt that he had been accused of sexism by another contributor and should have been afforded a right of reply. The studio contributor had begun his response to the complainant's call with the words, "That sexist nonsense aside...".

The complainant said that this incident was a "near replica of an incident in a previous broadcast of this same programme strand" and he felt that his complaint about the replication of the issue had not been properly addressed by the BBC complaints process.

### **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 Trust's Adviser considered the Editorial Guidelines on Fairness, in particular those concerning the right of reply. With regard to the question of whether the fact that the complainant was not able to respond during the programme to the studio contributor's comment represented a serious breach of the BBC's editorial standards, the Trust's Adviser agreed with the ECU's reasoning that:

"...whilst there are circumstances where a right to reply is required, it is not required in this particular instance. The guideline requirement covers situations where a programme makes 'allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or organisation' and I am afraid that I cannot agree that a throwaway, if pejorative, remark in the course of a lively debate on a matter of topical interest qualifies as such a situation".

The Trust's Adviser then considered the point that the complainant raised about his treatment in the programme in relation to it being a replication of a previous experience. She noted that the complainant had previously appeared on *Sunday Morning Live* in August 2011. The Trust Unit made further enquiries but found there was no record of a complaint being made at the time of broadcast. The programme makers were also unable to provide any correspondence with the complainant that might have given further information about this element of the complaint.

The Trust's Adviser concluded that the complainant was now out of time to raise his treatment on the August 2011 programme as a point of complaint and, also, that it appeared that the complaint had not been addressed by the Executive as required by the

Complaints Framework. Therefore, the Trust's Adviser considered that on this point too, the complaint did not have a reasonable prospect of success and should not be put before Trustees.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that his grounds for appeal were some false assumptions by the Trust's Adviser; the general applicability of the complainant's concerns to other contributors, and that they stretch to still bigger concerns. The complainant also still maintained that his treatment constituted serious defamation and deserved redress.

The complainant stated that he had not been informed in advance that Owen Jones would be appearing on the programme with him, and that he should have been allowed a rejoinder to correct the alleged falsity and defamation. The complainant alleged that because of a previous bad experience on another edition of *Sunday Morning Live* with fellow contributor Julie Bindel, he had made an express request to the programme before he consented to appear, that this should not be allowed to happen again. He said that he had made it a condition of his appearance on 26 August 2011 and that he had been reassured by senior members of the production team that there would be no repeat of his previous bad experience. In spite of this, he alleged that he suffered the same kind of defamatory misrepresentation as in the previous programme.

The complainant stated that his experience was not isolated and that the structure of programmes such as *Sunday Morning Live* facilitates potential unfairness because of the video link scenario, whereby there is a contributor in the studio with an anchor, and another contributor outside the studio. He felt that in this case the producer/editor had a responsibility to be especially vigilant, quite apart from his directly raising his previous experience with the production team.

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

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

The Committee noted that the complainant alleged that his treatment on *Sunday Morning Live* was defamatory and that he had not been afforded an adequate right of reply during a programme discussion about whether maternity benefits should be scrapped, to which he contributed via web-link.

The Committee also noted the complainant's concern about the potential for unfairness in contributions via web-link but agreed that the manner in which contributions are included in programme material is a matter of editorial and creative direction and that it is the responsibility of the BBC Executive to ensure that Editorial Guidelines are adhered to in all circumstances.

In terms of whether there was a reasonable prospect of the Committee finding that there had been a breach of the Editorial Guidelines in that the complainant should have been given a "right of reply", the Committee noted that the Guideline requirement for Right of Reply provides that there is a presumption that a fair opportunity to respond should be given where a programme makes "allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or organisation". In this case, the Committee agreed that the *Sunday Morning Live* discussion in which the complainant took part did not amount to such a situation and did not give rise to a requirement for a right to reply, and it further noted that, as BBC Complaints had said, in a debate, not everyone can have the last word.

The Committee also noted that the complainant, in his response to the Trust's Adviser's decision, had made a point that a similar situation had occurred on a previous edition of *Sunday Morning Live* in August 2011. The Committee agreed that on the basis of the evidence presented, the complainant had not made any previous complaints about this within the time limits set out in the BBC Complaints Framework. The Committee noted that the complainant was now out of time to raise a complaint about this previous piece of output. The Committee further agreed that, in the absence of a definitive record of what had been agreed prior to the complainant's second appearance, it could only make a judgment as to whether there was a reasonable prospect of it finding that the Editorial Guidelines had been breached by what had been broadcast.

The Committee was satisfied that the complaint had been dealt with appropriately by both the BBC at stages 1 and 2 and by the Trust's Adviser. In conclusion, having regard to the Editorial Guidelines, the Committee decided that there was no reasonable prospect of success for an appeal which alleged that there was unfairness amounting to a breach of the Editorial Guidelines. The Committee reached this conclusion notwithstanding the points raised by the complainant about the general applicability of his complaint and its relation to what the complainant described as bigger concerns, which the Committee considered and noted.

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

## ***The Andrew Marr Show, BBC One, 25 November 2012***

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

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

The complainant wrote to the BBC Trust seeking to appeal against the decision by BBC Audience Services not to engage in further correspondence with him about the content of the news round-up on *The Andrew Marr Show* on 25 November 2012.

The complainant said that during an interview with newspaper publisher Evgeny Lebedev, Andrew Marr was "uncomfortable" when Mr Lebedev made comments about phone hacking and that Mr Marr "couldn't wait to close the interview". Mr Lebedev had been responding to a question from Mr Marr on press regulation and had commented that he could not understand why the biggest scandal was being overlooked – that "the police should have been arresting those very journalists, but they weren't because they were on the take".

The complainant said that these comments, which seemed to him to be the most significant moment in the programme, were not picked up in the news round-up. The complainant alleged that this was "because the production team decided to protect Leveson and the corrupt police".

The complainant said he hears and sees things "on a 'daily basis'" where he sees "bias, factual error and countless incidents" like the one he originally complained of on *The Andrew Marr Show* where he believed BBC journalists and presenters failed to challenge appropriately people they had interviewed. He referred in particular to an incident in the previous day's edition of *The World at One*. The complainant said that this programme and *The Andrew Marr Show* demonstrated "total bias".

### **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 an appeal against this decision would have a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser said that her role is to determine whether a complaint engages the BBC's Editorial Guidelines and whether the appeal raises a "matter of substance", in particular whether there is sufficient evidence to suggest a reasonable prospect of success. The Trust's Adviser explained that the BBC has a responsibility to be fair, accurate and impartial across all its output, to provide a right of reply to individuals and groups as and when appropriate and to ensure that no-one or no one group is unfairly represented. She further explained that these responsibilities are reflected in the Editorial Guidelines.

The Trust's Adviser said that if the complainant were to make a specific complaint about a specific programme, series or individual which crystallised his general concerns, then it would be possible to consider it. She explained that the Editorial Complaints Procedure specifies that the BBC may not investigate a complaint if it:

Fails to raise an issue or breach of the Editorial Guidelines;

or is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In relation to the complaint about Mr Lebedev's comments on phone hacking not being included in the news round-up, the Trust's Adviser confirmed that the decision about which stories to include in the round-up are editorial choices, as BBC Audience Services had explained. She confirmed she saw no evidence to suggest bias and considered that the BBC Audience Services had therefore given a reasonable response on this point. The Trust's Adviser noted that in a follow-up complaint, the complainant said that the BBC was involved in "manipulating the news", and that other output was "irrelevant" or showed "bias". However, he did not give details which would have allowed the BBC to have addressed these points. The Trust's Adviser said that she had seen no evidence that suggested bias and did not believe that the complainant had cited an example of specific content which would provide evidence to demonstrate an engagement with, or breach of, the Editorial Guidelines. She said that she believed that the Trustees would be of the view that BBC Audience Services had provided reasoned and reasonable responses to the complainant's non-specific complaint.

As the Trust's Adviser did not consider that there was any evidence of the BBC's Editorial Standards being breached, she said it seemed reasonable for BBC Audience Services to decline to respond any further to the complainant's correspondence on this issue. For these reasons, she did not believe the appeal had a reasonable prospect of success and did not propose to proceed with it to Trustees.

The Trust's Adviser noted that the complainant referred in his appeal to a further incident which he considered demonstrated bias, on *The World at One*. The Trust's Adviser explained that, as the complaints framework makes clear, all complaints must be addressed by the BBC in the first instance, not the Trust, and therefore it was not appropriate for this point of the appeal to be put before Trustees.

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complaints system seemed to him to be designed to put people off complaining.

The complainant said he had not made specific complaints against Mr Marr because he too (the complainant) was conditioned by the BBC. He criticised the way Mr Marr conducted the interview with Mr Lebedev, and considered that the decision not to put Mr Lebedev's comment in the news round-up near the end of the programme was wrong. The complainant also raised criticisms and concerns relating to his perception of BBC "culture" generally.

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

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

The Committee noted the complainant's concern that comments made by Evgeny Lebedev in *The Andrew Marr Show* were not picked up in the news round-up section of the programme. It also noted the complainant's criticism of the way the interview had been conducted, in particular what he saw as Andrew Marr's apparent desire to close down the interview following Mr Lebedev's answer to a question.

The Committee was satisfied that it was reasonable for Mr Lebedev's comments not to have been included in the news round-up. Similarly, it did not consider that there was substance to the complainant's allegation that Mr Marr's handling of the interview was evidence of bias. The Committee considered that programme content is a matter of editorial discretion and there was no evidence to support the allegation that editorial judgment had been affected by bias. The Committee concluded that there was no evidence of breach of the Guidelines on Accuracy or Impartiality and that there was no prospect of success for an appeal against the BBC's decision to cease further correspondence in respect of this complaint.

The Committee noted the complainant's comments about the complaints system being "*designed to put people off complaining*". However, the Committee was satisfied that BBC Audience Services had dealt with this complaint appropriately.

The Committee reached its decision notwithstanding the comments and concerns about the BBC that the complainant had raised in his correspondence to the Trust, and which the Committee considered and noted.

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