

Editorial Standards Findings

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

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Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summaries of findings

The Future State of Welfare with John Humphrys, BBC Two, 26 October 2011

The Trust consolidated two appeals about The Future State of Welfare. The programme had considered changes to the welfare state and the Coalition Government's welfare reform proposals. The complainants criticised the accuracy and impartiality of the broadcast.

The Committee concluded:

- that the subject of the programme was controversial and a major matter within the meaning of the Editorial Guidelines.
- that the programme makers had made a legitimate editorial choice in choosing to tackle the subject by focusing on the voices of those "with most to lose", taking the Government's planned changes at its starting point.
- that there was no evidence in the programme that John Humphrys was advocating the Government reforms rather than playing the traditional interviewer's role of devil's advocate by challenging interviewees as appropriate.
- that given the clear signposting of the nature of the programme, which was to examine the proposed changes through the eyes of a selection of those most affected, the programme had included an appropriately wide range of voices.
- that, in approaching the subject in the way it did, the programme had not omitted an important perspective and had not therefore jeopardised perceptions of the BBC's impartiality on a controversial issue.
- that the presenter's reference to "a victim of the benefits system" was not a direct paraphrase of what a contributor had said but speculation by the presenter and that this section of the programme was duly accurate.
- that it was appropriate that weight was accorded to the New York contributions in the context of the allegation that there was no authoritative voice challenging the UK reforms.
- that a series of voices heard in the programme, most notably the benefits claimants themselves, John Humphrys' questioning, and also voices in New York, challenged the Government's assumptions and ensured that the programme achieved due impartiality by reflecting an appropriately wide range of significant views.
- that the programme was fair and open-minded when examining the evidence and weighing material facts and that it gave due weight to the many and diverse areas of the argument.

- that, having introduced the headline figures of the rising benefits bill, the programme ought to have reflected what percentage of that overall rise was represented by the welfare benefits being targeted by the Government and which were the subject of the programme.
- that the absence of sufficient complementary statistical information to underpin contributors' accounts, viewers were left unable to reach an informed opinion and the Accuracy guidelines had been breached
- that, as both issues are central to the viewers' understanding of the key issues discussed in the programme, and because this was a controversial issue which was also a major matter within the meaning of the Editorial Guidelines, the failure of accuracy had also led to a breach of impartiality.
- that the anecdotal style of the personal testimonies heard in the programme had been clearly signposted and were likely to have met audience expectation; and the contribution by John Humphrys, recollecting his own personal experiences was, in the view of the Committee, consistent with that approach.
- that on the issue of the likely efficacy of the Government's welfare reforms, which was the focus of the programme, there was no evidence that John Humphrys' commentary or approach went beyond reaching a professional judgement rooted in evidence as allowed for within the guidelines.
- that the sentiments John Humphrys expressed in relation to the public mood in the past compared with now were judgements based on his personal experience rather than opinions which could be interpreted as a personal view.

The complaint was partially upheld on one point with regard to Accuracy and Impartiality.

For the finding in full see pages 7 to 30.

“David Ward MP ‘sorry’ over Israel criticism”, BBC News Online, 26 January 2013

The complainant said that a BBC News Online article about an apology given by Liberal Democrat MP David Ward was inaccurate in the way it formulated his original comments and that, as a consequence, the audience would have been misled and confused as to the nature of the row his remarks had provoked. One complainant also said that the phrasing suggested the BBC was siding with Mr Ward's point-of-view.

The Committee concluded:

- that the formulation in the headline and opening sentence of the article did not accurately convey what Mr Ward had said in his original comments.
- that the effect of the inaccuracy in the headline and opening sentence would have been to mislead the audience on the nature of the row Mr Ward's comments had

provoked.

- that, while the precise wording of Mr Ward's website posting and his apology were reported verbatim later in the article, this was not sufficient to mitigate the inaccuracies in the headline and opening sentence.
- that the article reflected a range of views on the story and, whilst elements of the article had breached the Guidelines on Accuracy, the article had nevertheless achieved due impartiality.

The complaint was upheld in part.

For the finding in full see pages 31 to 38.

Today, BBC Radio 4, 29 November 2012

The complaint was about a Today programme interview with Lord Oxburgh, former Chairman of Shell, on the morning of a statement to MPs on the introduction of the Energy Bill. The complainant said that listeners should have been informed of Lord Oxburgh's business interests in renewable energy. The complainant also said that during the interview Lord Oxburgh had promoted the idea of carbon capture and storage, from which the complainant alleged Lord Oxburgh would stand to gain because of his commercial interests.

The Committee concluded:

- that Lord Oxburgh was well known as the former Chairman of Shell; however, his current business interests were significant in the context of an interview about future energy supply on the day that the Energy Bill was announced.
- that listeners would have benefited from being told by the Today programme that Lord Oxburgh was speaking in the context of being President of the Carbon Capture and Storage Association (CCSA) in order that they could have considered his comments accordingly.
- that the Today programme had failed to meet the requirement of the Editorial Guidelines to identify on-air and online sources of information and significant contributors, and provide their credentials, so audiences could judge their status, and there had been a breach of the Accuracy Guideline in this respect.
- that Lord Oxburgh's comments were largely uncontroversial and the audience was unlikely to have been misled, because of the general nature of the discussion.
- that at one point in the interview Lord Oxburgh did discuss carbon capture and storage but he had not promoted these as he qualified his comments with "if", and that he had cited carbon capture as one of a number of options that might be used "depending on your taste" if the government pursued a low carbon energy policy.
- that, whilst further information on Lord Oxburgh's current business credentials could have been helpful, the BBC had not "knowingly and materially" misled its audience.

- that, taking into account the broad nature of the discussion, even though the requirement for due accuracy had not been met, there was no evidence to suggest a breach of the Guidelines on Impartiality.

The complaint was upheld in part with regard to Accuracy.

For the finding in full see pages 39 to 45.

***Countryfile*, BBC One, 18 November and 9 December 2012**

Two people appealed to the Trust about the appearance of branded clothing on *Countryfile*, citing two broadcasts in particular. The complainants said that the wearing of branded clothing amounted to product placement and undue prominence.

The Committee concluded:

- that the wearing of branded clothing by the presenters did not amount to product placement as there was no evidence that its inclusion in the programmes was in return for payment or any consideration in kind.
- that the wearing of the same visibly branded clothing by two of the programme's presenters in the two editions of the programme did amount to undue prominence which gave the impression that the programmes were promoting or endorsing these products.
- that in these programmes the cumulative effect was that the branded clothing was unduly prominent and amounted to a breach of the Guidelines covering Product Prominence.

The complaint was upheld in part.

For the finding in full see pages 46 to 49.

***Holby City*, BBC One, 18 September 2012, 8pm**

The complainant objected to the use of the word "shagging" and the phrase "cut his balls off" during an episode of *Holby City*, broadcast before the 9pm watershed. The complainant said that this language was sexually explicit and inappropriate when children might be watching.

The Committee concluded:

- that some viewers might find the use of this particular language offensive, but *Holby City* is a well-established drama dealing with contemporary life and covering challenging themes of hospital life, both on the ward and in the staff's personal lives.
- that regular viewers of this drama serial would not have found the use of the word "shagging" or the phrase "cut his balls off" unacceptable in this particular context.
- that *Holby City* starts an hour before the watershed, when viewers are aware that not all programming is suitable for younger children.

- that parents and carers share responsibility with the broadcaster to decide what is suitable for their children to view.

The complaint was not upheld.

For the finding in full see pages 50 to 54.

Appeal Findings

The Future State of Welfare with John Humphrys, BBC Two, 26 October 2011

1. Background

This is a consolidated appeal regarding two appeals to the Trust about the documentary, *The Future State of Welfare* with John Humphrys. The allegations concern the accuracy and impartiality with which the programme presented the issue of the Coalition Government's welfare reform proposals.

The Future State of Welfare was a one hour standalone programme on BBC Two broadcast during the passage through Parliament of the Coalition Government's Welfare Reform Bill.

John Humphrys reported from across the UK. Amongst the people he spoke to were those "with the most to lose" under the proposed new system. He also went to the United States where in the late 1990s radical changes were introduced; Mr Humphrys asked whether the UK was headed in the same direction.

2. The complaint

Stages 1 and 2

The complainants received replies to their complaints at Stage 1 from BBC Audience Services. Additionally, one complainant (the Child Poverty Action Group) received a detailed reply from the Executive Producer, Independent Commissioning, Current Affairs.

None of the issues raised by either complainant was upheld by the Editorial Complaints Unit at Stage 2 of the complaints process.

Appeals to the Trust

Only material arguments are noted in this summary.

The first allegation is that the programme framed the controversial issue of welfare reform solely from the Coalition Government's perspective without noting that it is a contested view and a wide range of views exist about the challenges facing social security and welfare benefits.

The second allegation is that a lack of statistical and other objective evidence failed to equip viewers with adequate context on which to reach an informed opinion on the issue

of welfare reform, specifically the assertion that the programme noted the number of job vacancies without including statistics on the number of people looking for a job.

The third allegation is that John Humphrys conflated his personal opinion with factual reporting, breaching the Editorial Guidelines which prohibit BBC journalists who work in news and current affairs from expressing personal views about public policy in BBC output.

The first complainant (Complainant A) summarised her concerns in the introduction to her appeal thus:

“Because of the lack of informed analysis and lack of statistical and other objective evidence, viewers were left with opinions and nothing to guide them to a judgement as to which was more valid.”

She raised the following issues in relation to the programme:

- it stated that there were jobs to be found but did not include the numbers looking for jobs
- it pandered to common stereotypes
- it did not examine the distinction between contributory benefits and means tested benefits, nor how the poverty trap works
- it stated that incapacity tests are flawed without indicating the level of successful appeals against decisions
- it used an immigrant family in Islington to illustrate policy on housing benefit without fully explaining their circumstances
- it failed to examine the potential consequences of a cap on housing benefit around London
- it did not examine the consequences on children of Workfare in the US.
- the poll questions were not helpful as the questions were not sufficiently detailed to allow an informed response, particularly with regard to incapacity benefit.

The Head of Editorial Standards decided that, with the exception of the general issue raised by the complainant about the lack of statistics and other objective evidence, and the first bullet point relating to the ratio of job seekers to job vacancies, the remainder of the complainant's points did not qualify to proceed to appeal.

The second complainant is the Child Poverty Action Group (CPAG). It stated on appeal that the programme failed to meet the guideline requirement on Impartiality, particularly in relation to those clauses applicable to controversial subjects. CPAG summarised what it said were the key areas of failure in the programme:

- allowing the personal opinion of a senior news and current affairs presenter to be aired
- conflation of opinion with factual reporting
- misrepresenting alternative views by repeatedly misdescribing people who had described themselves as victims of labour market problems (low pay) by describing them instead as being victims of the benefits system
- engaging only with a single, politically associated, “dependency culture” framing, resulting in the range of alternative perspectives current in academia, politics and the population at large not being adequately signposted or given due weight.

CPAG raised two additional issues which were not included in their initial complaint:

- John Humphrys, in an article which appeared in the Daily Mail, gave the impression that in his opinion the welfare system had created an “age of entitlement”
- Iain Duncan Smith, interviewed by John Humphrys on the *Today* programme in October 2012, recalled it as “an excellent programme” which went back to Mr Humphrys’ roots and reported the shift. CPAG argued this supported its contention that the programme had reflected John Humphrys’ personal view.

The two appeals were consolidated in accordance with the Editorial Appeals procedure.

3. Applicable Editorial Standards

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The sections on Accuracy (Section 3) and Impartiality (Section 4) are relevant to this appeal.

4. The Committee’s decision

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

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

Point (A) – Regarding the allegation that the programme framed the controversial issue of welfare reform solely from the Coalition Government’s perspective without noting that it is a contested view and a wide range of views exist about the challenges facing social security and welfare benefits.

The Committee noted that in their submissions on appeal both complainants alleged the programme included insufficient context and too narrow a range of views in its discussion of welfare reform.

It noted Complainant A’s contention that Government spending cuts have resulted in high levels of unemployment which have increased the benefits bill:

“To keep the general public on side, there has to be a campaign of vilification of benefit claimants – not difficult when this is the perennial refrain of the conservative press. It can be reinforced by various schemes to get the ‘workshy’ back to work. Above all, the discussion has to be framed in terms of ‘the hard-working taxpayer against the feckless or fraudulent benefit claimant’. It is against this background that the programme we are discussing was pernicious...”

“There is an urgent need to examine the role of the Welfare State from a wider perspective than merely financial. It goes to the heart of what kind of society we want to live in and how we view our fellow citizens. At the moment, the debate is entirely framed within the narrative proposed by the government and the tabloids.”

The Committee noted the comment in CPAG’s letter of appeal that the programme began with an approach that was “inappropriately anecdotal and then presented a particular, partisan framing of the issue, including the proposition that there exists a ‘dependency culture’”. The Committee noted CPAG’s contention that it is a view espoused by the

Centre for Social Justice (CSJ) and Iain Duncan Smith, the Minister for Work and Pensions (who founded the CSJ), and that it represents a single political perspective, that of the Coalition Government. The Committee further noted CPAG's contention that this is a contested view and that other views on the causes of the spiralling benefits bill exist, and therefore the programme failed to provide the appropriate balance on a controversial issue that was at "major matter" stage as defined by the Editorial Guidelines.

The Committee noted a Trades Union Congress report published in May 2010 which CPAG submitted to support their allegation:

"For those arguing that raising benefits encourages idleness, this paper provides evidence contrary to this. The vast majority of individuals are committed to finding work, and it is important to note that unemployment is caused by structural factors outside the control of the individual. This paper shows us that there is a wide gap between the negative portrayal of benefit claimants in the popular tabloids and the independent academic research on living on current benefit levels."

The Committee noted how CPAG concluded their appeal in relation to this allegation:

"We noted the use of the phrases 'dependency culture' and 'age of entitlement' used in the programme as proxy terms for the overall framing, premise and tenor of the programme. Under this framing, the only problems admitted are intrinsic to the social security system and the attributes of the claimants. Matters extrinsic to the system, or the attributes of claimants, are not admitted.

"The ECU responded to our concerns on this point by simply counting the number of times the phrases 'dependency culture' and 'age of entitlement' were stated in the transcript. The matter of substance which therefore remains inadequately addressed by the ECU is the extent to which the programme was conceived, presented, directed and edited within the contested framing we are referring to."

The Committee noted the programme team's response to this allegation on appeal:

"The express purpose of the film was to look at the proposals for welfare reform that were being put forward in 2011 and to find out what those who would be most affected by the changes thought about welfare and the proposed reforms – as John Humphrys said in the pre-title sequence, 'to find out if Britain really is ready for the future state of welfare'. This necessitated the film setting out both what the Coalition Government was proposing and some of the thinking behind those proposals before presenting a range of voices who made it clear that the reforms were both controversial and contested. Having watched the whole film an impartial viewer could not contend that the film's conclusion was that Britain was both ready for and unanimously welcoming of the proposed reforms."

The Committee noted the programme's response to the assertion by both complainants that, while the issue of low pay and lack of jobs to apply for was raised by a number of benefit recipients as the barrier to employment (labour market failures), those views were either misinterpreted or ignored in the commentary:

"Every single speaker in the film was included because the points they made added to the debate. As a result the complainants are able to point to several individuals who they acknowledge do make strong points about both the difficulties of taking low paying employment and the relative scarcity of jobs. The

views of each contributor were accurately presented in the film and not one of them has indicated that they were in any way uncomfortable about their presentation within the film.

“The individuals in question were out of work for a number of reasons and their views are accurately reflected.”

The Committee noted the programme supported its response by reference to the contributors heard in the film:

- that in the featured case of Pat Dale from Cardiff, she says she would be “working for nothing” if she took a job on the minimum wage and that therefore John Humphrys’ subsequent hypothesis that she may be “a victim of the benefits system, the benefits culture” is a reasonable one.
- that Steve Brown and Paula Mort in Middlesbrough made a similar point and that there was no inference in the commentary that they would prefer to live off benefits if more highly paid work was available.
- that the group of single mothers made their desire to work very clear while acknowledging that earning a low wage and the loss of benefits that would result would be a problem in supporting their children.
- that the Middlesbrough Job Club interviewees are clearly portrayed as actively seeking whatever work they can get at the minimum wage, but that despite applying for dozens of jobs they frequently do not hear back from prospective employers; John Humphrys’ commentary states: “They have been trying and in some cases trying for a very long time”.
- that the attendees at the job club training course express similar frustrations to the Middlesbrough interviewees and that the view emerging from both sequences is that there is a failure in the labour market – that many people are actively trying, but failing, to secure work and that there is often a lack of engagement from prospective employers.

The Committee noted the concluding remarks in the programme team’s response on this point:

“...there is no single over-arching narrative or view that the film actively seeks to push. A range of views are presented and the Government certainly does not escape criticism.”

The Committee noted the programme team’s response to the criticism that it had failed to include a UK voice (other than benefit recipients) which gave the view that there was a problem of labour market failure:

“This view is sufficiently expressed through the various contributions from the individuals mentioned above – the attendees of the Middlesbrough job club and the training course, in particular. We acknowledge that the complainant would have preferred this view to be reflected by other ‘expert’ individuals (representatives of CPAG, for example) but we cannot agree that the programme-makers’ approach resulted in a lack of impartiality. Further, as the film makes clear the welfare budget covers a range of benefits many of which are not directly linked to whether or not the recipient is in work or available for work – such as

housing benefit (as the example of the Novillo family in Islington demonstrated and their local labour councillor set out very clearly). As Professor Paul Gregg of Bristol University says (in the programme) successive governments have increased welfare spending for various reasons – including attempts to reduce child poverty – that are not exclusively connected to unemployment.”

The Committee considered first whether the programme covered a “controversial subject”, as set out in the impartiality guidelines. The Committee noted the relevant section of the guidelines:

Controversial Subjects

4.4.5 We must apply due impartiality to all our subject matter. However, there are particular requirements for ‘controversial subjects’, whenever they occur in any output, including drama, entertainment and sport.

A ‘controversial subject’ may be a matter of public policy or political or industrial controversy. It may also be a controversy within religion, science, finance, culture, ethics and other matters entirely.

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

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

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

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

The Committee agreed that the “subject” it needed to consider for the purpose of deciding whether this programme covered a “controversial subject”, was the subject of the Government’s welfare changes. The Committee noted the wording in 4.4.6 above, and agreed that this was a topical subject which was the subject of public and political contention and debate and an issue of national importance. The Committee therefore concluded that this was a controversial subject within the meaning of the Editorial Guidelines.

Having satisfied itself that the subject matter covered in the programme was a controversial subject in accordance with the definition set out in the Editorial Guidelines,

the Committee considered whether it could also be considered a “major matter” as defined by clause 4.4.9 of the guideline on Impartiality:

“Major matters” are usually matters of public policy or political or industrial controversy that are of national or international importance, or of a similar significance within a smaller coverage area. When dealing with ‘major matters’, or when the issues involved are highly controversial and/or a decisive moment in the controversy is expected, it will normally be necessary to ensure that an appropriately wide range of significant views are reflected in a clearly linked ‘series of programmes’, a single programme or sometimes even a single item.

The Committee noted that at the time the programme was broadcast in October 2011 the Welfare Reform Bill was continuing its passage through Parliament. On the day before the programme was transmitted the Bill was being debated in the Grand Committee in the House of Lords and members had discussed a number of amendments to the work-related requirements for those claiming universal credit, including claimants’ availability, searching and preparing for work.

Noting that there had been widespread public interest about the measures in the Bill and that aspects covered in the programme had provoked widespread debate within Parliament but also amongst the general public and in the media, the Editorial Standards Committee agreed that the issue was both controversial and at “major matter” stage. As such, the programme was required to ensure it met the terms of 4.4.9.

The Committee noted how the programme outlined the scope of its ambition in the opening sequence and that, using a combination of voice montage and presenter commentary, the following points were made:

- 70 years ago one document, the Beveridge Report, sparked a social revolution and gave birth to the welfare state
- The welfare bill is massive and has gone up by nearly £60 billion in the last ten years
- Critics of the benefits system say the welfare state is in crisis
- The Government is planning major reforms to cut billions off the bill
- John Humphrys talks to people with the most to lose
- Are they prepared for the harsher future ahead? Is Britain ready for the future state of welfare?

The Committee took the view that the clear signposting at the beginning of the programme would have managed the audience’s expectation as to the nature of the programme, the range of voices which would most likely feature, and the questions the programme would seek to answer.

The Committee agreed with the programme team that, given the clear signposting and the timing of the programme during the passage of the Welfare Reform Bill through Parliament, the programme was not required to reflect the *causes* of the spiralling bill: the programme’s clearly stated ambition was to examine the likely *effects* of the specific changes envisaged by the Government on those who would be most affected.

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

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

The Committee considered the programme makers had made a legitimate editorial choice in choosing to tackle the subject by focussing on the voices of those “with most to lose”, taking the Government’s planned changes at its starting point. There nevertheless remained the requirement that the programme was duly impartial and that, taking account of the subject and nature of the content and the likely audience expectation, the programme reflected an “appropriately wide range of significant views” as required when an issue of contention was also a “major matter”.

Having agreed with the programme makers that the issue of contention, as signposted in the introduction, was the likely efficacy of the planned reforms, the Committee then considered, as this was a standalone programme and not part of a clearly linked series, whether the programme had achieved due impartiality by reflecting an appropriately wide range of significant views on the issue.

The Committee noted the programme’s approach of talking to those most likely to be affected. The Committee considered that, in including voices which were rarely heard at such length, the programme had reflected a breadth of opinion, giving a platform to claimants’ views and providing space for them to tell their stories in their own way.

The Committee noted that the complainants were not saying claimants’ voices should not have been heard, but that they should have been reinforced with informed, authoritative voices independent of claimants and challenging the Government’s assumptions in the UK context, as argued by CPAG in their response to the ECU’s finding at Stage 2:

“We find it hard to believe that it is desirable or, in this context, acceptable, for a programme to claim it achieved balance by the presenter explicitly presenting one view, but leaving the principal alternative view to be only implicitly represented by some of the contributors.”

The Committee noted Complainant A’s argument that the voices of the benefit recipients which are heard in the programme might be seen by the audience as “special pleading” and consequently accorded less weight as a result.

The Committee took the view that the programme was comprehensive in the range of topics covered during the extended interviews it conducted with a wide range of benefit recipients. The key issues relating to the likely efficacy of the planned reforms were covered, such as a lack of jobs to apply for; the low minimum wage; the failure of employers to engage with applicants; the “one size fits all” of Government training schemes; the range of practical issues raised about how single parents might cope with a loss of benefits; the practicalities of accessing suitable childcare; and those in work and on housing benefit being forced to move because of the planned cap on rent payments.

Whilst the Committee acknowledged that the principal alternative view in the UK context was provided entirely by benefit recipients, the potential problems were explicitly stated and were not “implicit” as CPAG contended. The Committee did not agree that the contributions would carry less weight because the source was the claimants themselves. Rather, the Committee accepted the ECU’s conclusion that their voices tested, challenged and qualified the assumptions on which the Government was basing its reforms.

Neither did the Committee agree that the presenter explicitly represented an opposing view to that of the benefit recipients he interviewed, as contended by CPAG. The Committee considered that there was no evidence in the programme that John Humphrys was advocating the Government reforms. The Committee considered he was, for the most

part playing the traditional interviewer's role of devil's advocate by challenging interviewees as appropriate.

Whilst the Committee had sympathy with the complainants' concerns that there was an absence of an authoritative independent UK voice challenging the reforms, it considered that the contributions heard in the sequences in New York were relevant in its determination of whether the programme reflected an appropriately wide range of significant views, as required by the Editorial Guidelines. It noted that the New York experience was introduced as the possible future for the UK and contributions were put in that context. The Committee felt that in particular the powerful contribution of Aine Duggan at the New York Food Bank reinforced the comments made by the UK contributors:

John Humphrys: Soup kitchens like this have become an integral part of the American welfare system, according to Aine Duggan, one of the directors here. We, in Britain, have unemployment. We don't have soup kitchens.

Aine Duggan (Food Bank for New York City): You don't have soup kitchens. You also haven't encountered the atrocity of welfare reform yet, but you might –

JH: The atrocity of welfare reform?

AD: Welfare reform is one of those interesting debates in the United States. I think the beauty for the rest of the Western world is that we're able to now look at the American system and see what actually happened and whether or not it was a success. And what we're seeing is that in the wake of this recession, that safety net has literally buckled and given way under the need among families, particularly families with children.

JH: But if you talk to, as I've just been doing, to City Hall here in New York, they will say the system is working, poverty is falling.

AD: If you take a myopic approach to it, it was a very successful initiative, because one of the things we did here in the United State was we just looked at the near term 'successes'. And so, right after welfare reform was implemented we were able to say things like there's a higher number of single mothers with children earning, because they're back at work. However, we have an unemployment rate that is practically double what it was at the beginning of the recession. In New York City, 1.5 million people living in poverty. And so, in reality what's happening is that we took welfare reform and we've used it as an excuse to cut and cut and cut, and to push more and more families out of the welfare system. And this recession has certainly sent more and more families to soup kitchen and food pantry doors.

While the Committee acknowledged that America was a different labour market and a different system, it noted that the account of the US experience was in the context of how

effective the kind of reforms the UK Government is planning might be in a difficult economic climate, that the experience from the US is mixed at best and in a significant number of cases denial of benefit has pushed people into poverty rather than necessarily creating sustainable jobs. The Committee therefore agreed it was appropriate that weight was accorded to the New York contributions in the context of the complainant's allegation that there was no authoritative voice challenging the UK reforms.

The Committee concluded that given the clear signposting of the nature of the programme, which was to examine the proposed changes through the eyes of a selection of those most affected, the programme had included an appropriately wide range of voices. The impact of the programme choosing to approach the subject in the way it did had not, the Committee concluded, led to an omission of an important perspective and had not therefore jeopardised perceptions of the BBC's impartiality on a controversial issue.

The Committee turned to the second aspect of this allegation, that despite interviewees raising issues of labour market failures, their contributions were undermined by the commentary "reasserting the dependency culture/failed welfare system framing". It noted CPAG's contention in its letter of appeal:

"despite several participants locating the problem as being low pay rather than the benefits system, Mr Humphrys continued to assert the 'dependency culture' framing in explanation".

The Committee noted the contribution by Pat Dale in Cardiff, who focussed her answer almost entirely on the level of the minimum wage as the disincentive to work, and which was followed with a piece to camera in which John Humphrys said:

"But obviously she sees herself as a victim, and maybe she's right. A victim of the benefits system, the benefits culture that we have created over the decades."

The Committee noted CPAG's assertion that it would have been more accurate if John Humphrys had said she sees herself as a victim of the low wage economy.

The Committee noted and considered the requirements for due accuracy as set out in the section of the Editorial Guidelines relating to Accuracy. The Committee noted that John Humphrys was not directly paraphrasing what this contributor had said but, rather, was observing that she saw herself as a victim. He then speculated whether she might be a victim of the benefits system. The Committee noted that Mr Humphrys did not attribute this view to the contributor. The Trustees considered that this section was duly accurate. It noted viewers had heard the contributor's own words and it considered they could come to their own conclusion about what her view was.

The Committee noted too the complainants' argument that the other UK voices in the programme favoured the Government's framing of the issue and that the two UK academic/think tank voices heard in the programme both brought up the theme of a dependency culture:

Gavin Pool (Executive Director, Centre for Social Justice):

I think there's something wrong with a system that enables part of the population who could work, to choose the option to live life on benefits, and we think that's wrong. A lot of people are trapped on benefits. They're worse off by going into work and that simply isn't, is not, that's not right.

...

Professor Paul Gregg (Bristol University):

We are now in a situation where the support of a child, in terms of the cash payments received, is broadly equivalent to that for an adult. ... And this was an attempt to reduce child poverty. The, the other side of this kind of argument, if you like, is that the very creation of that kind of a safety net encourages people to perhaps exist on welfare payments longer than they otherwise would do.

The Committee noted the further allegation that the programme was framed around the flawed notions of a "benefits trap", a "dependency culture" and a perception of "entitlement". It noted CPAG's rejection of the ECU's reasoning for not upholding this aspect of the complaint:

"The ECU responded to our concerns on this point by simply counting the number of times the phrases 'dependency culture' and 'age of entitlement' were stated in the transcript. The matter of substance which therefore remains inadequately addressed by the ECU is the extent to which the programme was conceived, presented, directed and edited within the contested framing we are referring to."

The Committee noted where contributors were heard stating that they consciously choose to exercise their entitlement to benefits: Pat Dale and her family in Cardiff, and the Brown family in Middlesbrough:

John Humphrys: Do you think that a sort of attitude develops, ah, in an area – on an estate maybe – in a certain area that says "Well..."

Steve Brown: There's no jobs so...

JH: So living on benefits is an acceptable lifestyle.

SB: Yeah, yeah, yeah. See before, before I take a job you have to sit down with them and work it out – whether it's acceptable to go to work or not

JH: When you say acceptable, acceptable in what way?

Paula Mort: Whether it's going to be worth your while...

SB: Whether it's going to be worth your while to go to work...

JH: Right...why might it not be then?

SB: Because, you know, because I might go to work for forty hours and end up with thirty pound. Or twenty pound. After I paid out all the bills.

The Committee noted that where contributors said they had consciously chosen to stay on benefits rather than seek jobs they were also given space to explain why. Pat Dale told John Humphrys that she could not work because the minimum wage is too low and that

she would have nothing left and would lose out on her rent benefits if she took a job at that level.

Steve Brown said:

- SB: ... I wanna work but I can't afford the minimum wage work.
- JH: You don't think that working is better than not working, whatever the financial outcome?
- SB: No, no, no, no not at all, like, no. I just don't, I just don't see, I think, I mean, I just...I don't wanna be going out to work for forty hours and missing my kids, if I'm only going to receive a few quid extra for it, do you understand? I'm missing my kids growing up. I can't see how the minimum wage is, is good enough, that's all, when -
- JH: Well, a lot of people do work for the minimum wage.
- SB: Well, the way it worked out for me, like I say, it was just not worth going to work for it.
- Voiceover: So what Steve Brown has done is make a straightforward calculation: go out to work for very little extra, or stay home and enjoy his children. He's chosen the latter. And that presents politicians with a massive dilemma.

The Committee considered CPAG's criticism of what it called the "benefits culture" framing. It then considered whether there was legitimate editorial justification for the programme according to the Government's perspective on the weight it did.

- Group member 1: My mum's worked all her life. She has to go and pay for tablets in the doctors and the dentist and stuff like that, whereas there's me who gets me rent paid for, I don't have to pay for nothing in the doctors and I don't have to pay for nothing in the dentist and then sometimes it makes me that angry that I think "well, what is the point in going and working?" If that's how it's gonna be? But I do wanna go and work.
- Kelly Wright: But this is what I'm saying- it's not that you don't wanna job, it's the barriers that are in front of you getting that job.
- Group member 2: Even if I went to work, half, half my wages anyway would go on childcare. I'm not trying to say I don't want a job but, but it wouldn't pay for my childcare and for rent and for leccy and for gas and shopping.
- KW: You don't wanna get your wages and go "Oh, it's gone"... (background dialogue) Yeah, you do.
- Group member 1: You get called for these interview and they threaten to stop your benefits and that, and then you go there and there's nothing that works around you, you can't get your childcare

paid for or you'll find a job where you've got to be somewhere for 8 o'clock and it takes an hour to get to, and there's no childcare places that can take your child at 7 o'clock... and then if the job doesn't pay you good enough to support all that it's like you're going to work for nothing, isn't it?

The Committee concluded that the programme was explicitly framed within the context of the Government's planned changes to some aspects of the welfare benefits system. It noted this was stated at the outset and reaffirmed throughout the commentary. A series of voices heard in the programme, most notably the benefits claimants themselves, John Humphrys questioning, and also voices in New York, challenged the Government's assumptions and ensured that the programme achieved due impartiality by reflecting an appropriately wide range of significant views as required by 4.4.9 of the Impartiality guidelines.

The Committee further concluded that the programme was fair and open-minded when examining the evidence and weighing material facts and that it gave due weight to the many and diverse areas of the argument as stipulated in 4.4.1 of the Impartiality guideline outlining the mandatory practices for achieving breadth and diversity of opinion.

Point (B) – Regarding the allegation that a lack of statistical and other objective evidence failed to equip viewers with adequate context on which to reach an informed opinion on the issue of welfare reform, specifically that it stated the number of job vacancies without including statistics on the number of job seekers.

The Committee considered Complainant A's contention that the programme lacked the statistical evidence relating to the ratio of job vacancies to job seekers which would have enabled viewers to reach an informed opinion on the issue.

In considering the allegation the Committee noted that a number of other specific allegations relating to the omission of statistical data and raised by Complainant A both in this appeal and at earlier stages did not qualify to proceed to appeal, as noted in the summary above. These included the numbers of those granted Employment and Support Allowance after initial denial and the omission of a detailed examination of family budgets.

The Committee noted Complainant A's submission to the ECU at Stage 2:

"...the interviews were not related to sufficient factual information. As a result, all we have are competing voices among many assertions without supporting evidence. Viewers were not given enough information to help them evaluate alternative views."

"Without hard factual evidence, all you have are anecdotes, which is what the tabloid press thrive on. To allow an interviewee to get away with saying 'there are jobs out there', without saying how many, nor how many job-seekers are chasing them, is simply not acceptable! No matter how much tweaking everyone does to their CV, nor how many motivational talks are given, you cannot make three million people go into half a million jobs."

The Committee noted the complainant's comments at Stage 1:

“The most glaring omission, so obvious that it throws doubts on the intentions of the programme makers, was not to include any statistics on the numbers seeking each available job. The national average ratio of seekers to jobs is 5 to 1; in some places it is much higher. It is true that interviewees in the job club made this point, but their personal experiences should have been backed up by statistics to show that the situation is nationwide.”

The Committee noted that the global benefits figure in the introductory section of the programme stated that the benefits bill had increased by £60bn over the past ten years but that the commentary omitted to put that figure in context: £24bn of the increase came from pensions. It noted too that Jobseeker’s Allowance in 2010-2011 was £4.46bn or around 3% of the total benefit bill for 2010-2011 whereas in the same year pension spending was £69.88bn or 46% of the total benefit spend.

The Committee noted the programme’s response to the points raised on appeal:

“There are numerous BBC News and Current Affairs outlets that do regularly report, analyse and debate those statistics but that was not the purpose of this film. This film set out to ask if Britain was ready for the impact of the proposed welfare reforms and to see how those who would be directly impacted felt about both the debate and its likely outcomes. As a result it was built around John’s encounters with people involved or affected rather than a detailed analysis of facts and figures. The programme-makers think this made it more accessible while still enabling viewers to reach an informed opinion.”

The Committee noted this sequence in the programme at the Cardiff Job Centre:

John Humphrys: Are there really no jobs here, the capital city of Wales? I went to the nearest job centre to try to find out. Let’s have a look and see what’s on offer today in Cardiff. Cleaner, carers, meter reader, sales assistant, telesales agent, kitchen porter and so on and so on and so on.

JH (voiceover): In fact, in September, there were more than sixteen hundred jobs advertised in Cardiff.

Rosemary Gehler (Manager, Jobcentre Plus):
There will always be jobs that are more appealing than others, but what we try to do here is try to encourage people to see the benefit in any of the jobs. And that, even working at a fairly low-paid level, getting yourself back into work is beneficial for you and the family, and it’s often a stepping stone to something a lot better.

The Committee noted a separate exchange between John Humphrys and another Job Centre Manager:

JH: It’s one thing to prepare people for work – make them, help them, want to work, but if the jobs aren’t there?

Julie Gillam (Centre Manager):
There are jobs out there. I think it was in April this year there were nearly half a million jobs. I’ve never found it where we’re struggling to actually get jobs. They won’t

always map exactly to the people that are looking for them and it's working with people for them to be realistic with their expectations.

The Committee noted how the programme responded to a query from the Trust's Independent Editorial Adviser about what it did to corroborate claims made in the programme that there are jobs available:

"On only two occasions is a figure put on the number of available jobs. In the Cardiff job centre, John says:

'...in September there were more than 1,600 jobs advertised in Cardiff.'

"The film's production team checked this statistic with the manager of the Cardiff Job Centre Plus who confirmed that in the month of September 2011 there were 1753 jobs advertised through them in Cardiff. Each of these jobs was considered by the Job Centre as relevant or potentially relevant to job seekers in Cardiff.

"Then, in the training course section, in response to John's comment 'It's one thing to prepare people for work, make them, help them want to work. But if the jobs aren't there?' – a member of staff states 'I think it was in April this year, there was nearly half a million jobs.'

"This is supported by the ONS Statistical Bulletin for labour market statistics, published in April 2011, which states that there were 482,000 vacancies in the three months to March 2011.

"No figures are put on the number of unemployed people who are fit to work and of working age. However, the contributions from those attending the Middlesbrough job club and the Work Programme training course again serve to demonstrate the point that many people who are actively looking for work are unable to find it."

The Committee noted that in October 2011, when the programme was broadcast, for every advertised vacancy there were 4.5 people in Cardiff looking for jobs and claiming Jobseeker's Allowance, and that nationally, during the same period, up to six people were seeking a job for every vacancy (depending on whether the figure for those also claiming Jobseeker's Allowance is included).

The Committee noted the sequence in the programme when John Humphrys visited Middlesbrough:

John Humphrys: One in ten are out of work here, the highest unemployment rate in the country. You might think the reason for that is simple: no jobs. But talk to the Mayor of Middlesbrough, Ray Mallon, you get a very different explanation.

Ray Mallon (Mayor of Middlesbrough):

When you look at Middlesbrough, out of an 88,000 working population, 18,000 people are on some form of benefit. I mean, 18,000 people out of an 88,000 working population on benefits, that's a big issue. At the moment you've got a large cohort of people that are not even applying for jobs. This just isn't on. It's almost a lack of hope, it's almost a lack

of engagement – that the State have looked after us, and they'll continue to do it.

The Committee noted that the programme illustrated the mayor's point by following his interview with a couple who said they could not afford to work on the minimum wage. The programme also visited a job club where two attendees say they would be happy to take any job but they do not even get replies to their applications; John Humphrys expressed sympathy with their plight: "It's very hard not to feel sorry for people in that situation".

The Committee noted, however, that the programme did not include any concrete information on the ratio of jobs to applicants, which the complainant contended should have been included in order for the audience to reach an informed opinion.

In October 2011 according to the TUC there were 374 vacancies and 7064 claimants in Middlesbrough, i.e. almost 19 people seeking a job for every vacancy.

The Committee noted the ECU's comments in regard to Julie Gillam's contribution (quoted above):

"The fact that she puts a figure on the number of jobs which was around 20% of the total unemployed at that time shows that even she was not trying to give the impression that there were jobs available for everyone who might want one."

The Committee noted the ECU and the programme's view that it would have been "of limited utility" to have placed a figure on the number of job seekers, that "the film heard from several individuals who were desperate to find work but could not" and that this "highlighted the great competition for jobs".

The Committee noted too the programme's contention that the comment made by the Job Centre manager that "(the available jobs) won't always map exactly to the people who are looking for them" provided some qualification to her statement that there are jobs out there.

The Committee did not consider that the headline unemployment figure of 3 million was likely to be instantly recalled such that the audience would have understood that half a million job vacancies would mean there were not enough jobs to go round.

The Committee noted the programme's comment that it had decided to "show rather than tell" and that elsewhere in BBC output job statistics are quoted, analysed and debated. However, the Committee took the view that while the approach chosen was legitimately an issue for editorial judgement, there was a lack of consistency on this occasion in how the programme applied that approach.

The Committee noted some statistics were included in the programme: the Middlesbrough mayor stating a figure of 18,000 people on benefits; the Job Centre Manager saying there were half a million jobs available; and at the top of the programme the fact that the Welfare Bill had increased by £60bn in the last ten years. But it noted that, in the absence of additional context, these statistics all tended to provide the Government's perspective.

The Committee noted that this was a controversial issue and the Editorial Guidelines required that "all the relevant facts and information should be weighed to get at the truth". The Committee considered that job vacancies became a "relevant fact" in this context when the programme introduced the statistic of the number of jobs available.

Having introduced the headline figures of the rising benefits bill, the Committee considered that to achieve due accuracy the programme ought to have reflected what percentage of that overall rise is represented by the welfare benefits being targeted by the Government and which were the subject of the programme. The Committee took the view that on this occasion, in this context, the missing information was crucial.

The Committee decided that in the absence of sufficient complementary statistical information to underpin contributors' accounts as to the difficulty of securing a job for example, the viewer is left unable to reach an informed opinion and clauses 3.1 and 3.2.3 of the Accuracy guideline had been breached:

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

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

The Committee then considered whether the failure to achieve due accuracy had also given rise to a breach of the Impartiality guidelines. It considered the impact of the breach of the Accuracy guidelines, i.e. the failure to provide adequate context, on the audience's perception of the issues discussed in the programme.

The Committee concluded that viewers would be likely to form the conclusion that the benefits being targeted by the Government were largely responsible for the view held by some that "the welfare state is in crisis". The Committee also concluded that viewers would be likely to form the impression, despite the anecdotal testimonies of job seekers heard in the programme, that there was a healthy supply of jobs overall. As both issues are central to the viewers' understanding of the key issues discussed in the programme, and because this was a controversial issue which was also a major matter within the meaning of the Editorial Guidelines, the Committee concluded that the failure of accuracy had also led to a breach of impartiality on this occasion.

The Committee decided that the content had breached section 4.4.2 of the Impartiality guidelines, relating to due weight, which states:

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

And also 4.4.7:

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

Point (C) – Regarding the allegation that John Humphrys conflated his personal

opinion with factual reporting in breach of the Editorial Guidelines which prohibit BBC journalists who work in news and current affairs from expressing personal views about public policy in BBC output.

The Committee noted the sequence in Cardiff towards the beginning of the programme which was cited by CPAG as “inappropriately anecdotal” and clearly expressing the presenter’s personal view:

John Humphrys: Here’s one way the benefits system has changed in my lifetime. This is where I was brought up - Splott in Cardiff. Poor, working class district. Respectable poor, I suppose you could say. This, incidentally, is the, er, house where I was born. And in those days everybody, if they could, was expected to work. And they did. We knew only one family where the father did not work, never had a job, and he was regarded as a pariah. It was a mark of shame.

Like most other kids, we were expected to help out. When my father had no work he sent me around streets posting leaflets through people’s doors. I wasn’t unusual. Today, one in four of the working age people in this area is on some form of benefit.

Local resident: My sister was Mrs Neat who lived next door to you.

JH: Ah, well, yes well I remember her of course.

Resident: I think I’m the only one left here now.

JH: Will you remember, I wonder, um, there was a chap, er, who lived in that house over there, and he never worked if you remember?

Resident: That’s right.

JH: But the fact that he didn’t work, we used to think – my parents thought – was shocking, ‘cause he didn’t have a job.

Resident: That’s right.

JH: And that’s changed, hasn’t it?

Resident: Oh yes, definitely it’s changed.

JH: But do you think that that pride in working changed?

Resident: It’s gone, yeah. If they can get money without working, they will.

The Committee noted the following from CPAG’s original letter of complaint:

“We believe section 4.4.13 (of the Impartiality guideline) has been breached because this is a highly controversial subject, John Humphrys is a senior news and

current affairs presenter and the programme presented his personal view of the current and future of the welfare state.”

The Committee noted too CPAG’s Stage 2 submission:

“(The Commissioning Editor) acknowledged that Mr Humphrys ‘drew examples from his own experiences’. The code says a presenter ‘may provide professional judgements rooted in evidence, but may not express personal views in BBC output’. The presentation of personal anecdotes by a presenter does not, in our view, constitute a professional judgement ‘rooted in evidence’.”

And CPAG’s response to the ECU finding:

“Mr Humphrys clearly personalised his telling of the story. He began the programme by embedding his narrative in his own life experiences. He used the phrase ‘respectable poor’ in his narration, immediately establishing a framing of ‘respectable’ and ‘unrespectable’ poverty – basically the contentious and politically interested division into ‘deserving’ and ‘undeserving’ poor. He then leads the direction of discussion with a woman who was a neighbour in his childhood bringing up the case of the family on the street who had no work, and introducing the idea that it was shocking for the father to not have a job. The woman agreed, but it was Mr Humphrys who introduced the framing and anecdote suggesting that it was a shameful situation that his family was not in work. That was not an impartial interview. It presented a particular moral judgement, linked to a contentious political framing and rooted in his personal background. This was not the ‘devil’s advocate’ style of interview that you suggested Mr Humphrys employed in the programme.”

The Committee noted CPAG’s letter of appeal which combined its concerns about John Humphrys’ role with the broader allegation relating to the framing of the programme (as reflected in the discussion of Point A above):

“We believe the programme began with an approach that was inappropriately anecdotal and then presented a particular, partisan framing of the issue, including the proposition that there exists a ‘dependency culture’. In our view this is a contested and politically partisan view of the current challenges facing social security and welfare benefits.”

The Committee noted an interview on the *Today* programme in October 2012 which CPAG cited as evidence in support of its contention that John Humphrys expressed a personal view in this programme:

“Matters also came to light during the ongoing complaint correspondence that we believe lend further weight to our complaint... In a high profile interview, the Secretary of State for Work and Pensions, endorsed Mr Humphrys’ personalised presentation of the problems with, and future of, social security and welfare benefits on the Today Programme on Wednesday 25th October. We believe this to be of tremendous relevance in terms of the purpose of BBC editorial guidelines and the situations they seek to preclude. Mr Duncan Smith stated:

‘Actually I remember the programme that you did, excellent programme, when you went back to your roots and looked at what was going on and what you then reported as the ‘shift in culture’ from people who had got

used to two, maybe three generations out of work and no longer wanted to go into work.”

The Committee noted also CPAG’s submission at Stage 2 and in its appeal, of an article by John Humphrys that appeared in the Daily Mail two days before *The Future State of Welfare* was broadcast:

“A further matter that subsequently came to our attention is that Mr Humphrys had published an article under his name in the Daily Mail to coincide with the broadcast of the programme. His Daily Mail article, headlined ‘JOHN HUMPHRYS: How our welfare system has created an age of entitlement’ is compelling evidence of Mr Humphrys’ presentation of a personal view, rather than simply a ‘devil’s advocate’ view that endorsed what we have referred to as the ‘dependency culture’ or ‘age of entitlement’ framing to the exclusion of other widely held views on the contested terrain of current challenges and the future of social security and welfare benefits.”

The Committee noted that the ECU had advised CPAG that its remit is limited to investigating BBC content and CPAG’s comment for this appeal:

“While we appreciate (the ECU’s) observation that the ECU’s task is specific and limited to BBC content, we hope that the Trust’s governing role will allow it to give consideration and due weight when considering this appeal to the implications of the apparent endorsement from Mr Duncan Smith on the Today Programme (which is in fact BBC content) and the article by Mr Humphrys in the Daily Mail. We believe these demonstrate the difficulties for the BBC of senior journalists conflating personal opinion with factual reporting on politically controversial issues.”

The Committee noted the substantive programme response to the allegation which was in the Stage 1 reply from the Executive Producer, Independent Commissioning, Current Affairs:

“While John Humphrys presented the programme and drew examples from his own experience from time to time to expand on the observations made during various interviews we do not agree with your contention that the programme was an opinion piece and should have been signposted as a single view. We believe that *The Future State of Welfare* was a balanced and impartial look at the current benefits debate in the UK. Views from all sides of the debate were given prominence and the real-life impact of reforms in both the UK and USA was brought home through the people John encountered on both sides of the Atlantic.”

The Committee noted the ECU’s comments at Stage 2:

“I think for this point of complaint to be upheld you would have to be able, having watched the programme, to say confidently that you knew what John Humphrys’ views on welfare reform actually are. Having watched it and studied a transcript carefully I am not at all sure that this is possible. It is the case, at various points, that when he questioned interviewees he may have given an impression of strongly disagreeing with them in such a manner that his own opinion is becoming evident. The fact is, though, that he adopted this approach more or less across the board, playing devil’s advocate with his various contributors the better to elicit their views.”

The Committee noted CPAG's response to the ECU finding which noted John Humphrys' use of the phrase "respectable poor" in the Splott sequence, and it noted that CPAG argued that this immediately established a contentious and politically partisan framing dividing the poor into "deserving" and "undeserving":

John Humphrys: This is where I was brought up. Splott in Cardiff. Poor, working class district. Respectable poor, I suppose you could say.

The Committee noted, however, that later in the programme John Humphrys acknowledged that such language was "highly controversial":

JH: The problem comes when the state tries to distinguish between those people who can't work, and those people who don't want to work. Between what would have been referred to in Beveridge's time as, highly controversial language these days of course, the deserving and the undeserving poor.

The Committee concluded that the distinction between "deserving" (or "respectable") and "undeserving" poor was not an invention of John Humphrys, but has been around for many hundreds of years. It also noted John Humphrys' acknowledgement that such a distinction is "highly controversial".

The Committee noted that in relation to the article which appeared in the Daily Mail on the day the programme was broadcast, CPAG was not asking that the Committee test the article against the guidelines, rather it was citing the article as further evidence, as it saw it, of John Humphrys' views.

Whilst the complainant highlighted the headline and photo captions as being particularly problematic, the Committee had no evidence to suggest that either of these would have been seen, written or approved by John Humphrys prior to publication.

The Committee noted also the paragraph in the article cited by CPAG in their appeal in which they said the final sentence was not sufficient to dispel the impression that Mr Humphrys was making his own personal argument:

"Idleness takes two forms today, one enforced and the other voluntary. One is the result of unemployment made worse by recession, spending cutbacks, growing competition from abroad and a dozen other economic factors. The other is the predictable effect of a dependency culture that has grown steadily over the past years. A sense of entitlement. A sense that the State owes us a living. A sense that not only is it possible to get something for nothing but that we have a right to do so. This, seventy years on from the Beveridge Report, is the charge many people level against it."

The Committee noted information provided by the programme team that the article was written for the Sunday Times and cleared through the usual BBC channels and that it was lifted by the Daily Mail without reference to the BBC.

The Committee noted also CPAG's contention that comments by Iain Duncan Smith in an interview conducted by John Humphrys for the *Today* programme in October 2012 support their assertion that *The Future State of Welfare* presented John Humphrys' personal view. The Committee's view was that this expression of appreciation for the

programme did not constitute evidence that the programme lacked impartiality or that views expressed in the programme revealed the personal prejudices of the presenter.

The Committee considered the type and nature of the content: it was signposted to viewers as a programme in which John Humphrys travels across the country talking to those who have “the most to lose” under the Government’s reforms.

The Committee noted that the way in which a programme chooses to report on an issue is a matter for the programme makers, so long as they can demonstrate editorial justification and as long as it otherwise meets the editorial standards set by the Trust. The Committee agreed the anecdotal style of the personal testimonies heard in the programme had been clearly signposted and were likely to have met audience expectation; and the contribution by John Humphrys, recollecting his own personal experiences was, in the view of the Committee, consistent with that approach.

The Committee noted that the opening sequence set the topic in the context of the birth of the Welfare State 70 years ago and that this led to the sequence in John Humphrys’ childhood neighbourhood of Splott in Cardiff. The Committee noted that John Humphrys was born less than a year after publication of the Beveridge Report which led to the establishment of the welfare system that is in place today.

The Committee considered there was clear editorial justification in a programme billed as John Humphrys’ travels around the UK to use Splott as the editorial device linking him with the foundation of the welfare state. It was equally a legitimate matter of editorial judgement how the programme chose to portray that link. The Committee did not agree that a personal connection that John Humphrys had to Splott and his recollection of the stigma attached to unemployment back in the 1950s suggested it was his personal view on the subject.

The Committee considered the following line of commentary:

John Humphrys: In those days everybody, if they could, was expected to work. And they did. We knew only one family where the father did not work, never had a job, and he was regarded as a pariah. It was a mark of shame.

There was no indication in the comment whether John Humphrys shared the view that it was shameful to be unemployed, rather it was his recollection of the public mood at the time and in the Committee’s view it represents a professional judgement, rooted in evidence rather than the expression of a personal view.

The Committee noted the way in which John Humphrys interviewed his former neighbour, and the allegation that it could be interpreted as leading the interviewee. The Committee took the view that there was no indication that the woman interviewed did not have the recollection or hold the opinion which John Humphrys encouraged her to share. She agreed with his memory and added her own thought at the end: “If they can get money without working, they will”.

The Committee then considered John Humphrys’ approach across the programme and noted the occasions on which he robustly challenged interviewees regardless of the perspective they represented. The Committee did not discern any bias in the programme’s approach to its subject, and noted that the complainant did not cite any such example in relation to the interviews conducted by Mr Humphrys which would suggest he favoured a particular perspective on the issue of the Government’s welfare reforms. The Committee

noted in particular the questioning of Larry Mead, one of the architects of Workfare, in a sequence in New York:

- JH voiceover: There's no doubt people are suffering as a result of welfare cutbacks. One estimate says that 40% of recipients of the Workfare scheme have fallen through the safety net. How can Professor Mead possibly justify that?
- JH: There's a problem here, isn't there? The hard facts. How many people stay in work, how many people go on to do better jobs?
- Prof. Larry Mead: About 60% were employed, that is, they took jobs. The other 40% did not, and there's some debate about whether they're worse off or not, 'cause they're not working and they're not on welfare. But it's still clear that overall, the economic effects of welfare reform are positive.
- JH: But are they?
- Prof. Mead: Yes, yes –
- JH: The evidence seems not to be there. What you don't know is how many people go on to do better jobs.
- Prof. Mead: Well, we don't know over a long period of time. But we know over about eighteen months after the initial reform. If you work, chances are you get out of poverty within a couple of years –
- JH: Yes, but you don't know whether they do continue to work after that eighteen months.
- Prof. Mead: No, and the reason they don't continue to work is often the reason why they went on welfare in the first place, namely they're not organised enough to work consistently.
- JH (to camera): So, if you're a British politician bent on serious reform of the welfare state, and you've come here to America to see what they've done, what lessons do you take back with you? Well, what you learn very quickly indeed is that Workfare is not the magic bullet that so many people thought it was just a few years ago. But something has changed: attitudes have changed. There is a growing realisation that if you want a welfare benefit, you have to work one way or the other in return for it.

Whilst the Committee understood the complainants' concerns, it concluded that on the issue of the likely efficacy of the Government's welfare reforms, which was the focus of the programme, there is no evidence that John Humphrys' commentary or approach went beyond reaching a professional judgement rooted in evidence as allowed for within the guidelines.

The Committee concluded that where John Humphrys' approach was anecdotal and arguably personal was when he was recollecting historical events from his childhood. The Committee took the view that the sentiments he expressed in relation to the public mood then compared with now were judgements based on his personal experience rather than opinions which could be interpreted as a personal view. Given the subject and nature of the content and the clear signposting, the Committee considered the style would have met audience expectation on this occasion.

The Committee nevertheless took the opportunity to remind the BBC that, in choosing to present a programme on a highly controversial issue such as welfare reform, in a less formal style, using presenters and correspondents better known as main stream news and current affairs practitioners, producers need to be particularly sensitive to the impression that might leave with the audience. Regardless of any signposting as to the nature and type of content, judgements reached or observations made are still required to be based on the evidence and should not give the appearance of presenting a personal view on a controversial subject.

Finally the Committee noted CPAG's contention that the overall framing of the programme supported the allegation that the presenter was expressing his personal view. However, as these issues had already been considered under Point A and the Committee had decided that the content was duly impartial, the Committee agreed there was nothing further to consider in relation to this aspect of the allegation.

Finding: Partially upheld on one point with regard to Accuracy and Impartiality.

“David Ward MP ‘sorry’ over Israel criticism”, BBC News Online, 26 January 2013

1. Background

This appeal relates to an article on the BBC News website about a row over the interpretation of comments made by Liberal Democrat MP David Ward – <http://www.bbc.co.uk/news/uk-politics-21216801>

Mr Ward made the original comments on his website ahead of Holocaust Memorial Day.

In his posting on 25 January 2013 the MP said:

“Having visited Auschwitz twice – once with my family and once with local schools – I am saddened that the Jews, who suffered unbelievable levels of persecution during the Holocaust, could within a few years of liberation from the death camps be inflicting atrocities on Palestinians in the new State of Israel and continue to do so on a daily basis in the West Bank and Gaza.”

The posting immediately provoked a row with reports that the Liberal Democrat party leadership were considering withdrawing the whip from Mr Ward and had summoned him to a meeting at the Whip’s Office.

The Holocaust Educational Trust accused the MP of deliberately abusing the memory of the Holocaust, causing deep pain and offence; the Chief Executive of the Board of Deputies of British Jews said:

“We are outraged and shocked at these offensive comments about Jewish victims of the Holocaust and the suggestion that Jews should have learned a lesson from the experience.”

The BBC News Online article which led to this appeal reported details of Mr Ward’s subsequent apology and clarification of his remarks. The headline of the article read:

David Ward MP ‘sorry’ over Israel criticism

The article began as follows:

A Liberal Democrat MP who accused “the Jews” in Israel of “inflicting atrocities on Palestinians... on a daily basis” has apologised for the “unintended offence”.

It was not the first time coverage of the story had appeared on the website: the day before, BBC News Online reported some of the initial reaction to Mr Ward’s remarks.

The allegation in this appeal is that the article updating the story with details of Mr Ward’s apology was inaccurate in the way it formulated his original comments and that as a consequence the audience would have been misled and confused as to the nature of the row his remarks had provoked.

The complainant also alleges that the phrasing suggested that the BBC was siding with Mr Ward’s point-of-view.

2. The complaint

Stages 1 & 2

The complainant wrote to the BBC on 26 January 2013 saying that the reporting of David Ward's comments was "imprecise". He alleged that the BBC had reordered the MP's initial comments and that this had the effect of suggesting that Mr Ward's criticism was limited to "Jews in Israel" and not ... general 'Jews'...". The complainant asserted that the reordering of Mr Ward's words was deceptive and had the effect of:

"...mitigating the extent of (Mr Ward's) criticism, and making the ensuing outcry less understandable".

The complaint was answered at Stage 1 by BBC News Online, who did not accept that the article was misleading.

The complaint was escalated to the Editorial Complaints Unit at Stage 2 of the process. The ECU did not uphold the complaint.

Appeal to the Trust

The complainant wrote to the BBC Trust on 19 March 2013 reiterating the points he had made at earlier stages and summarising the grounds on which he was appealing:

- David Ward's comments referred to the Jews and their history. It was misleading and factually inaccurate of the BBC to describe his comments in the title as "Israel criticism". Even according to the ECU's view that Mr Ward was referring to the "Jews in Israel" and not the wider Jewish community, this is still materially different to "Israel criticism".
- By referring without qualification to "the Jews", David Ward was referring to the collective Jewish community and not just to Jews in the State of Israel. The reference in his remarks to the new State of Israel was in connection to Palestinians and in relation to the location of the alleged atrocities. The MP's remarks on his website referencing "the Jews" were made in relation to the Holocaust that affected Jews worldwide; this supports the suggestion that Mr Ward's criticism of "the Jews" also referred to the wider Jewish people and not just Jews living in Israel.
- The EU's working definition of anti-Semitism specifically characterises as anti-Semitic holding Jews collectively responsible for the state of Israel since, historically, persecution against Jews has often included the automatic imputation of collective Jewish guilt for the perceived crimes of other Jews anywhere in the world. The complainant considered Mr Ward's generalised criticism of "the Jews" as consistent with "these anti-Semitic tropes" and he disputed the ECU's judgment that it is "illogical" to presume that that is a possible meaning of Mr Ward's comments.
- Even if the BBC considered its interpretation to be more correct, it is clear another interpretation was also possible. Various bodies criticised Mr Ward's comments for his broad criticism of the Jews and even Mr Ward himself acknowledged in the wording of his apology that some had construed his comments in this manner. By characterising Mr Ward's comments in the way that it did, the BBC website

adopted a specific interpretation of the MP's words and ignored a significant alternative point-of-view.

3. **Applicable Editorial Standards**

The sections of the BBC Editorial Guidelines relating to Accuracy and Impartiality are applicable to this case. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>.

4. **The Committee's decision**

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

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

Point (A) – Regarding the allegation that the headline and the opening sentence of the website inaccurately described David Ward's comments as "Israel criticism" and as referring to "Jews in Israel". This was misleading given that the row which developed and the apology which followed was because his comments had been construed by some as referring to the Jewish people as a whole.

The Committee noted the headline of the article as it appeared on the BBC News website:

David Ward MP 'sorry' over Israel criticism

The Committee noted the complainant's allegation that it was misleading for the headline to state that David Ward had said sorry for criticising Israel; his apology was because he had appeared to some to be criticising the Jews collectively:

"This description distorted the nature of his comments, and ignored their contentious religious/ethnic elements. Even according to the ECU's view that Mr Ward was referring to the 'Jews in Israel' and not the wider Jewish community, this is still materially different to 'Israel criticism'."

Regarding the first sentence of the article which referred to "'the Jews' in Israel", the Committee noted the complainant's assertion that the formulation used was an inaccurate paraphrase of the comment by Mr Ward which had caused so much controversy, and that the wording used in the article was misleading and had the effect of "mitigating the extent of (Mr Ward's) criticism, and making the ensuing outcry less understandable".

The Committee noted the section of the article in question:

A Liberal Democrat MP who accused "the Jews" in Israel of "inflicting atrocities on Palestinians... on a daily basis" has apologised for the "unintended offence".

The Committee noted the complainant's contention that the correct interpretation of David Ward's words, and the reason they caused such a controversy, was that the MP was accusing the collective Jewish community of atrocities against Palestinians and not just Jews living in the state of Israel.

The Committee noted the complainant's rejection of the ECU's finding that his interpretation would be a "stretch of the imagination". It noted the complainant's assertion that the context in which David Ward referred to "the Jews" was in relation to the Holocaust that affected Jews worldwide and that this supported the interpretation that the MP's criticism of "the Jews" referred to the wider Jewish people and not just Jews living in Israel.

The Committee noted the complainant's view that even if the BBC considered its interpretation to be more correct, it was clear that another interpretation was also possible:

"Various bodies criticised Mr Ward's comments for his broad criticism of the Jews and even Mr Ward himself acknowledged that some had construed his comments in this manner (in his apology which stated) 'I never for a moment intended to criticise or offend the Jewish people as a whole'."

The Committee noted that BBC News was invited to respond to the issues raised in this appeal and that in response they quoted the Stage 2 finding, advising that they felt they could not improve on the ECU's wording:

"In our view, the reference to those 'inflicting atrocities on Palestinians in the new State of Israel' made it sufficiently clear that Mr Ward was in fact referring to those Jews who are in Israel. It would, we felt, be a stretch of the imagination to assume he was suggesting that Jews in other parts of the world had the capacity to inflict atrocities on Palestinians 'in the new State of Israel'. That being the case, we didn't consider that in paraphrasing the comment in the way it did, the website article materially altered the intended meaning of Mr Ward's words. In summary, while we appreciate the sensitivities surrounding this issue, it's our view that to have taken the criticism as extending to Jews outside Israel would be a misinterpretation of Mr Ward's intended meaning since the logical sense of his comment was that he was in fact referring to Jews 'in Israel', as paraphrased in the article..."

The Committee noted the subsequent submissions from the ECU and BBC News in which they reasserted their view that the logical interpretation of Mr Ward's words was not that which the complainant ascribed to them and that this had been made clear by Mr Ward himself in clarifying what he had meant in the media following the outcry over his remarks.

The Committee noted the timeline of the story and how it developed.

Friday January 25

- Following an event in his Bradford constituency where he signed a Holocaust memorial book, David Ward wrote on his website:

"Having visited Auschwitz twice – once with my family and once with local schools – I am saddened that the Jews, who suffered unbelievable levels of persecution during the Holocaust, could within a few years of liberation from the death camps be inflicting atrocities on Palestinians in the new State of Israel and continue to do so on a daily basis in the West Bank and Gaza."

The Committee noted the original posting has been removed but the reporting of the MP's words across the media has been consistent and there was no reason to doubt the veracity of the quote.

- Mr Ward was criticised by the Holocaust Educational Trust and the Board of Deputies of British Jews (amongst others) for his comments, particularly on the eve of Holocaust Memorial Day. The Board of Deputies stated:

"We are outraged and shocked at these offensive comments about Jewish victims of the Holocaust and the suggestion that Jews should have learned a lesson from the experience.

"For an MP to have made such comments on the eve of Holocaust Memorial Day is even more distasteful, and we welcome the fact that the Liberal Democrats have sought to disassociate the party from David Ward's comments."

- Mr Ward defended his comments on BBC Radio 5 Live saying he had chosen his words carefully and did not regret the timing of the statement.
- He was summoned to a meeting with party whips; a party spokesman said:

"This is a matter we take extremely seriously. The Liberal Democrats deeply regret and condemn the statement issued by David Ward and his use of language which is unacceptable."

Saturday January 26

- Just before 5pm David Ward issued a statement on his website in which he wrote:

"I never for a moment intended to criticise or offend the Jewish people as a whole, either as a race or as a people of faith, and apologise sincerely for the unintended offence which my words caused."

Saturday 26 January/Sunday 27 January – Holocaust Memorial Day

- BBC News Online reported details of the apology in the article which is the subject of this appeal.

Regarding the headline of the article, which stated that the MP was "'sorry' over Israel criticism", and the complainant's assertion that this was not what the MP was apologising for, the Committee noted David Ward's apology for any "unintended offence" which his words caused and that he "never for a moment intended to criticise or offend the Jewish people as a whole...". It also noted that in the same apology he said his criticisms of actions in the Palestinian territories "in the name of the State of Israel" remained as "strong as ever" and that he intended to continue to criticise Israel's oppression of the Palestinian people.

The Committee noted the BBC News guidance to journalists reporting on Israel and the Palestinians, which acknowledges the requirement for precision in language: that a clear distinction is made between "Israeli" and "Jewish":

Jewish

Be careful over whether you mean 'Israeli' or 'Jewish': the latter might imply that the story is about race or religion, rather than the actions of the state or its citizens.

The Committee noted also the complainant's argument that the European Union's working definition of anti-Semitism states that "holding Jews collectively responsible for actions of the state of Israel" was a manifestation of anti-Semitism⁴.

The Committee agreed with the ECU and BBC News that David Ward's words might not necessarily be interpreted to mean what the complainant said they meant, i.e. that it was a collective criticism of Jews worldwide. The Committee concluded, however, that this was not a relevant consideration in this context. It noted the purpose of the article was to report the ongoing row over David Ward's comments and the fact that they had been interpreted in some quarters as criticism of Jews as a whole rather than confined to Jews living in Israel.

The Committee therefore agreed with the complainant that an accurate conveyance of what the MP actually said, and the nature of the row his comments had provoked, was required in order for the article to achieve due accuracy, as required by the Editorial Guidelines. In the Committee's view the formulation in the headline and opening sentence of the article did not do this.

The Committee noted that as part of the apology reported in the article, the MP had said he would continue to criticise Israel as he had always done; he had explicitly not therefore apologised for "Israel criticism". The Committee agreed that the apology had, as the complainant contended, been wholly about David Ward answering criticism that his comments were addressed at Jews.

The Committee noted the requirements for due accuracy set out in the Editorial Guidelines. The Committee noted too that due accuracy is not simply a matter of getting facts right. Given the sensitivities, the Committee considered the article concerned a controversial issue and it was incumbent on the BBC to consider all relevant facts, information and opinions to achieve due accuracy. Whilst the Committee acknowledged there are constraints in writing a headline, it considered that in this instance the headline had summarised the nature of the apology incorrectly and the inaccuracy was reinforced by the inaccurate paraphrasing of what Mr Ward said in the opening sentence of the article itself. The Committee agreed with the complainant that it would have been straightforward to correct the errors when they were first brought to the BBC's attention, and that this could have been done without necessarily increasing the length of the headline. The Committee agreed the effect of the inaccuracy in the headline and opening sentence would have been to mislead the audience on the nature of the row the MP's comments had provoked. While the Committee accepted that the precise wording of Mr Ward's website posting and his apology were reported verbatim later in the article, this was not in the Committee's view sufficient to mitigate the inaccuracies in the headline and opening sentence.

The Committee decided that the headline and the first sentence had not achieved the due accuracy required by the Editorial Guidelines.

⁴ The Committee further notes, however, that the definition relied upon by the complainant, which was previously available on the website of the EU Monitoring Committee for Racism and Xenophobia, has recently been removed by its successor, the EU Agency for Fundamental Rights.

Point (B) - Regarding the allegation that the formulation used in the BBC website article was biased because it did not allow for a significant alternative perspective and left the impression that the BBC supported the MP's claim as to what he intended his words to mean.

The Committee noted the allegation in the complainant's letter of appeal that the article was biased and that the BBC had violated the Impartiality guideline by failing to reflect the existence of a range of views on a controversial subject:

"Even if the BBC considered its interpretation to be more correct; that Mr Ward was only referring to the Jews in Israel, it is clear that another interpretation was also possible. Various bodies criticised Mr Ward's comments for his broad criticism of the Jews and even Mr Ward himself acknowledged that some had construed his comments in this manner. He stated: 'I never for a moment intended to criticise or offend the Jewish people as a whole.'

"Yet, the BBC adopted a specific interpretation and ignored a significant alternative point-of-view. The BBC's choice of language, 'Jews "in Israel"', only conveyed the specific view that Mr Ward had qualified his criticism of 'the Jews'. Its description of his comments as 'Israel criticism' ignored the view that Mr Ward was in fact, criticizing the Jews."

The Committee noted the requirement in the editorial guidelines that due impartiality should be achieved in a way which is "adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation".

The Committee considered there were further requirements for "controversial" subjects. The Committee noted that the relevant section of the guidelines says:

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

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

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

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

The Committee agreed that the subject of this article was an apology over the apparent criticism of “the Jews” for the treatment of Palestinians in the West Bank and Gaza. The Committee agreed that taking into account those factors set out in the guidelines, the subject matter of this article was controversial. The Committee agreed that, as a result, the article was required to give due weight and prominence to a wide range of significant views and perspectives, and opinion should be clearly distinguished from fact.

The Committee noted that the article reflected a range of views on the story and that the article included direct quotes from the Israeli Embassy and the Liberal Democrat party, as well as referring to criticism from the Holocaust Educational Trust and the Board of Deputies of British Jews. In addition, the full text of the relevant sections of the MP's original website posting and his apology were contained in the article and attributed to him.

The Committee concluded that, whilst elements of the article (specifically, the headline and opening sentence) had breached the Guidelines on Accuracy, the article had nevertheless achieved due impartiality. The Committee was mindful that the BBC is committed to achieving impartiality in its output; however, the Committee wished to remind the BBC of the extra care needed to achieve due accuracy in matters of controversy in order to avoid any perception of a lack of impartiality.

Finding: Upheld with regard to Accuracy, not upheld with regard to Impartiality.

Today, BBC Radio 4, 29 November 2012

1. Background

On 29 November 2012 Lord Oxburgh was interviewed on BBC Radio 4's *Today* programme. Energy Secretary Ed Davey was due to publish a statement to MPs later that morning on the introduction of the Energy Bill.

The programme featured BBC Employment & Industry Correspondent John Moylan, who provided context to the Bill: he claimed that a fifth of our energy generation capacity was due to end by 2020.

Following Mr Moylan's contribution, interviewee Lord Oxburgh was introduced by presenter Jim Naughtie as the "former Chairman of Shell":

"John Moylan, thanks very much. We're joined in the studio by Lord Oxburgh, former Chairman of Shell. Lord Oxburgh, good morning. Do you think this is the right approach? Is it going to work?"

Mr Naughtie concluded the interview by saying:

"Lord Oxburgh, former Chairman of Shell, thanks very much for joining us."

2. The complaint

Stages 1 and 2

The complainant contacted the BBC to complain about the interview. He stated that the presenter

"...described Lord Oxburgh as a former Chairman of Shell at the top and tail of the interview, This, is of course true, but more relevant to the listeners are Lord Oxburgh's current jobs. He is currently honorary president of the Carbon Capture and Storage Association, chairman of Falck Renewables, a wind energy firm, and an advisor to Climate Change Capital. I got this information with a 30 second glance at Wikipedia, I would have thought that John Humphries [*sic*], or his researchers, could have done the same and better informed your listeners so that they could make a judgement about his views given that he stands to make money out of the renewables industry."

The complainant also considered that:

"...the BBC breached its charter for impartiality by keeping details of Lord Oxburgh's association with various renewable energy companies and presenting him as a former Chairman of Shell, when his current roles as adviser to, and Chairman of, various renewable energy companies was kept from the public."

The complainant received a reply from the Assistant Editor of *Today* who said that Lord Oxburgh is best known as the former Chairman of Shell so that is how they described him on air. The Assistant Editor did not think listeners were misled or that any key information was withheld in not mentioning his subsequent, more minor, roles elsewhere.

The complaint was escalated to the Editorial Complaints Unit at Stage 2 of the process. The ECU said it would have been better if the programme had referred to Lord Oxburgh's

interests in clean energy but it did not conclude that on this occasion the audience would have been seriously or materially misled by the omission.

Appeal to the Trust

The complainant appealed to the Trust on 7 April 2013, claiming that the BBC's Guidelines on Accuracy had been breached.

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

- Point (A) Listeners should have been told of Lord Oxburgh's business interests in renewable energy to allow listeners to "judge Lord Oxburgh's contributions on their merits".
- Point (B) In the complainant's view, Lord Oxburgh promoted the idea of carbon capture and storage during the interview which the complainant alleged he stood to gain from because of his commercial interests in this field.

3. Applicable Editorial Guidelines

The sections of the BBC Editorial Guidelines relating to Accuracy and Impartiality are applicable to this case. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>.

4. The Committee's decision

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

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

The Committee considered the on-air sequence, which began with a two-way interview between the presenter, James Naughtie, and the BBC Employment & Industry Correspondent, John Moylan. The presenter's introduction to the piece was as follows:

"As we were hearing in the news the Government's announcing its plans for regulating the energy market today. It gives government more powers to intervene. Ministers claim the new regime will create a quarter of a million jobs. The Energy Bill is designed to cope with a rising demand for electricity but alongside it the Government's going to lay out plans for helping us all to save energy so it's quite a package."

The Committee noted that the BBC Employment & Industry Correspondent went on to summarise that the Bill was intended to address a number of issues: firstly, the UK capacity to produce electricity was declining compared to demand; secondly, the energy industry had targets for the use of low carbon renewable energy; thirdly, achieving security of energy supply so that the UK was not dependent on the world energy markets; and finally that people had to be able to afford the energy they used. The Government's intention was to give more certainty to the energy industry and it was hoped that both individuals and companies would reduce their demand for energy so that the pressure to build new generation facilities would be reduced. The Committee noted that the BBC's correspondent stated:

"... it's worth remembering the big picture here, Jim, something like a fifth of our generation capacity is due to close by 2020 that's polluting coal fired power stations old and nuclear. And you will probably recall the industry regulator indicated that by around 2015 the margin between our generation capacity and demand is going to fall to about 4% – so it's going to get pretty tight. So the challenge of this bill is to keep the lights on, to do it in a way in which we are going to meet our renewables targets, in a way in which gives us security of supply in that we're not too prone to what goes on in the wider world in terms of the energy markets and of course crucially to do in a way that's affordable for consumers.

".... At the very heart of the bill there will be fairly complicated mechanisms which will ensure that the builders of new nuclear or new big offshore wind farms that they get a guaranteed return for the price of their electricity. So that's at the very, very heart of all this – something that's going to give certainty to investors on how they're going to make a return. ...the industry have been calling out for this, it's what the industry want.

"...We've heard a lot about how generation is going to change in the years to come and we've heard a lot about moving towards low carbon sources and the way in which that might impact upon our bills. So today the energy secretary will be talking about things like how we all should be cutting our electricity demand, so there will be incentives put in place for homeowners and also for industry in order to try and reduce demand and of course if we reduce demand we won't need as many of these new power plants built in the first place."

The Committee noted that Lord Oxburgh was then introduced by presenter Jim Naughtie as the "former Chairman of Shell". Lord Oxburgh's first substantive point was to reinforce the final point made by the BBC's Employment and Industry Correspondent. Lord Oxburgh said:

"Fundamentally, I think the point that your correspondent made right at the very end is probably the single most important, that energy investment in this country has been more or less in limbo for nearly a decade simply because the investment community have not had any certainty about what the Government was going to do. It clearly had to do something, the Government had this challenge of balancing price against energy security and against low carbon and it wasn't clear how they were going to do that."

Lord Oxburgh gave his analysis of the balance which the Government needed to strike between being mindful of the cost of energy, the security of its supply and the use of renewable energy:

"Given that the Government is trying to balance these three objectives, two of which cannot be relatively monetised – I mean how do you value in cash terms energy security? They've had a go at carbon. So ultimately what this bill has to do is put these three objectives together and provide an incentive package in which this country can come together. The low carbon is being done through a carbon price which is progressively increasing over time but energy security is going to be effectively governed by ministers or by the department or their advisors in the choice of the mix of energy production that we go forward."

The Committee noted that, when asked about the mix of energy sources available in the UK, Lord Oxburgh suggested that there was flexibility in this, except that if the UK were both to continue to use fossil fuels and also want to pursue a low carbon energy policy, he considered it inevitable that carbon capture would be needed.

“...There are many ways one can skin this particular cat depending on your taste. There are a number of ways that won’t work, but in practice you can put together a mix of nuclear, of wind, a certain amount of gas – which it is hard to see us avoiding in the near future – and you can put in various other renewables as well. And you can actually make something that will work. The proportions of these you can vary a little bit, but if you want to go low carbon and keep your fossil fuel you’ve really got to go carbon capture and storage.”

The interview concluded with a short discussion about the effect that shale gas mining in the US has had on the world’s gas markets and that the possibility for shale gas in the UK depended both on how much gas there was available for extraction and secondly on the will, centrally and locally, for it to be extracted.

The Committee went on to consider Lord Oxburgh’s experience and business interests. He trained as a geologist and geophysicist. He held academic positions at Oxford and Cambridge Universities and was appointed Head of the Department of Earth Sciences in Cambridge. He was Chief Scientific Advisor to the Ministry of Defence between 1988 and 1993 and was Rector of Imperial College from 1993 to 2000.⁵

The Committee noted that in 2004 Lord Oxburgh was appointed Chairman of Shell. During his two-year tenure he made headlines for his comments that climate change caused him to be “very worried for the planet” and he called for the development of ‘sequestration’, or carbon capture technology: “If we don’t have sequestration I see very little hope for the world.”⁶

He was made a life peer in 1999 as Lord Oxburgh of Liverpool and was Chair of the Lords Select Committee on Science and Technology from 2009 to 2012.⁷ The House of Lords’ website lists among current interests directorships of 2OC Ltd and Green Energy Options Ltd.

He is Chairman of 2OC Limited, a company which “creates joint ventures with gas network operators around the world to generate low carbon, sustainable energy (electrical power, heat, cooling and refrigeration) from the network operators’ pressure reduction stations.”⁸

He is Chairman and non-Executive Director of Green Energy Options Ltd which “provides in-home displays enabling customers to monitor their utility consumption”.⁹

Under the heading of “Remunerated Employment”, the Lords’ website notes that Lord Oxburgh offers occasional professional advice to Deutschebank, Evo Electric Ltd (electric motors); the Government of Singapore (higher education; water resources; energy), Fujitsu (IT services), Geothermal Engineering Ltd, McKinsey & Company and Climate Change Capital. The latter company notes that Lord Oxburgh sits on their Advisory Board.

⁵ http://www3.imperial.ac.uk/aboutimperial/imperial_people/pastrectors/oxburgh

⁶ <http://www.guardian.co.uk/environment/2004/jun/17/scienceinterviews.oilandpetrol>

⁷ <http://www.parliament.uk/biographies/lords/lord-oxburgh/2494>

⁸ <http://www.2oc.co.uk/greenutility/about/>

⁹ <http://www.greenenergyoptions.co.uk/>

It describes itself as an investment manager and advisory group specialising in the opportunities generated by the global transition to a low carbon economy.¹⁰

Under the heading of “Non-financial interests” Lord Oxburgh’s House of Lords biography notes that he is President of the Carbon Capture and Storage Association. The CCSA website says he is Honorary President of the organisation, which “brings together specialist companies in manufacturing & processing, power generation, engineering & contracting, oil, gas & minerals as well as a wide range of support services to the energy sector such as law, finance, consultancy and project management”.¹¹

The Committee noted Lord Oxburgh’s President’s Statement on the CCSA website on “A Vision for Energy and the Environment”:

“The number of people in the world and the amount of energy used by each individual are both increasing remorselessly. Although we may slow the rate of increase of energy usage by more efficient use and reduced wastage, we cannot stop it.

Furthermore, meeting even the world’s present energy needs, let alone those of future generations, is having disastrous consequences for the environment. Clearly, in the future we must do things differently, perhaps using energy sources such as renewables, or sources we have not yet found ways of harnessing. In the mean time we have little alternative but to continue burning fossil fuels. And while we do so it is essential we cause as little environmental damage as possible.

Achieving this demands the capture of greenhouse gases where they are generated and not discharging them to the atmosphere. Once captured, they must then be stored securely for many thousands of years. This process is known as Carbon Capture and Storage (CCS).

Industry has already taken great steps in developing technologies to ensure CCS can be a safe and effective avenue towards reconciling energy and environmental needs. It is essential that this process should command full public confidence.

The Carbon Capture and Storage Association, of which I am President, was created to bring together companies with the skills and resources to develop CCS projects – and to work with Government to ensure those projects are designed, executed and verified to meet the needs of the society they serve.”

The Committee noted that the Energy Bill was, on the day of broadcast, being announced. It aims to move the UK’s energy production from a dependence on fossil fuels to a more diverse mix of energy sources, such as wind, nuclear and biomass. In aiming to encourage investment in low-carbon power production, the Government says the investment will shield the UK from volatile gas prices and force down costs in the long run. The Government also needs to fill the energy gap from closing a number of coal and nuclear power stations over the next two decades, and to meet its carbon dioxide emissions targets.¹²

The Bill proposes allowing energy firms to increase the “green” levy from £3bn to £7.6bn a year by 2020 in order to encourage them to invest in renewable energy infrastructure

¹⁰ <http://www.climatechangecapital.com/about-us/company-overview.aspx>

¹¹ <http://www.ccsassociation.org/about-us/our-staff/>

¹² <http://www.bbc.co.uk/news/business-20539981>

such as wind farms. However, opponents say this could potentially increase household bills by £100 per year.

Big, energy-intensive companies could be exempt from the extra costs of the switch to renewable energy. In a consultation paper published alongside the Bill, Secretary of State Ed Davey said energy-intensive industries, such as steel and cement producers, would be exempt from additional costs arising from measures to encourage investment in new low-carbon production.

When Mr Davey published his statement to the House, the Opposition expressed disappointment¹³ that the Bill did not include a “clear decarbonisation target” to cut the amount of carbon in Britain’s energy generation. Mr Davey acknowledged this had been a “matter of some debate” within the Government. He said Ministers “would bring forward amendments to the Bill to give the Secretary of State the power to set a target after the next general election”.

The Committee considered the complainant’s allegation that listeners should have been told of Lord Oxburgh’s business interests in renewable energy to allow listeners to judge his “contributions on their merits”.

The Committee noted the comments of BBC News to the Independent Editorial Adviser that:

“...this interview was never intended to be so specific that Lord Oxburgh’s other interests were relevant to raise at the start of the interview. Had the guest openly campaigned for a specific cause or type of fuel that would have been a different matter. But he did not.”

The Committee noted that Lord Oxburgh was well known as the former Chairman of Shell. However, the Committee considered that his current business interests were significant in the context of an interview about future energy supply on the day that the Energy Bill was announced.

The Committee noted the ECU’s comments at Stage 2 that “Lord Oxburgh spoke in broad and general terms about the challenge facing the Government”. The Committee accepted that Lord Oxburgh’s comments were largely uncontroversial and concluded that the audience was unlikely to have been misled because of the general nature of the discussion. However, at one point in the interview Lord Oxburgh discussed carbon capture and storage:

“There are many ways one can skin this particular cat depending on your taste. There are a number of ways that won’t work but in practice you can put together a mix of nuclear, of wind, a certain amount of gas – which it is hard to see us avoiding in the near future – and you can put in various other renewables as well. And you can actually make something that will work. The proportions of these you can vary a little bit, but if you want to go low carbon and keep your fossil fuel you’ve really got to go carbon capture and storage.”

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http://news.bbc.co.uk/democracylive/hi/house_of_commons/newsid_9774000/9774035.stm

The Committee did not agree with the second point made by the complainant in his appeal that Lord Oxburgh promoted the idea of carbon capture and storage, as he qualified his comments with “if”, and cited a mix of energy sources “depending on your taste”. The Committee considered they had seen nothing to support the complainant’s assertions on this point.

The Committee noted that 3.4.12 of the Editorial Guidelines states that the BBC should normally identify on-air and online sources of information and significant contributors, and provide the credentials, so audiences can judge their status. In this case, the Committee agreed that the *Today* programme had failed to do so, and it considered that the Guideline requirements relating to Accuracy had not been met.

The Committee agreed that, in relation to the first point of the appeal, listeners would have benefited from being told by the *Today* programme that Lord Oxburgh was speaking in the context of being President of the CCSA in order that they could have considered his comments accordingly.

The Committee noted the requirement for the BBC not to “knowingly and materially mislead its audiences” (3.2.3). Whilst the Committee considered that further information on Lord Oxburgh’s current business credentials could have been helpful, the Committee did not consider that the BBC had “knowingly and materially” misled its audience. The Committee noted that “knowingly and materially” is a high threshold. The Committee did not consider this threshold had been met. It noted the response given to the complainant at Stage 1 that the programme had described Lord Oxburgh as the former Chairman of Shell because that is how he is best known. It also noted the general nature of the discussion in the interview.

The Committee was mindful that it had found a breach of the Editorial Guidelines on Accuracy. It also noted that the complainant had in his pre-appeal correspondence with the BBC complained that the BBC was in breach of its Charter requirement for Impartiality. The Committee was mindful of the broad nature of the discussion and having regard to the Editorial Guidelines on Impartiality, it agreed that, even though the requirement for due accuracy had not been met, there was no evidence to support a breach of the Guidelines on Impartiality.

Finding: Upheld in part.

Countryfile, BBC One, 18 November and 9 December 2012

1. Background

Countryfile is a BBC One factual series about the people, places and stories making news in the British countryside.

Two of the presenters of the two editions of the programme which are the subject of this appeal wore 'Rab' clothing, on which the manufacturer's branding was visible.

2. The complaints

Stages 1 and 2

Complainant A contacted the BBC to complain about the edition of *Countryfile* broadcast on 18 November 2012. He referred to two of the presenters of the programme wearing the same branded clothing and called this "blatant product placement & advertising which should not be allowed".

Complainant A raised an additional complaint in relation to the programme broadcast on 9 December 2012 where the same two presenters were again wearing the same branded clothing.

Complainant B's initial complaint referred to the 9 December 2012 edition of *Countryfile* as an illustration of the entire series in respect of presenters wearing branded clothing.

BBC Audience Services responded to both complaints at Stage 1 saying that the wearing of branded clothing by the *Countryfile* presenters did not amount to product placement or undue prominence. Complainant B also received a response from the Series Producer.

Both complainants were escalated to the Editorial Complaints Unit at Stage 2 of the process. The ECU did not uphold the complaints.

Appeals to the Trust

Complainant A escalated the complaint to the BBC Trust. He confirmed the basis of his appeal, that he felt "...that the presenters of the programme are in breach of guideline 14.4.4 by wearing branded clothing on a weekly basis. This is outdoor programme [sic] giving undue prominence to manufacturers of outdoor clothing."

Complainant A also reiterated his question asking "why are not the presenters provided suitable outdoor clothing by the BBC with its own logo"

Complainant B also appealed to the BBC Trust. He said he did not feel that the Stage 2 response had addressed the points he had made about the edition of the programme broadcast on 9 December 2012. He did not accept that the outdoor nature of the programme justified "brand prominence on clothing" and stated that "It is not necessary to wear logos to obtain weather protection."

In addition, Complainant B maintained that "The programme is unwittingly creating the perfect product placement for which a brand owner would pay handsomely." He argued that, by including branded clothing, the programme is not reflecting the "reality of ordinary life" envisaged by the Editorial Guidelines, but rather represents the personal clothing preferences of the presenters.

He said that *Countryfile* does not include glimpses of brands from time to time but "...features branded clothing for extended periods in close up and features the same brand from programme to programme". The complainant referred to comments on various web forums (included with his correspondence) to demonstrate that other people have also noticed the way the programme features branded clothing.

3. Applicable Editorial Guidelines

The section of the BBC Editorial Guidelines (2010) relating to editorial integrity and independence from external interests is applicable to this appeal. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>

4. The Committee's decision

The Committee considered the complaints 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 the subsequent submissions from both complainants and the BBC.

The Committee noted all the points made by both complainants in correspondence at Stages 1 and 2 of the appeals process and in relation to this appeal.

The Committee also noted the BBC's submissions that:

- In relation to product placement the presenters did not wear the branded clothing in return for payment or consideration in kind. There were no deals between presenters and clothing manufacturers and no question of particular ranges of clothing appearing onscreen in exchange for cash or in return for being supplied at low cost or no cost. This is a matter which is included in the terms of the presenters' contracts and is the subject of regular reminders both to them and their agents.
- The question of undue prominence is one that they take seriously, particularly with regard to clothing worn in vision by presenters. Before signing off any programme for transmission this is one of the aspects which is looked at closely both by the Executive Editor and the Series Producer. Directors are encouraged to have the issue very much in mind at the time of filming, but if necessary the size of a shot will be changed or cut around the action in the edit so as to minimise the length of time that a particular branded product is onscreen. The programme making team say that they do this not only because overly-prominent branding is non-compliant editorially, but also because it is a distraction from the core content of the programme for its audience.
- The programme making team use the BBC's Editorial Guidelines on Editorial Integrity & Independence from External Interests as their general guidance and, in particular Section 14.4.4. They say that they generally avoid any reference to brand names unless there is a specific journalistic reason and editorial justification for it; however, *Countryfile* personnel - including presenters - work on outdoor locations in all weathers and need to wear specialist outdoor clothing on a regular basis.
- It is a fact of life nowadays that most clothing of this kind is heavily branded, so in presenting "the real world" it is almost unavoidable that labelling will feature in shot at some point. They do not agree that most outdoor clothing is unbranded

and in their experience the vast majority of brands are very readily identifiable – even those sold by budget retailers. This is particularly so with “high specification” technical wear used in filming, which has to be suitable in a range of sometimes extreme conditions. They do, however, aim to avoid the undue prominence of any particular brand or product and take every step to ensure that the programme conforms to the BBC Guidelines if any is featured.

- *Countryfile* presenters supply their own clothing and choose what they wear on a particular shoot depending on the demands of their individual filming schedule. They do not prefer “heavily branded clothing” for its own sake, rather they simply choose the best clothing for the job. They pay for this clothing themselves.
- Both presenters have confirmed (through their Executive Editor) that the outdoor clothing in question was bought or hired by them directly in accordance with BBC guidelines (one of the presenters hires some of her clothing by agreement with the BBC specifically to ensure that no single brand or style features too frequently in any of the series in which she appears. Hired items of clothing are paid for at commercial rates.) The presenters have confirmed that the clothing worn by them in the programmes was neither provided at low or no cost, nor was it subject to any agreement that the brand should be worn onscreen.
- The programme making team accept that it is unfortunate that two presenters should have chosen to wear the same brand of outer wear in the same programme, but given that this happened in November/December, during very cold weather, it was a question of coincidence rather than collusion. On each occasion the two presenters were working in different locations and with different directors, so it wasn’t until the final editing stage that the problem became apparent.
- Although directors do endeavour to film in such a way as to minimise the prominence of any branding, when the production team realised that two presenters were wearing the same branded clothing, they took extra measures to avoid undue prominence, including cutting away from the action and minimising the branding as far as possible. The production team say that this is readily done and does not significantly affect the overall visual offering to the *Countryfile* audience. They say that after the second occurrence, to avoid any further juxtaposition, they asked one of the presenters not to wear the particular jacket he had worn again on *Countryfile*, which he agreed to do, and since that time a similar situation has not occurred.

The Committee considered first the allegation of product placement. The Committee noted the relevant guidelines on Editorial Integrity and Independence from External Interests, which state that:

Product placement is the inclusion of, or a reference to, a product or service in return for payment or consideration in kind. The taking of product placement for licence fee funded services is prohibited under the terms of the BBC Agreement.

The Committee noted the BBC’s assurances that the presenters did not wear the branded clothing in return for payment or consideration in kind. There were no deals between presenters and clothing manufacturers and no question of particular ranges of clothing appearing onscreen in exchange for cash or in return for being supplied at low cost or no cost. The Committee noted that this was included in the terms of the presenters’ contracts and is the subject of regular reminders both to them and their agents.

The Committee concluded that the wearing of branded clothing by the presenters did not amount to product placement as there was no evidence that its inclusion in the programme was in return for payment or any consideration in kind.

The Committee then turned to the question of undue prominence.

The Committee accepted that the Guidelines on Product Prominence do not prohibit entirely the appearance of on-screen of branded products and it noted the specific reasons given by the BBC for the appearance of branded clothing on *Countryfile*. The Committee wished to emphasise, however, that great care that must be taken to ensure that the BBC does not give the impression that it is promoting or endorsing products.

The Committee noted the BBC's explanation that it was coincidental that two presenters chose to wear the same brand of outer wear in the same programme and that it was also a coincidence that two presenters wore the same branded clothing in both programmes. The Committee noted what the BBC said it had done to minimise any undue prominence issues by cutting away and limiting the branding.

The Committee agreed, however, that the wearing of the same visibly branded clothing by two of the programme's presenters in the two editions of the programme which are the subject of this appeal did amount to undue prominence which gave the impression that the programmes were promoting or endorsing these products. The Committee concluded that in these programmes the cumulative effect was that the branded clothing was unduly prominent and amounted to a breach of the Guidelines covering Product Prominence.

In relation to the question posed by Complainant A about issuing the presenters with BBC branded clothing, the Committee concluded that decisions such as those relating to the provision of clothing which presenters wear are day to day operational matters, and as such they are the responsibility of the BBC Executive rather than the BBC Trust. However, the Committee would expect the Executive to take whatever steps were necessary to avoid a further breach of this sort.

Finding: Upheld in part.

Holby City, BBC One, 18 September 2012, 8pm

1. Background

Holby City is a long-running drama serial which was first broadcast in 1999 and was in its 14th series at the time of broadcast. It is a spin-off from *Casualty* and follows the lives of staff working at the same fictional hospital.

The complaint concerns the following dialogue from the episode broadcast on 18 September 2012:

Mo Effanga: You know what, it's like she doesn't even trust me.

Jonny Maconie: I don't think you're special, Naylor and trust are not the best of buddies.

ME: It's alright for you.

JM: What do you mean?

ME: You're just shagging her. Actually forming a functioning relationship with a woman is like picking through a minefield.

And

Jac Naylor: Which one was it?

Mo Effanga: Mark

JN: Double chin or balding?

ME: Balding

JN: Scared of women. Remind him that you have the power to cut his balls off, metaphorically speaking.

2. The complaint

Stage 1 and 2

The complainant contacted BBC Audience Services objecting to "the use of the offensive sexual words 'shagging' and 'cut your balls off' during what is a family programme" before the 9pm watershed.

The complaint was escalated to the Editorial Complaints Unit at Stage 2 of the process. The ECU concluded that the material in question did not represent a serious breach of the BBC's Editorial Guidelines and therefore the complaint was not upheld.

Appeal to the Trust

The complainant contacted the BBC Trust to appeal the ECU's decision. The complainant considered the use of sexually explicit language, including the words "shagging" and "cut

his balls off", was offensive when children might be watching television with their families. The complainant asked the BBC Trustees to consider whether they would find this language acceptable in a classroom and, if not, queried why it was acceptable to transmit it into people's homes. The complainant believed that "programme makers are constantly pushing at the boundaries, transgressing the watershed, and inflicting their views and coarse language ... during the pre-watershed period".

In reply, the Trust's Senior Editorial Strategy Adviser explained that she considered 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 his case for reconsideration was based on the following points:

- He did not consider that the words "shagging" or "cut his balls off" should have been broadcast before the watershed.
- He considered that it was "disingenuous" of the BBC to suggest parents were responsible for the programmes their children watched prior to the watershed, when they were not aware of the programmes' contents.
- The complainant queried the reference to "Generally Accepted Standards" and considered that the explanation of "Generally Accepted Standards" in the Editorial Guidelines enables those who include bad language in a programme to support its inclusion on the basis that it is a matter of judgement and interpretation.
- The complainant challenged the research about the audience response to strong language and cited a poll that he said had been carried out by a newspaper which indicated that, contrary to findings of the BBC, people did object to strong language.
- The complainant pointed to specific Guidelines which he felt had been breached by the inclusion of the words "shagging" and "cutting his balls off". He drew attention to the time at which the programme was available (prior to the watershed) and the likely size and composition of the potential audience and its likely expectation. In relation to harm and offence, the complainant said the language was "offensive and no protection was offered to any vulnerable children who would be watching". The complainant also said there was no signposting, and a further breach of the Guidelines occurred in relation to the "effect of content on audiences who may come across it unawares". He said viewers could not guess what the content was likely to be, nor prevent the embarrassment of hearing "such appallingly sexually explicit language" used in front of their children.
- The complainant referred to Clause 5.4.6 of the Editorial Guidelines and stated it: "...is used to exonerate the BBC from exercising its responsibility to protect young viewers, by shifting the responsibility on parents and carers for assessing programme content. ...this is an impossible task not knowing what is going to be broadcast beforehand".
- The complainant also noted that 5.4.7 of the Guidelines states that programmes broadcast between 5.30am and 9pm must be suitable for a general audience including children.

- In terms of an older person being present when children were watching pre-watershed content; the complainant considered this might for example be helpful if a nervous child needed reassurance during a programme such as *Dr Who*. However, he considered that the presence of an older person would not offer any protection to children who had been watching *Holby City* because they would have been unaware of the strong, sexualised language in the programme.
- The complainant noted that while the majority of viewers of *Holby City* might be adults, that does not mean that the number of children watching will be insignificant and they can be a very sizeable minority.
- The complainant queried whether the language used in the programme would have been acceptable if it had been used by a schoolteacher. He stated: "I contend that parents and carers do not have dual standards, and they expect high standards from their schools and their BBC."
- The complainant considered "the use of such offensive language ...warps young peoples' views of what is normal and acceptable language".

The Committee considered the complainant's request for a review of the Trust Unit's decision not to accept the appeal at its meeting on 11 April 2013. The Committee decided that it wished to accept the appeal for consideration.

3. Applicable Editorial Guidelines

The sections of the BBC Editorial Guidelines relating to Harm and Offence are applicable to this case. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>.

4. The Committee's decision

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

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Independent 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 Harm and Offence. The Committee noted that it was asked to consider whether the BBC had met generally accepted standards regarding the use of offensive language taking into account the likely expectation of the audience and whether any offence was likely to be caused by the inclusion of this particular content in this programme. The Committee was also asked to consider whether the BBC had met the standards required regarding the television watershed taking into account that programmes broadcast before 9pm must be suitable for a general audience including children, but also bearing in mind that programmes in later pre-watershed slots may not be suitable for the youngest children or for children to watch without an older person.

The Committee noted the storyline for this episode. One of the consultants, Jac Naylor, is having a relationship with a CT nurse, Jonny Maconie. Jac is a long-standing regular character in the series and is portrayed as a ruthless and ambitious consultant who does not let personal feelings intrude into her professional life. Jonny is best friends with Mo Effanga, a registrar, who finds it difficult to understand why Jonny would go out with Jac. She thinks it is just about sex and, having been on the receiving end of some very cutting

comments by Jac, remarks that the only reason Jonny is seeing Jac is because "you're just shagging her". Jonny jokingly replies that he cannot defend Jac: "What do you want me to say, she's a total bitch?" Jac overhears the end of the conversation and is antagonistic towards Mo when dealing with a patient. When Mo says there is a delay in sending the patient for an X-ray, Jac tells Mo that the radiologist is scared of women and that she should "remind him [the radiologist] that you have the power to cut his balls off metaphorically speaking".

The Committee noted that the ECU Complaints Manager cited two research reports in relation to the use of sexually offensive language. The Committee also noted that another research report published by Ofcom in 2010 looked at *Audience attitudes towards offensive language on television and radio* (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>). This report supported the other two reports which found that the use of the word "balls" was in general not a concern to viewers. However, there was more concern expressed over the use of the word "shag" where the participants felt that care needed to be taken over its use "particularly whether children were likely to be listening or watching and whether programmes were intended to be family viewing". However, "some participants thought there were some contexts in which these words (including 'shag') would be acceptable in television pre-watershed".

The Committee noted there was some sensitivity to the use of the word "shag" in pre-watershed programming. The Committee noted an Ofcom Finding in 2007 concerning a sitcom *After You've Gone* which contained some offensive language including "shag", "crap", "bollocks" and "tits". It was broadcast on BBC One at 8.30pm and repeated on a Sunday afternoon at 5.10pm. Ofcom did not uphold the complaints about the 8.30pm broadcast as "this level of language is generally acknowledged as mild by the majority of adult viewers and was justified by the editorial context of the programme, a light-hearted comedy". However, the BBC admitted that this language "was not suitable for broadcast on a Sunday afternoon when many children would be watching". The BBC published an apology on its website and "the remaining episodes were edited to remove much of the coarse language". The case was resolved. The full finding is available at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb81/>

The Committee noted that the audience for this episode of *Holby City* was 4.66 million viewers and, of this total, 186,000 were children. Children, therefore, represented 4% of the audience. The average audience for this series was 4.9 million with an average of 278,000 children viewing, which was 6% of the audience. The Committee noted that the complainant had questioned the accuracy of these figures but it was satisfied that they were the statistics adopted by the industry and were a reliable estimate of the viewing audience.

The Committee recognised that some viewers may find the use of this particular language offensive. The Committee, though, took into account that *Holby City* is a well-established drama dealing with contemporary life and covers challenging themes of hospital life, both on the ward and in the staff's personal lives. The Committee did not believe that regular viewers of this drama serial would have found the occasional use of the word "shagging" or the phrase "cut his balls off" unacceptable in this particular context, given the animosity between the two characters.

The Committee took into account that *Holby City* starts an hour before the watershed, when viewers are aware that not all programming is suitable for younger children. The Committee noted that the complainant believed that the same standards should apply to pre-watershed programming as those appropriate for a teacher in a classroom. The

Committee believed that there was a significant difference in these two situations, namely that parents and carers share responsibility with the broadcaster to decide what is suitable for their children to view whereas a teacher has sole responsibility for the children in the classroom and, therefore, has a higher threshold of responsibility than a broadcaster.

The Committee concluded that the programme was not in breach of the Editorial Guidelines.

Finding: Not Upheld

Rejected Appeals

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

***Newsnight*, BBC Two, 14 November 2012**

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold her complaint about *Newsnight's* coverage on 14 November 2012 concerning Israel's military operation in Gaza.

She said that she was unhappy with the response she had received at Stage 2 to her complaint of bias in the coverage of Israel's attack on Gaza on November 14 and to the "uninterrupted airtime" given to Israel's Deputy Foreign Minister, Danny Ayalon, whom, she considered:

"was allowed to deliver inaccurate and untrue information, which promoted the Israeli narrative, without adequate challenge for a long period of time".

The complainant made the following arguments in respect of the interview with Danny Ayalon:

- Mr Ayalon said the killing of Mr Jabari [the military commander of Hamas in Gaza] was an act of self-defence; it was not, it was an act of murder. The charge that Israel had breached international law should have been put to Ayalon and Jabari's peace-promoting activities should also have been reflected "which belies the terrorist label"
- Mr Ayalon's statement that Gaza was given entirely to the Palestinians in 2005 was untrue and should have been challenged. The presenter ought to have reminded Ayalon that the UN and the British government still consider it occupied because of Israel's ongoing control of its airspace, coastal waters and land borders
- Mr Ayalon was unchallenged when he stated that Hamas was terrorising innocent civilians with long range missiles; as the Thomas report of 2006 (into the impartiality of the BBC coverage of the Middle East) pointed out, there is an asymmetry of (fire) power between the two sides and it is misleading if the BBC gives an impression of equality.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Strategy Adviser (Trust's Adviser) decided that the complainant's appeal did not 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 agreed with the ECU that the guidelines on Impartiality and Accuracy were relevant to the issues raised. She noted that the over-arching requirement is for due accuracy and due impartiality. This requirement allowed for account to be taken of the subject and nature of the content, the likely audience expectation and any signposting that might influence that expectation.

The Trust's Adviser noted that in the case of long-running output (such as *Newsnight*) due impartiality may be achieved over time "by the consistent application of editorial judgement in relevant subject areas", but that "it is not usually required for an appearance by a politician, or other contributor with partial views, to be balanced on each occasion by those taking a contrary view".

Before considering the three specific allegations of bias in the interview with Mr Ayalon, the Trust's Adviser noted the context in which the interview took place. The item was one element of a nine minute long segment and had been preceded by a five minute studio discussion in which the presenter, Gavin Esler, discussed with reporter, Tim Whewell, the broader political and diplomatic context of the day's events in the region. The Trust's Adviser noted the introduction:

"There's no doubt that Ahmed Jabari was a big player in the struggle between the Palestinians and Israel. He was the military commander of Hamas in Gaza. A man described by the Israeli Defense Forces as someone with blood on his hands. The IDF assassinated him today, and further strikes on targets across Gaza have followed with civilians among the dead and injured."

She noted that there had been signposting about the scope of that day's coverage in the introduction to the item with the script line, "So what does the killing of Ahmed Jabari tell us about the new and potentially explosive geography of the Israeli-Palestinian conflict?" She noted that while the studio interview preceding Mr Ayalon's interview reflected in commentary and graphic pictures what had happened in Gaza; the majority of the interview focussed on Israel's actions in the context of the first conflict of this type between Hamas and Israel since the Arab Spring and the election of the Muslim Brotherhood in Egypt and in the context of the upcoming elections in Israel itself.

The Trust's Adviser noted that the exchange between the presenter and the reporter included important context: the segment began with graphic video of the scenes in Gaza City; the commentary noted that amongst the victims of Israeli air strikes were "some very young casualties"; it quoted Gaza's Health Ministry that nine people died in addition to Ahmed Jabari, and that Tim Whewell said "we expect that number to rise"; and reference was made to Israeli naval and air strikes.

In terms of the interview with Mr Ayalon itself, the Trust's Adviser considered there was clear editorial justification for conducting the interview with a representative of the Government responsible for the day's immediate events and which had the power to decide what would happen next.

She noted that the decision on which aspects of the issue to address in the interview with Mr Ayalon were a matter of editorial judgement. The requirement would nevertheless remain that the content observed due accuracy and due impartiality and did not mislead the audience on any material facts. She also acknowledged that this was a controversial subject.

The Trust's Adviser considered the complainant's first point that the killing of Ahmed Jabari was not self-defence and was an act of murder and that:

"...there was evidence that Jabari was in fact brokering a ceasefire agreement, he had been instrumental in the release of the Israeli soldier, Shalit, the previous year and had previously enforced Palestinian ceasefires from rival militant groups, which belies the terrorist label with which Ayalon had marked him."

She considered the assertion that the presenter should have challenged Mr Ayalon to respond to the charge that Israel had breached international law by murdering Ahmed Jabari.

The Trust's Adviser noted the relevant extract:

Gavin Esler: Well Danny Ayalon, the Israeli Deputy Foreign Minister joins me now from New York. Mr Ayalon, what do you think that Israel has achieved by killing Ahmed Jabari?

Danny Ayalon: Well we have to remember that Ahmed Jabari was the Bin Laden of the Hamas. He has many, many innocent lives on his head. The fact that he was overseeing the new attacks on Israel for the last two weeks, by actually taking him it is not only a self-defence, it's a classic self-defence, and hopefully a message and prevention and pre-emption for the future.

There is no way to reason with the terrorists, you cannot reason with but by defending yourself in a way where they won't be able to operate again.

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

The Trust's Adviser noted also that it was explicitly stated by *Newsnight* at the very start of the item that the killing of Mr Jabari was an "assassination", which is an illegal act usually considered synonymous with murder and is a word usually used to describe a political murder. It was not described as, for example, a "targeted killing" which is the wording usually used to denote the killing of an illegal combatant or terrorist (theoretically in self-defence). Therefore the Trust's Adviser did not consider the audience would have been misled into thinking that Israel had acted within the law.

The Trust's Adviser said that it was likely that Trustees would consider that the BBC had not shown bias but, having described the killing of Ahmed Jabari as an assassination, *Newsnight* had then asked the representative of the Israeli Government for its position on the killing. This was how due impartiality was achieved.

Whilst the Trust's Adviser appreciated the complainant's desire for the spokesman to be asked directly for his response to the charge that this was murder and that Israel had

broken international law she noted that the choice of which questions to ask an interviewee is a legitimate editorial decision and not one in which the Trust would generally intervene. The fact that the Israeli Deputy Minister had described this as an act of self-defence would not have been a matter of surprise to the *Newsnight* audience: it is the known position of the Israeli government on such killings. In this instance *Newsnight* had chosen a different interviewing tactic and had gone on to question Israel's strategic decision to kill Ahmed Jabari by suggesting that such actions were pointless because another leader would emerge. This was a legitimate editorial approach.

The Trust's Adviser then considered whether it was necessary to include some context on what the complainant described as Mr Jabari's "peace promoting activities to give some voice to the Palestinian narrative", which the complainant said belied the terrorist label, in order to achieve due impartiality.

The Trust's Adviser noted that Hamas continues to be listed as a terrorist organisation by the EU, the US and many other non-Islamic countries. Mr Jabari had been the operational head of its military wing since 2002, during which time Hamas had carried out numerous suicide bomb attacks in Israel, had acquired longer-range missiles from Iran to more effectively target Israel and that Mr Jabari was understood to be the Hamas leader responsible for the kidnap and incarceration of Gilad Shalit. The Trust's Adviser therefore did not regard Mr Ayalon's response regarding Hamas and Ahmed Jabari to be inconsistent with the known facts such that he was required to be challenged by the interviewer.

The Trust's Adviser noted that Mr Jabari had played a major role in the negotiations to free Gilad Shalit, but she considered that would be anticipated given that Mr Jabari supervised the Israeli soldier's captivity. On Mr Shalit's release, Mr Jabari confirmed to an Arab newspaper that 447 prisoners released initially from Israeli jails in exchange for the soldier were collectively responsible for the deaths of more than 500 Israelis.

With regard to the complainant's assertion that Mr Jabari was actively involved in brokering a ceasefire agreement at the time of his death and the fact should have been reflected, the Trust's Adviser noted the claim was made by Gershon Baskin, the founder of an Israeli NGO which advocated a two-state solution and helped broker the deal with Hamas that led to the release of Gilad Shalit. It was understood that Mr Baskin never met Mr Jabari. Mr Baskin's claim that Mr Jabari was involved in a ceasefire agreement had not been independently substantiated and his claims did not appear in the media until 15 November, the day following Mr Jabari's death and the *Newsnight* interview with Mr Ayalon.

Therefore, on this first point, the Trust's Adviser considered Trustees would be likely to conclude the report had achieved the requirements for due accuracy and impartiality and there was, therefore, no reasonable prospect of success for this element of the complaint.

The Trust's Adviser then considered the complainant's second point, which was that the presenter should have challenged Mr Ayalon's claim that Israel had left Gaza altogether in 2005.

She noted the context in which Mr Ayalon's remarks were made:

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

Danny Ayalon: Well, I would beg to differ. When we did what we had to do in killing these heads of terror we did achieve these deterrents. What happened in between is that we gave Gaza entirely to the Palestinians. So we left Gaza altogether in 2005, seven years ago. And since then, instead of having a responsible part, taking responsibility and managing the lives in Gaza and negotiating with us on peace and reconciliations, we saw, actually, that Hamas was emboldened, getting more and more arsenal of terror and more accurate long range missiles, and terrorising more than one million innocent Israeli civilians in the population on our southern border in southern parts of Israel. What we see now.

The Trust's Adviser acknowledged that Gaza was regarded as occupied territory by the UN and the UK; however, Israel's physical presence in Gaza ended in 2005 with the withdrawal of all of its military forces and the evacuation of Israeli settlements. Hamas had day-to-day political and administrative control of Gaza. The Trust's Adviser considered that the audience would have been likely to understand that Mr Ayalon was referring to Hamas's ability – in the absence of Israel's physical occupation – to launch rockets at Israel. She considered that, if this had been a discussion about the status of Gaza, then in order to achieve due impartiality and due accuracy the issue of whether or not Gaza was an occupied territory would have merited further probing – but that was not the case. Importantly, she considered that the *Newsnight* audience would take into account the source of the statement, which in this case was Israel's Deputy Foreign Minister, and would be able to decide what weight to place on his comments.

Therefore on this second point she considered the complaint did not have a reasonable prospect of success and should not be put before Trustees.

The complainant's final point in relation to allegations of bias in the interview with Mr Ayalon was about the asymmetry of military power between the two sides:

"I am fed up with hearing how many rockets have been fired into Israel from Gaza without hearing a similar count and listing of ordinance power from Israel into Gaza. Israel possesses F-16s, Apache helicopters, Merkava tanks and drones and uses them to terrorise 1.6 million Palestinians in Gaza (and they did so on that day). This wasn't offered as a challenge by Esler, and there was no Palestinian spokesperson to make that point or any point in challenge to Ayalon, Whewell or Esler. This favoured the Israeli narrative."

The Trust's Adviser noted the complainant's reference to the 2006 Thomas Report for the BBC Governors on the impartiality of coverage in the Middle East:

"...which made several mentions of the asymmetry of power between the two sides and which noted that, given this asymmetry 'the BBC's concern with balance gave an impression of equality between the two sides which was fundamentally, if unintentionally, misleading' and highlighted the threat of this approach resulting in producing 'coverage which misleads from the outset'."

The Trust's Adviser noted that in the context of the coverage that night, the guideline requirement would be that the content did not mislead by suggesting the forces were balanced. She considered that the focus that night was not on the military capabilities of either side, so there would be no requirement that the programme explicitly spell out Israel's military capabilities as the complainant asserted.

She considered the requirement would be to reflect accurately the intensity of Israel's bombardment of Gaza. She felt this was achieved by noting it involved both air and naval strikes, and by including the latest known civilian casualty figures:

Tim Whewell: Mr Jabari's body was taken to hospital in Gaza, followed soon afterwards by some very young casualties apparently of other naval and air strikes. At the end of the day, Gaza's health ministry said that a further nine people had been killed, at least, in various strikes. But, of course, we expect that number to rise.

The Trust's Adviser also noted the description of the rocket attacks by Hamas in the studio introduction before the interview:

Tim Whewell: There's no doubt, I think, this is linked to a rather sudden upsurge in missile attacks from Gaza into Israel, particularly in the last couple of weeks. Indeed 110 rocket attacks since Saturday. What the Prime Minister, Binyamin Netanyahu, said is we've got to give a clear signal against Hamas. And also in other strikes, the main aim was to try to reduce or get rid of Hamas's stockpile of Fajr rockets. Those are the Iranian rockets that can go rather further and target main population centres in Israel.

[...] Well Hamas's reaction to this was very predictable. It talked about opening the gates of hell against Israel. And already today it's been reported that intercepted by Israel's shield there have already been 13 Hamas rockets successfully intercepted.

Given that on-going rocket attacks on Israel were the reason stated by Israel for launching the offensive, the Trust's Adviser considered that Trustees would be likely to conclude that it was editorially justified for *Newsnight* to note the numbers of rockets that had been launched and Hamas's response to the Israeli attack.

The Trust's Adviser noted the complainant's assertion that this comment from Mr Ayalon should have been challenged by the presenter:

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

The Trust's Adviser noted the following response from the presenter:

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

She noted that the Guidelines did not require that every statement be challenged, but they did state that contributors expressing contentious views should be rigorously tested and considered that on this occasion the reference to "needless civilian deaths" was a reasonable challenge.

She considered Mr Ayalon's comments regarding Hamas's acquisition of long range missiles was consistent with the known facts and there was therefore no requirement to challenge his statement. In addition, the audience were informed as to Mr Ayalon's credentials and would have been capable of reaching an informed judgement as to the weight to place on his comments.

The Trust's Adviser considered therefore that Trustees would be likely to conclude that on this point too there was no evidence that the Editorial Guidelines on impartiality or accuracy had been breached. She therefore concluded that the complaint did not have a reasonable prospect of success and should not be put before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She said that she had concerns which had not been addressed regarding what she considered to be a lack of explanation of context surrounding the Israeli attack on Gaza in November 2012, and the assassination of Ahmed Jabari. She also said that no mention was made that a ceasefire had been agreed by Israel on 12 November and that it was Israel's assassination of Mr Jabari which breached this ceasefire.

Israel's assassination of Mr Jabari:

The complainant agreed that it was explicitly stated at the very start of the item that the killing of Mr Jabari was an assassination, and that this was an appropriate term to use. She therefore felt that using the "neutral term 'kill' which does not necessarily imply illegality when speaking about this during the discussion thereafter", was misleading and also in breach of Guideline 3.2.3 in that the audience was misled by the use of the term "kill" which was used by BBC presenters amongst themselves three times, with "assassination" being used once, and then "kill" used a further three times by Esler when speaking to the Israeli Deputy Foreign Minister, with no use of the term "assassination" during that interview.

The issue of "self-defence" in relation to the death of Mr Jabari:

The complainant took issue with the Trust Adviser's statement that:

"The fact that the Israeli Deputy Minister has described this as an act of self-defence would not have been a matter of surprise to the *Newsnight* audience: it is the known position of the Israeli government on such killings."

The complainant felt it was presumptuous to second guess what the *Newsnight* audience would have been surprised about, and considered that the assassination should have been more contextualised by mentioning the days preceding the assassination of Mr Jabari (the incursions into Gaza and killing of unarmed civilian minors). The complainant considered that without any mention of the ongoing blockade, the audience could have been misled into thinking the rocket attacks on Israel were unprovoked, and that the killing of Mr Jabari and other political leaders were carried out in self-defence and that this made the deaths somehow acceptable.

Inaccuracy regarding Israel's departure from Gaza in 2005:

The complainant regarded as inaccurate the claim by Mr Ayalon that Israel had left Gaza altogether in 2005. She said that Mr Ayalon claimed that, because Israel was not a military force physically occupying Gaza, it was therefore unable to stop Hamas building an arsenal with which it could attack Israel. In order to be fair, accurate, to give context, and to demonstrate impartiality, the complainant believed that Gavin Esler had a responsibility to point out that lifting the air, sea and land blockade imposed by Israel on Gaza would be a more productive way of promoting better relations between the two sides, as well as complying with international law. The complainant considered that this omission breached BBC Editorial Guidelines 4.2.1 and 4.2.2.

Allegations of bias in the interview with Mr Ayalon about the asymmetry of military power between the two sides:

The complainant said that in terms of asymmetry of power the Trust's Adviser had considered that:

"...the focus that night was not on the military capabilities of either side, so there would be no requirement that the programme explicitly spell out Israel's military capabilities..."

However, the complainant said that, as the transcript of the discussion had shown, military capabilities were discussed:

"[Israeli] Naval strikes have been launched..."

"...other [Israeli] naval and air strikes..."

"...110 [Palestinian] rocket attacks..."

"...other [Israeli] strikes, the main aim was to reduce or get rid of Hamas's stockpile of Fajr rockets. Those are the Iranian rockets that can go rather further and target main population centres in Israel."

"...intercepted by Israel's shield there have already been 13 Hamas rockets successfully intercepted."

The complainant considered that in the case of Israeli capability it was noticeable that it was "rather more loosely and vaguely alluded to compared with the very specific information about the (very much smaller and extremely limited) Palestinian capability which had the effect of making it sound more significant than it was".

The complainant said that although the Trust's Adviser had stated that it was unnecessary to explicitly spell out the military capabilities, the programme had done this when talking about the Palestinian artillery: 110 rockets; Fajr rockets (and description of them); 13 Hamas rockets, but not for the other side. The complainant said that whatever journalists decided, they should apply the same treatment to both sides. She therefore believed that BBC Editorial Guidelines 3.2.2 and 4.2.2 had been breached.

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 considered the complainant's allegation that there had been a lack of explanation of the context surrounding the Israeli attack on Gaza in November 2012, and the assassination of Ahmed Jabari. The Committee noted that the complainant said no reason had been given for the upsurge in missile attacks from Gaza in to Israel.

The Committee also considered the point made in the complainant's challenge that by not always using the term "assassination" instead of the word "kill" whenever the death of Mr Jabari was mentioned, the programme was misleading.

The Committee noted that Gavin Esler asked at the start of the programme whether the assassination would lead to "an even more bloody conflict." The Committee agreed that it had been made clear at the outset of this item that the death of Mr Jabari was an assassination and that to use the word "kill" on other occasions when referring to his death would not have misled viewers into thinking that Israel had acted within the law.

With regard to the complainant's concerns about overall contextualisation, the Committee acknowledged the complainant's concern that viewers might not have had a full understanding of events without all the background information she considered necessary to reaching that understanding. The Committee agreed that the decision about what material to include and what to focus on in this item was a legitimate editorial judgment and would not have given rise to a materially misleading impression. The Committee agreed that the sense was not given that Israel was merely defending itself.

With regard to the complainant's concern about the references to "self-defence" in relation to the death of Mr Jabari, the Committee noted that the complainant took issue with the Trust Adviser's statement that:

"The fact that the Israeli Deputy Minister has described this as an act of self-defence would not have been a matter of surprise to the *Newsnight* audience: it is the known position of the Israeli government on such killings."

The Committee agreed that the *Newsnight* audience could be expected to take into account the source of statements made on the programme when deciding what weight to place on comments made. The Committee agreed that it was reasonable for the Trust's Adviser to refer to the expectations of the audience on this and other issues.

The Committee noted the complainant's view that "Gavin Esler had a responsibility to point out that lifting the air, sea and land blockade imposed by Israel and Gaza would be a more productive way of promoting better relations between the two sides, as well as complying with international law", and that by not doing so he had breached the Guidelines on Impartiality. The Committee considered that the presenter had made clear that the focus of this item was on Israel's actions in the context of the first conflict of this type between Israel and Hamas since events of the Arab Spring, and in the context of Israel's forthcoming elections. It considered it is a matter of editorial judgment which points are picked up and challenged by the interviewer, and, given the context, it did not agree that the Impartiality Guidelines necessarily required Mr Alayon to be challenged on this particular point. Having regard to the Editorial Guidelines on Impartiality, the Committee therefore agreed that it was not likely to find that the omission of the details

which the complainant had said should have been included resulted in any breaches of those Guidelines.

With regard to the complainant's allegation that Israeli and Palestinian military capabilities were not fairly alluded to, the Committee agreed with the Trust's Adviser that "the requirement would be to reflect accurately the intensity of Israel's bombardment of Gaza", and that this had been "achieved by noting it involved both air and naval strikes, and by including the latest known civilian casualty figures."

The Committee agreed that there was no reasonable prospect of success for an appeal that the Editorial Guidelines on Impartiality or Accuracy had been breached.

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

“Gaza crisis death toll passes 100”, BBC News Online, 19 November 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold his complaint regarding a BBC News Online report about the Gaza crisis death toll.

The complainant said that a BBC News Online video report and the short article which accompanied it failed to mention that the building hit in an Israeli raid “housed the high command of Palestinian Islamic Jihad’s militant wing”. He further alleged that the man who was killed was a leading figure in the militant wing and that this fact was not mentioned, and nor was it mentioned he was a member of the PIJ’s militant wing. The complainant named three further members of the PIJ’s militant wing (the al-Quds brigade) who were injured in the attack, two of whom he said were on the organisation’s supreme military council.

The complainant asserted the story was not impartial and maintained that the newsworthy element of the story was

“...that members of the high command of PIJ’s militant wing were hit, one fatally, yet no civilians were harmed in the attack despite the fact that the al-Quds brigades were, in flagrant breach of the laws of war, using journalists housed in the same building as human shields. The story instead appeared to say that Israel hit a civilian target. Being a media spokesman for PIJ does not mean that person is a member of the high command of the al-Quds brigades, but Harb was. The story appeared to show Israel as being at fault when clearly PIJ had behaved illegally and Israel had done a remarkable job in hitting the al-Quds brigade and yet not harming civilians.”

The Trust Unit’s decision

The Trust’s Head of Editorial Standards replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit. She did not consider that the appeal had a reasonable prospect of success and she did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards, BBC Trust, said that the Editorial Guidelines on Accuracy and Impartiality were relevant to the complaint.

The Head of Editorial Standards noted that the term ‘due’ means that the accuracy/impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation, and any signposting that may influence that expectation.

The Head of Editorial Standards considered the context in which the raid was mentioned. Firstly, she noted that the article served as the introduction to the video of Jeremy Bowen's news report and was clearly not intended to stand alone.

She also noted that the "Read More" invitation at the foot of the introduction linked to the full version of the online article, under the same headline. The full version of the article noted that:

"A leading figure in the militant group Islamic Jihad, named as Ramez Harb, was killed as a building housing media workers was struck."

The Head of Editorial Standards noted the context in which the raid on the building housing journalists was mentioned in Jeremy Bowen's video report. It was not the main focus of the story, but was a 10 second section of commentary at the end of a three-minute item. The item was a location report by the BBC's Middle East Editor which updated viewers on casualties and attacks on both sides of the conflict, included contributions from both a Hamas leader and from an Israeli government spokesman and noted the diplomatic and regional context in which the current phase of the conflict was being waged, the first serious hostilities between the two sides since the political landscape had changed following the Arab spring.

The Head of Editorial Standards therefore considered that the audience would not have expected, nor would it be a requirement under the guidelines, that greater detail on the strategy behind any individual raid be reflected in the news report. She acknowledged that it would have been an issue for consideration against the guidelines had the news report suggested the IDF had targeted journalists, but this was not the case; the short section of commentary described succinctly and accurately the basic facts:

"Back in Gaza Israel attacked a building used by journalists. The raid killed a senior media official in the militant group Islamic Jihad."

It was correct that the single fatality was a member of Islamic Jihad. The Head of Editorial Standards agreed with the ECU, namely that the description of Ramez Harb was "a formulation which would leave viewers in no doubt as to who Harb was and the organisation he represented". It was factually correct to state that the building was used by journalists. She noted that an IDF attack on the same building the previous day had resulted in casualties amongst journalists based there working for the Palestinian Authority TV company, Palestine Media Production.

Taking all these factors into account, it was the view of the Head of Editorial Standards, BBC Trust that the appeal had no reasonable prospect of success.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal for the following reasons:

- It was disingenuous of the Head of Editorial Standards, BBC Trust, to say "It was not the main focus of the story, but was a 10 second section of commentary at the end of a three-minute item." This 10 second section mentioned the raid on the building housing journalists. The complainant said that was the part of the story with which both the video and the short accompanying article concluded, and consequently left a significant impact on the viewer/reader.

- The complainant said that although it was true that the short article served as the introduction to Jeremy Bowen’s news report and was not intended to stand alone, very few of those who read that article and watched the video would have also read the longer article linked at the bottom of the video web page, though some would have.
- The complainant said that his complaint was about the video itself as well as the short accompanying article, and it concerned the majority of people who did not read the longer article.
- The complainant said that nowhere in the report did it indicate that the building which was attacked housed the high command of Palestinian Islamic Jihad (PIJ)’s militant wing, the al-Quds brigades or that Harb was a leading figure in, or even member of, their militant wing. The complainant said that other members of PIJ’s militant wing, the Al-Quds Brigades, who were casualties in the attack were Baha Abu al-Alta and Tayasir Jabari, both of whom belonged to the organization’s supreme military council, and Khalil Bahatini. The complainant said that the newsworthy element of the story was that members of the high command of (PIJ)’s militant wing were hit, one fatally, yet no civilians were harmed in the attack despite the fact that the al-Quds brigades were using journalists housed in the same building as human shields. The complainant alleged that the story instead appeared to say that Israel hit a civilian target.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Head of Editorial Standards and the complainant’s letter asking the Committee to review her decision. The Committee was also provided with the content in question.

The Committee noted the complainant’s concern about the impartiality of the BBC News Online video report and the short piece of text which accompanied it.

The Committee considered the complainant’s allegation that the story appeared to say that Israel hit a civilian target. The Committee agreed with the Head of Editorial Standards that had the news reports suggested that the IDF had actually targeted journalists, then it would have been an issue to consider against the Guidelines, but this was not the case. The report described what happened in simple factual terms:

“Back in Gaza, Israel attacked a building used by journalists. The raid killed a senior media official in the militant group Islamic Jihad.”

The Committee considered that the words used in the video report and the accompanying text had both been factually accurate and did not raise issues with regard to the Guidelines on Accuracy. The Committee noted the complainant’s view that the newsworthy information was that the building housed high ranking members of the Palestinian Islamic Jihad’s militant wing. The Committee considered, however, that it was open to the BBC to choose which aspects of a story to report on and that, in the absence of a breach of the Editorial Guidelines this was an operational matter outside the Trust’s remit. The Committee agreed that the focus of this news item was an update on the casualties and attacks on both sides of the conflict and it was not necessary to provide greater detail on the strategy behind the individual raids in order to achieve due impartiality, as required by the Editorial Guidelines.

The Committee noted the complainant's argument that the section about the raid on the building housing journalists occurred at the very end of the video and therefore would have left a significant impact on the viewer. The Committee considered that it was not appropriate to separate the video from the accompanying text when considering this complaint, and that the two should be judged as a whole. The Committee noted that the text accompanying the video had explicitly stated that the strike on the building had killed a member of the Islamic Jihad group, and this fact would have been clear to viewers of the video.

Having regard to the Editorial Guidelines on Accuracy and Impartiality, the Committee concluded that there was no reasonable prospect of it finding that there had been a breach of those Guidelines in this instance.

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

BBC News Channel, 21 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

Following the decision of the Editorial Complaints Unit not to uphold his complaint, the complainant appealed to the BBC Trust, saying that a statement made by a presenter on the News Channel during an interview was inaccurate. The complainant considered the effect was potentially so significant in terms of exacerbating anti-Semitic feeling that it ought to be considered a serious breach of the BBC's Editorial Guidelines.

At the time of the interview, there was growing speculation that Israel might launch a ground invasion into Gaza; talks between Israel and Hamas had failed to result in a ceasefire. The interviewee, Colonel Richard Kemp, a senior associate fellow at the Royal United Services Institute, was being asked about the morale of the Israeli reserve soldiers who would have been involved in that operation.

In this context, the interviewer said:

"Is it difficult, I know you are Jewish yourself, is it difficult to get a sense of, well you describe it as fear particularly of those reservists that have come in to perhaps launch a ground-strike, are they hopeful that there will be a ceasefire?"

The complainant said that Col Kemp was, in fact, Roman Catholic. He noted that Col Kemp had already made comments that supported Israel and considered that by wrongly informing viewers he was Jewish, viewers would be given the implication that Col Kemp's support for Israel was a result of his being Jewish.

The complainant considered this would reinforce a belief which he said was felt by some British Muslims that British Jews were always supportive of the actions of the Israeli government and this in turn could lead to an increase in anti-Semitic attacks in Britain.

In his appeal, the complainant referred to two pieces of research to support this contention. The first was a report by the Community Security Trust of 2009 which noted that anti-Semitic attacks increased when fighting between Israel and Hamas intensified. The second was an opinion poll carried out by Populus for The Times seven years ago. This found that of British Muslim people questioned, 58% strongly agreed with the statement that, thinking about the Jewish community in Britain, how far do you agree or disagree that they always defend the state of Israel whether its actions are right or wrong.

The Trust Unit's decision

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

The Trust's Adviser noted that BBC Complaints wrote to the complainant on 20 December 2012 and noted that Col Kemp was interviewed as someone who had both expertise and personal knowledge of the issues at stake.

"BBC News would not normally highlight someone's religion or race, although in some instances, such references may of course be editorially justified. It is, however, BBC editorial policy to avoid careless or offensive stereotypical assumptions.

"Colonel Kemp has had a distinguished military career and offers insightful judgments on military operations to our audiences. He has, of course, closely studied, and frequently stated his support for, the IDF's standards which he himself has said is based on 'the dispassionate military perspective that I bring' and certainly not from his personal background.

"In the course of the live interview, Simon McCoy was simply trying to indicate to viewers that Colonel Kemp might have an empathetic insight into the feeling amongst reservists on the ground, in terms of their hopes for a ceasefire."

The Trust's Adviser noted that the BBC had at Stage 2 acknowledged the interviewer had been mistaken in stating that Col Kemp was Jewish. The Complaints Director's response of 25 February 2013 stated:

"I should say at the outset that I agree with you that this was an inaccurate assertion.

"...I do share your concern on the accuracy of the comment and how it was said and I raised this with the programme-makers. They have asked me to pass the following on to you:

'We would like to reassure [the complainant] that the substance of his complaint has been accepted – namely that the phrasing and content of the question did not meet the standard we aim to achieve. Both of those elements have been fed back to the presenter, and as his senior editor I have discussed them with him.

'We apologise if this has not been fully communicated to [the complainant] – leading to his referral of the matter to the Editorial Complaints Unit. On review our written responses to [the complainant] addressed the content of [the complainant's] second submission rather than all the documentation received – which meant we placed greater emphasis on the appropriateness of the question, rather than its factual basis. In practice however, the action taken since [the complainant's] complaint was received means we have accepted the question was inaccurate.'"

The Trust's Adviser noted that where the Executive accepted a mistake had been made and apologised for it, Trustees would normally consider the matter resolved (unless there were features to the breach which suggested it was so serious that further action may be necessary). The Trust's Adviser did not believe that this matter raised such serious issues. Therefore, she considered that the first point – that the statement was inaccurate – did not have a reasonable prospect of success and should not therefore be put before Trustees.

The second point raised by the complainant was that the mistake could lead to an increase in anti-Semitic feeling and potentially in the number of anti-Semitic attacks in Britain.

The Trust's Adviser noted that the exchange came in the context of an interview about how prepared Israeli forces were for a ground attack on Gaza and, in particular, the mood of the Israeli reservists. She noted the following relevant extract:

Simon McCoy: Is it difficult, I know you are Jewish yourself, is it difficult to get a sense of, well you describe it as fear particularly of those reservists that have come in to perhaps launch a ground-strike, are they hopeful that there will be a ceasefire?

Colonel Kemp: I think the majority of people I've spoken to over here – whether in the army or not – do not want to see a ground offensive – they do want to see this campaign end.

She noted that BBC Complaints had said in their response of 20 December 2012 that the presenter "was simply trying to indicate to viewers that Colonel Kemp might have an empathetic insight into the feeling amongst reservists on the ground, in terms of their hopes for a ceasefire".

The Complaints Director had addressed this point in his letter of 25 February 2013 and had stated:

"This does seem to me to be the most likely interpretation of what he said – although I would agree that this thought was not clearly expressed. As for the factors behind his position, the sense I got from the interview as a whole was that his view was formed chiefly from his relevant military experience and the conversations he had had in Israel. I do not think therefore that viewers would have focused unduly on this single passing reference, or considered it to be the only reason that he thought highly of the tactics employed by the Israeli forces.

"I recognise that it could be argued that Colonel Kemp's (supposed) Jewishness was of little relevance to the topic under discussion, and I can see the potential for offence here. However I could only consider this reference to have constituted a serious breach of editorial standards if no editorial justification could be articulated for it – as required by the guidelines on Portrayal:

"In some instances, references to disability, age, sexual orientation, faith, race, etc. may be relevant to portrayal. However, we should avoid careless or offensive stereotypical assumptions and people should only be described in such terms when editorially justified.

"In this case, it seemed to me that it was being suggested that Colonel Kemp may have been more able to connect with the feelings of the reservists who might be called into battle. The only assumption in this proposition, it seems to me, is that a British Jew may have some feelings of empathy towards an Israeli citizen in such a position. This does not seem to me to be a particularly offensive assumption, or to perpetuate a negative stereotype, and it is certainly a long way from suggesting that the only reason for a person supporting Israel's actions is their Jewishness. I have difficulty therefore in concluding that this reference was so inappropriate as to breach the BBC's standards on Harm and Offence."

The Trust's Adviser agreed with that analysis; she did not accept the complainant's assertion that by describing Colonel Kemp as Jewish, Mr McCoy was suggesting that he was supporting Israel because he was Jewish.

The Trust's Adviser noted the strength of the complainant's feelings regarding the potential impact of the comments on the opinions of Britain's Muslim community. However, she noted that the opinion poll the complainant had referred to was seven years old and she had not seen any evidence that its findings had been replicated elsewhere. She did not consider she had seen any evidence that the interview would have reinforced any prejudice in the minds of British Muslims that British Jews generally were supportive of the State of Israel, irrespective of whether its actions were right or wrong. Nor did she consider the complainant had brought forward evidence suggesting that British Jews were more susceptible to anti-Semitic attacks as a result of the broadcast.

Therefore she did not consider the second aspect of the complainant's appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the reason that he makes complaints about BBC coverage of the Israel/Palestine dispute is the impact that that coverage has on the Jewish community, especially the Orthodox Jewish community in the UK. He said that anti-Semitic incidents in this country always rise when there are reports in the UK media suggesting that Israel has done something wrong, whether those reports are accurate or not, and that those rises are particularly steep when the Israel/Palestine dispute is at its most active – a point made by CST in their 2009 report.

The complainant said that there was a specific reason why he chose the 2009 CST report: two of the anti-Semitic incidents that were specifically mentioned in that report were direct reactions to media broadcasts and showed that media reports do lead directly to anti-Semitic incidents:

- An anti-Semitic email which was sent during a broadcast of an episode of Panorama about Gaza.
- A senior diplomat fined for shouting anti-Semitic obscenities at his gym during a news report.

The complainant said it was appropriate for Simon McCoy to indicate to viewers that Colonel Kemp, as an experienced soldier, might have an empathetic insight into the feeling amongst reservists on the ground, in terms of their hopes for a ceasefire. However, he said that what was not appropriate (as had already been acknowledged) was "the phrasing and content" of Mr McCoy's question.

The complainant stated that he did not actually say, as the Trust's Adviser had asserted, that "by describing Colonel Kemp as Jewish, Mr McCoy was suggesting that he was supporting Israel because he was Jewish". The complainant stated that what he actually said was that some Muslim viewers would draw that inference from the suggestion.

The complainant said that the opinion poll carried out by Populus for The Times remained relevant despite having been carried out seven years ago because there have been no polls since then of the British Muslim community that have asked the same questions, and

the evidence, based on anti-Semitic incidents at times of conflict in the Israel-Arab dispute, is that their opinions have not significantly moderated since then.

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 News Channel report in question.

The Committee noted that the inaccuracy regarding Colonel Kemp's religion had been acknowledged at Stage 2 of the complaints process. The response of 25 February 2013 from the Complaints Director stated that he had discussed the complaint with the programme makers and obtained this response from them:

"We would like to reassure [the complainant] that the substance of his complaint has been accepted – namely that the phrasing and content of the question did not meet the standard we aim to achieve. Both of those elements have been fed back to the presenter, and as his senior editor I have discussed them with him."

The Committee agreed that as the inaccuracy had been acknowledged, with action taken by the BBC Executive, it would be likely to conclude that this first point of appeal had been resolved and there would be no reasonable prospect of success for an appeal on this.

The Committee considered the complainant's second point, that some Muslim viewers would draw the inference from the description of Col Kemp as Jewish that he was supporting Israel because he was Jewish. The Committee agreed with the ECU's view that the interview as a whole gave the impression that Col Kemp's position was formed chiefly from his relevant experience, and that viewers would not have focused unduly on this single passing reference.

The Committee noted the evidence the complainant had provided to support his argument that rises in anti-Semitic attacks are linked to media coverage of Israel's actions in Gaza. It did not consider, however, that even if there was such a link, it would be relevant to the Committee's consideration of whether the Editorial Guidelines had been breached by the interviewer's question to Col Kemp in this instance. The Committee did not agree that the interview would necessarily have had the effect which the complainant alleged of linking support for Israel to being Jewish.

Having regard to the Editorial Guidelines, the Committee concluded that an appeal on this second point would not have a reasonable prospect of success.

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

Profile of Suha Arafat, BBC News Online

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold his complaint regarding a BBC News Online article profiling Suha Arafat which he said was inaccurate. The article can be found at http://news.bbc.co.uk/1/hi/world/middle_east/3965541.stm

The BBC News Online article included a reference to a controversial interview that had apparently been given by Suha Arafat to an Arabic newspaper in April 2002 in which she appeared to condone suicide bombings. The BBC article referred to that interview and stated:

"In 2002, just before her husband condemned 'all terrorist acts which target civilians', Suha Arafat seemingly endorsed suicide bombings.

"If she had a son, there would be "no greater honour" than to sacrifice him for the Palestinian cause, she told a London-based Saudi weekly."

The complainant stated that in a recorded interview given ten years later, Suha Arafat had explained that she had not made the controversial comment attributed to her in 2002. She said that questions had been submitted in writing by a journalist via a Palestinian Ambassador; however, she had not been available to answer the questions herself and the Ambassador had answered them on her behalf.

The complainant stated that references to the controversial comments Suha Arafat had ostensibly made in 2002 continued to circulate. He considered that the BBC News Online article was seriously inaccurate and he considered it ought to be corrected or, at the very least, the BBC should carry a further article to set out the position that Suha Arafat had explained in 2012.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (Trust's Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and an Independent Editorial Adviser, 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 noted that the complainant raised two issues. Firstly, he complained the BBC News Online article was inaccurate and should for the sake of accuracy refer to the later clarification. Secondly, he stated that, in the interests of retaining a proper historical record, if the original article were not amended a separate article should be published to set out the information that emerged in the 2012 interview.

On the first point, the Trust's Adviser noted the response of an Editorial Complaints Unit Complaints Director on 22 January 2013 which referred to Suha Arafat's reported opinions on suicide bombings and stated:

"...for a period of ten years or so, Suha Arafat was prepared to let this stand as a public record of her views on this matter. In the absence of any contradiction from her I cannot see that it was unreasonable therefore to take it as her view and write about it accordingly. In these circumstances, it was not, at the time of reporting, a breach of the editorial guidelines on accuracy – which require 'due accuracy' – to report this as her view."

The Trust's Adviser agreed with that analysis. She noted that the date of publication was clearly shown on the article and its status in relation to the Guidelines was not altered by new information coming to light some considerable time later. She noted too the BBC's policy of retaining its online articles as an archive.

Therefore, she did not consider she had seen any evidence that the BBC News Online article was in breach of the Editorial Guidelines relating to Accuracy and she did not consider the appeal had a reasonable prospect of success on this point. Therefore she did not consider the first point should be put before Trustees.

The second point the complainant made related to an obligation he considered the BBC was under to ensure there was a historical record of Suha Arafat's views regarding suicide bombers as she had expressed them in her recorded interview with David Frost in 2012.

The Trust's Adviser noted that the Complaints Director had explained that a decision about whether or not to publish a separate article was a news judgment, and had stated:

"Editorial decisions such as this fall outside the remit of the ECU but I will copy this finding to those responsible in BBC News and draw their attention to this particular point that you make in this regard."

The Trust's Adviser noted that BBC News had responded to the concerns raised by the complainant but had concluded that they did not consider it was appropriate to change the article or to publish a separate article about this matter. BBC News considered that Suha Arafat had had a number of opportunities to dispute the authenticity of the original newspaper article but had waited a decade to do so and had not raised any concerns with the BBC about the contents of the online article. The Head of Accountability for BBC News had written to the complainant on 12 March 2013 and provided a response from the BBC News website team:

"We do not necessarily share his view that the account given to David Frost by Suha Arafat is one we should repeat without making our own checks, and that has been the reason why we have not come to any agreement on this matter."

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

The Trust's Adviser considered that Trustees would be likely to conclude that the second element of the complaint did not involve a breach of the Editorial Guidelines and that the

issue of whether a follow up article should be published was a matter for the Executive. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that he had supplied clear evidence of factual inaccuracy on a very significant story that has and continues to influence Western perceptions of Palestinian mentality.

He felt that his complaint warranted further attention.

He disputed the view of the ECU and the Trust Unit that Suha Arafat's silence on the matter for 10 years indicated her acceptance. He pointed to the fact that Suha Arafat had explained she was unable to deny the remarks attributed to her because they were under siege and she feared for the safety of her family. He considered that the onus should be on responsible journalists to get their facts straight, not for everyone else to defend themselves against inaccurate charges.

The complainant said that the BBC seemed to have no desire to remedy the inaccuracy despite being provided with pretty clear evidence. He provided a link to the relevant section of the 2012 interview with Suha Arafat in which she claimed that she had never made the comments attributed to her in the BBC profile.

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 links to the online content in question.

In considering the first part of the complaint, regarding the alleged inaccuracy of the BBC's profile of Suha Arafat, the Committee noted the wording in question:

"In 2002, just before her husband condemned 'all terrorist acts which target civilians', Suha Arafat seemingly endorsed suicide bombings.

"If she had a son, there would be 'no greater honour' than to sacrifice him for the Palestinian cause, she told a London-based Saudi weekly."

The Committee noted the complainant's statement regarding Suha Arafat's claim that she was not in a position to deny the comments attributed to her before 2012 because she feared for the safety of her family while under siege. However, the Committee noted that BBC News had explained to the complainant that it did not necessarily share his view that the account given to David Frost by Suha Arafat is one they should repeat without making their own checks.

The Committee noted that the BBC profile was dated 11 November 2004. The Committee considered that claims made in a single interview given by Suha Arafat ten years after the events reported in the BBC profile did not constitute sufficient grounds to conclude that the events reflected in that profile were inaccurate.

The Committee considered, however, that the BBC's profile had not actually presented the statement attributed to Suha Arafat as her proven view in the first place; the article had stated that she "seemingly" endorsed suicide bombings. The Committee believed it would be likely to find that the statement was a duly accurate representation of the situation at the date of publication.

The Committee considered that the article's status in relation to the Editorial Guidelines was not altered by new information coming to light a decade later, and it also noted the BBC's policy of retaining its online articles as an archive.

The Committee agreed that it would be unlikely to find that the BBC News Online article was in breach of the Editorial Guidelines relating to Accuracy and did not consider this element of the appeal had a reasonable prospect of success.

The Committee noted the second part of the complaint, that the BBC should carry a further article to set out the position that Suha Arafat had explained in 2012.

The Committee noted that the Editorial Complaints Unit had drawn the complainant's view that there should be a separate article covering the comments made by Suha Arafat in 2012 to the attention of those responsible in BBC News. The Committee considered that the choice of content for the BBC's News pages was one relating to the editorial and creative direction of the BBC and therefore was not a matter in which the BBC Trust should normally intervene.

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

Today, BBC Radio 4, 25 January 2013

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold her complaint regarding the scripted introduction to an interview broadcast on 25 January 2013 to mark Holocaust Memorial Day. The interview was with Henia Bryer, a concentration camp survivor. In the introduction, presenter John Humphrys referred to people who had been held inside the camps until the "death marches" towards the end of the war.

The introduction included the following:

"...the Nazis tried to conceal the evidence of their mass murders by forcing the last, starving Jews out of the Polish camps and into Germany."

The complainant stated that the reference to "Polish camps" implied that the terrible acts of the Holocaust were performed by Poles, and that this was historically inaccurate.

The complainant appealed to the BBC Trust and stated: "This use is a factual error and that is why it should be corrected."

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (Trust's Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and an Independent Editorial Adviser, 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 presenter's introduction to the interview:

"It is Holocaust Memorial Day on Sunday, a day when the world remembers six and a half million human beings murdered, most of them Jews, murdered in pursuit of an ideology so corrupt we needed a new vocabulary to do it justice. But it's not a day that we've always marked as perhaps we should have done; certainly not on this programme. Perhaps there's a feeling that it's no longer necessary. The Holocaust is imprinted on all our memories surely. But on Sunday night on BBC One there's a programme that might make you question how sharp that imprint is. It's about Mrs Henia Bryer. She's one of a tiny handful of survivors of the concentration camps who are still alive today and she has told her story in a film made by her niece Lisa Bryer. It is as powerful a testament to the triumph of the human spirit over evil as you're ever likely to see.

Henia Bryer survived not only the camps of Auschwitz and Belsen but even one of the death marches when the Nazis tried to conceal the evidence of their mass murders by forcing the last, starving Jews out of the Polish camps and into Germany. When it was all over she built a new life for herself; used a forged passport to get into Palestine; married a South African; became a head teacher.

She's in her eighties now and lives in Cape Town with her family and her memories, which is where I spoke to her yesterday. Her personal hell had begun in 1941. She was 13 when the Nazis forced her family to live in the Warsaw ghetto where hundreds of thousands of Jews were to die, amongst them her older brother. He was physically disabled and therefore of no use to the Nazis."

The Trust's Adviser noted the complainant's view expressed at Stage 1 of the BBC's complaints process that the camps were not Polish camps, but "Nazi concentration camps and many of them were built in Nazi occupied Poland".

The Trust's Adviser noted that the script made several references to horrific acts perpetrated by the Nazis: "the Nazis tried to conceal the evidence of their mass murders", "the Nazis forced her family to live in the Warsaw ghetto", and the death of her older brother who "was physically disabled and therefore of no use to the Nazis". The interview went on to discuss the public's knowledge of what happened during the Holocaust and made shocking reference to a doctor who was presumably well-educated and yet admitted no knowledge of what happened in the concentration camps; hence John Humphrys' reference in his introduction to the need for Holocaust Memorial Day to remind us of these events.

The Trust's Adviser noted the complainant's appeal letter stated:

"The duty of the BBC is to report facts accurately, not to justify its statements by saying that they did not think that a 'single line of script in question would have given the kind of materially misleading impression you suggest, or that it would have caused the kind of offense which you have indicated' or, as in [the ECU Complaint Director's] original reply, to say that since the average age of the Today listener was 57 it was 'reasonable to assume' that they would not be misled by such a statement."

However, the Trust's Adviser noted that the requirement for "due accuracy" took into account the likely audience understanding of a programme or item. She noted the Complaints Director's response of 8 February 2013, stated: "The average age of listeners to Today is 57 and so I think it is reasonable to assume that most will be aware the concentration camps were set up by the German Nazi Party." She noted this was disputed by the complainant but agreed with the Complaints Director's analysis and considered too that the *Today* audience would have been likely to have understood that the reference to "Polish camps" referred to the geographical location of some concentration camps. She further considered that the introduction's multiple references to the Nazis made it clear that they, rather than Poles, were the perpetrators of these acts, and the interview itself went on to reinforce this understanding.

The Trust's Adviser noted that the complainant's mother was a survivor of the concentration camps, having been imprisoned for actively supporting the Polish Resistance. She noted the complainant's strength of feeling and was sorry that she had taken offence at the reference. However, in this case the Trust's Adviser did not consider there was evidence that the Guidelines had been breached therefore she considered the appeal had no reasonable prospect of success and should not be put before Trustees.

Request for Review by Trustees

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

She referred to the decision made on 27 June 2007 by the World Heritage Committee of UNESCO to change the name of the Auschwitz-Birkenau concentration camps to the Auschwitz-Birkenau German Nazi concentration and extermination camps 1940-1945.

The complainant asked whether the BBC considered themselves above accepting the UNESCO decision by referring to "Polish camps". She said that the BBC had made a factual error and she felt that an apology would be the appropriate resolution to her complaint.

The Committee's decision

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

The Committee noted and understood the complainant's concern about the reference to "Polish camps" but it considered that there was no reasonable prospect of it finding that this comment resulted in a breach of the Editorial Guidelines on Accuracy in the context of this *Today* report. The Committee noted the requirement for "due" accuracy as set out in the Editorial Guidelines meant that the accuracy must be adequate and appropriate to the BBC output in question, taking into account the subject and nature of the content and the likely audience understanding of a programme or item. In this case, the Committee agreed with the Trust's Adviser that the multiple references to the Nazis in the introduction to the report made it clear that they, rather than Poles, were the perpetrators of the atrocities committed in the concentration camps, and the interview itself went on to reinforce this understanding.

The Committee noted the complainant's reference to the decision made by UNESCO to rename the Auschwitz-Birkenau concentration camps. The Committee noted that the effect of the UNESCO decision was to specify that the camps were German Nazi concentration and extermination camps. The Committee agreed that, while it was not bound by UNESCO's actions, the *Today* programme report had clearly linked the concentration camps with the Nazis and this was consistent with the UNESCO position. The Committee agreed that *Today* programme listeners were likely to interpret the reference to Polish in the programme as relating to the geographical location of the Nazi camps that were mentioned.

The Committee concluded that there was no reasonable prospect of success for an appeal on the grounds that the Editorial Guidelines on Accuracy had been breached.

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

Today, BBC Radio 4, 17 October 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold her complaint about a reference to Jerusalem as an Israeli city during a report on the *Today* programme.

The *Today* report was about a higher education college in a West Bank settlement being accorded university status by Israel. It was reported that this contentious decision would enrage opinion in the occupied territory. The report included two Israeli academics, one of whom strongly supported the university, while the other opposed it. The correspondent noted that some considered it was a political manoeuvre to reinforce Israel's position in the occupied territories and noted that it had led to further discussion of an academic boycott against Israel. During the report, the correspondent referred to other universities that were better established and, in that aside, referred to Jerusalem as an Israeli city.

The complainant objected to the reporter's description of Jerusalem as an Israeli city. The complainant contended that regardless of whether it was just a passing reference, the programme had a responsibility to be duly accurate about all its facts.

The complainant rejected the ECU's contention at Stage 2 that a listener to the *Today* programme would have a "degree of informed knowledge" on the subject:

"As the BBC never, across its output, reports that only West Jerusalem is Israeli, how would 'Today' listeners know otherwise? The BBC regularly says that Jerusalem – all of it – is Israeli, so how would anyone who listens to the BBC, or reads its website, know that it isn't?"

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (Trust's Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and an Independent Editorial Adviser, 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 noted that the introduction to the report stated:

"The Israeli settlement of Ariel was built inside what the rest of the world regards as the occupied Palestinian West Bank and its students will soon be gathering for the start of what looks like being a very big year for the town's higher education college. It has cleared nearly all the bureaucratic hurdles that stood in the way of it being declared a fully-fledged Israeli university. It seems to be a matter of 'when' rather than 'if' the government gives its final seal of approval – and that will enrage critics of Israel's settlement policies and perhaps add new fuel to calls for an academic boycott of Israel over it..."

The Trust's Adviser noted the section of commentary complained about was made in the pre-recorded report in which the correspondent stated:

"In Israeli cities with better established academic institutions like Jerusalem almost every aspect of this is controversial. Even the question of whether the country really needs another university..."

The guideline requirement that content is duly impartial and duly accurate was considered relevant to the allegation:

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

The Trust's Adviser noted the Editorial Guidelines make clear that the requirements for due accuracy will vary depending on the nature of the output and the context. The Guidelines also allow audience expectation to be taken into account. The Trust's Adviser noted that in earlier correspondence with the BBC, the complainant had argued that Jerusalem should have been prefixed with "West" for the reference to it as an Israeli city to be duly accurate; as East Jerusalem is Palestinian, the complainant said the BBC should be more sensitive "in order to avoid accusations of bias".

The Trust's Adviser acknowledged that Israel's sovereignty over the whole of Jerusalem was not recognised under international law; however, she considered that Israel had de facto control over the entire city in a political, administrative and military sense. She also noted that Jerusalem was administered as a single entity by the Jerusalem municipal authority which made no distinction between east and west, nor were there any physical divisions in the city such as there were between Jerusalem and the rest of the West Bank.

The Trust's Adviser noted the response of the Complaints Director on 7 March 2013 which stated:

"Given the clear focus of this report, I cannot see a case for including more information on the status of Jerusalem, and I do not agree that listeners would have been given a misleading impression of its status (or the debate about its status) by a single passing mention.

"I appreciate that you believe the wording should have been more precise to reflect the competing claims over the city, but I think it highly unlikely that the audience for a programme such as Today (where a degree of informed knowledge can be assumed) would have assigned any significant weight to a passing reference to Jerusalem, particularly in the context of its academic institutions."

The Trust's Adviser noted the complainant's assertion in her appeal:

"As the BBC never, across its output, reports that only West Jerusalem is Israeli, how would 'Today' listeners know otherwise? The BBC regularly says that Jerusalem – all of it – is Israeli, so how would anyone who listens to the BBC, or reads its website, know that it isn't?"

The Trust's Adviser noted that a search of the BBC Online website using the terms "East Jerusalem" brought up more than 20 stories in the last three months, almost all of which explicitly or implicitly made it clear that East Jerusalem was considered occupied territory.

Many of the stories discussed it on the same terms as the rest of the West Bank and the Gaza Strip, in the context of land that Israel captured in 1967 and that remained subject to a final settlement. In addition the Trust's Adviser noted that at the foot of all the stories were links to other relevant parts of the BBC News website including to a fact-file on the Palestinian territories which discussed East Jerusalem as part of those territories and includes a map which clearly depicted East Jerusalem within the West Bank in an area marked as "unresolved border".

The *Today* programme, along with the rest of the news and current affairs output at the BBC, regularly covered the issue of Jerusalem, as noted in the Stage 1 response:

"We are of course aware of the divided status of Jerusalem and the occupied status of its Eastern sector which Palestinians hope will form the capital of their future state. We report frequently on those circumstances."

The Trust's Adviser noted too the subject and nature of the content. The comment was made during an item which was wholly about a controversy over the proposal to award university status to an Israeli-run college in occupied territory. The sentence which referred to "Israeli cities" was in the context of established Israeli educational institutions and led to a discussion about whether or not there was a need for any further university provision or if it was a political manoeuvre.

Had this been an item discussing the prospects for a two-state solution, then due accuracy and due impartiality may have required an explicit recognition of the disputed status of Jerusalem. However, while Jerusalem is wholly under Israel's control, in the context of this item, the Trust's Adviser considered a passing reference to Jerusalem as an Israeli city would not have given listeners a misleading impression of the city's status in international law.

The Trust's Adviser considered Trustees would be likely to conclude the report met the requirements for due accuracy and therefore the complaint did not have a realistic prospect of success, therefore she did not propose to put it before the Committee.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She made the following points in her challenge:

"Degree of informed knowledge"

The Trust response relied heavily on the complainant's response to the ECU's argument that a "degree of informed knowledge can be assumed" of the *Today* audience. The line of argument put forward by the Trust was that a search on the BBC website came up with 20 articles containing "East Jerusalem". This was irrelevant to the issue of inaccuracy with regard to Jerusalem being referred to as an Israeli city.

The complainant said that the only programme which should be looked at with regard to this complaint is the *Today* programme which was the subject of the complaint. She made the point that if a complainant refers to other BBC programmes or online articles in the course of a complaint, in order to construct an argument, he or she will be told that the ECU or the Trust can only investigate the actual programme that is the subject of the complaint; any other programmes or articles cannot be taken into consideration. The complainant believed this rule should also apply to the ECU and the Trust, and that this part of the Trust's response to her appeal should be struck out. If it was not struck out,

then she wished the Trustees to take into consideration that searching for "Jerusalem" on the BBC's website brings up 8,437 results. Typing in "East Jerusalem" brings up 1,755. This means that, online, the BBC refers to Jerusalem, in terms of it being wholly in Israel, nearly five times as often as it refers to "East Jerusalem".

The complainant referred to the statement included in the Trust response from the *Today* programme: "We report frequently on those circumstances", meaning the divided status of Jerusalem. She said that the *Today* team should be asked to provide examples that backed up its claim to frequent broadcasts on the status of Jerusalem, if that argument was to be allowed to form part of the case.

The complainant said that the "degree of informed knowledge" that is assumed of *Today* listeners also needed to be backed up with facts. Assumptions could not be allowed to form part of an argument on a subject as controversial and disputed as the status of Jerusalem.

International law

The complainant said that although the Trust's Adviser had acknowledged that "Israel's sovereignty over the whole of Jerusalem was not recognised under international law," she then "dismissed" international law by asserting that "Israel had de facto control over the entire city in a political, administrative and military sense".

Misleading the audience

The complainant believed that the fact of Jerusalem's division was distorted in the *Today* report and it was misleadingly made to appear as a united city that is Israeli. She referred to the statement in the BBC Guidelines:

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

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 argument that the reference to Jerusalem as an Israeli city was inaccurate. The Committee acknowledged that the status of East Jerusalem is disputed, and agreed that the brief reference made to Jerusalem did not illustrate the complexity of the city's status under international law.

The Committee noted the Guideline requirement for "due accuracy" means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Committee noted that this was an item wholly about controversial Israeli plans to give an Israeli-run college in occupied territory a university status.

The Committee agreed that Israel has de facto control over the entire city of Jerusalem in a political, administrative and military sense, and that this was the situation on the ground notwithstanding East Jerusalem's status in international law.

The Committee noted the complainant's argument that the response from the Trust's Adviser regarding the coverage that the BBC had given to the status of East Jerusalem was irrelevant to this complaint. The Committee considered that this analysis, which included a reference to the contents of the coverage, was given in response to the complainant's assertion that "the BBC never, across its output, reports that only West Jerusalem is Israeli", and it had served to demonstrate that this assertion was false. The Committee considered that contrasting search results for the term "Jerusalem" with those for the term "East Jerusalem" was meaningless as context was ignored, and also not relevant to this complaint.

The Committee was satisfied that it was appropriate for the Editorial Complaints Unit and the Trust's Adviser to take into account the *Today* programme's audience when considering whether this passing reference in a story which was focussed on a separate issue would have materially misled listeners.

Whilst the Committee considered that the report could have been worded more clearly, the Committee concluded that, taking into account the context of this report and the nature of the *Today* audience, and having regard to the Editorial Guidelines on Accuracy and Impartiality, there was no reasonable prospect of this complaint being upheld on appeal as a breach of those Guidelines.

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

Complaint made out of time - *The Graham Norton Show*, BBC One, 9 November 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of BBC Audience Services not to investigate his complaint about *The Graham Norton Show* because it was submitted outside the 30 working day time limit.

The complainant asked how, given the availability of catch-up services and repeats, his complaint could be considered out of time and he wished to have a substantive response.

In his original complaint he said that comments made on *The Graham Norton Show* about the singer Marc Almond were untrue. In the complainant's original letter to the BBC, he had expressed his concern that Graham Norton should have referred to rumours about the singer.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (Trust's Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and an Independent Editorial Adviser, 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 noted that under the BBC's Complaints Framework, an editorial complaint must be submitted within 30 working days of the date of transmission. The Framework states:

You should make your complaint within 30 working days of the date on which the content was broadcast or first published in a BBC owned magazine. If you write after that time, please explain why your complaint is late. Exceptionally, the BBC Executive may still decide to consider your complaint, but only if it decides there was a good reason for the delay.

In this case the programme had been transmitted on 9 November 2012 and the deadline for submitting a complaint would have fallen on 21 December 2012. The Trust's Adviser noted that the complaint had been written on 2 January 2013 and was recorded as having reached the BBC on 4 January 2013.

BBC Audience Services responded on 7 January 2013 and explained the complaint was out of time and referred the complainant to the BBC's complaints web pages. The complainant wrote again on 14 January 2013. He stated that he had watched the programme on catch-up and explained that he had been delayed in complaining because of Christmas and the post, but felt this was not material and that his complaint should be investigated because "a complaint is a complaint".

BBC Audience Services responded again on 25 January 2013 and repeated its position that the complaint was out of time, adding: "Due to the volume, range and complexity of complaints we receive, it's important for effective complaints handling that we've a simple, clear and easily accessible complaints procedure to ensure that our limited resources are used wisely."

The Trust's Adviser noted that the BBC could decline to take a complaint that was out of time and that complaints that were out of time would only be taken "exceptionally" if the BBC considered a good reason had been given. She considered that Trustees would be likely to conclude that the BBC had acted reasonably in not accepting that the explanation given justified disregarding the time limit in this case. Therefore she considered the appeal did not have a realistic prospect of success and should not be put before Trustees.

The Trust's Adviser considered whether the matter raised was so serious that an exception should be made. She noted the circumstances of the original complaint. In summary, the complainant considered comments made about Marc Almond on the programme to be untrue and a low form of wit. He objected to Marc Almond being named in relation to an urban myth about a pop star which, the complainant said, had been rumoured to apply to a number of stars over the years none of whom had been named on television. The rumour had been referred to in Graham Norton's guest's autobiography. Graham Norton described Rod Stewart, in terms of being the person at the centre of this urban myth. Graham Norton continued: "We've heard this rumour about so many pop stars over the years. I thought it was Marc Almond, I thought he was the source of the Nile, but it's you".

Rod Stewart then described how the rumour had been spread about him by a former publicist whom he had sacked.

The Trust's Adviser considered that the complaint might have potentially related to the Editorial Guidelines on Harm and Offence that refer to Portrayal which state:

We aim to reflect fully and fairly all of the United Kingdom's people and cultures in our services. Content may reflect the prejudice and disadvantage which exist in societies worldwide but we should not perpetuate it. In some instances, references to disability, age, sexual orientation, faith, race, etc. may be relevant to portrayal...

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

The Trust's Adviser considered that, while Graham Norton had referred to Marc Almond, this story was clearly positioned as a "myth" that had been applied to many pop stars over the years and she did not consider the exchange – which was conducted with good humour throughout – would have exceeded the audience expectations. She also considered that, within the programme, it was clarified that the person who was at the centre of the story was Rod Stewart who explained that the story had been made up about him. She therefore considered that the underlying issues complained about would not amount to a matter that was so serious that it should be considered by the BBC even though it was out of time.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that he did consider the matter serious, and gave his reasons:

- Graham Norton should not have mentioned Marc Almond's name on the matter at all.
- Graham Norton and Rod Stewart were laughing at the matter after Marc Almond's name was mentioned.
- What Graham Norton said was unacceptable and unnecessary – a cheap joke.
- None of the allegations against Marc Almond were true and could be slanderous.
- To say that Marc Almond was the "source of the Nile" was offensive and rude.
- Graham Norton said that many pop stars over the years have this "myth", but no other pop stars' names were mentioned.

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 Audience Services had declined to take his complaint as it was made outside the time limit set out in the complaints framework, and also observed that no specific reason had been offered by the complainant for the delay in submitting his complaint apart from the fact that Christmas and New Year had fallen within the 30 day timeframe.

The Committee considered whether the matter raised in the original complaint was so serious that an exception should be made.

The Committee shared the view of the Trust's Adviser that "while Graham Norton had referred to Marc Almond, this story was clearly positioned as a 'myth' that had been applied to many pop stars over the years". The Committee considered the expectations of the *Graham Norton Show* audience and agreed that the exchange, which the Committee agreed was carried out in good humour, would not have exceeded those expectations. Furthermore, it was clarified in the programme that the person at the centre of the story was Rod Stewart, who had explained that the story had been made up about him.

The Committee agreed that the BBC had responded appropriately when it said that it could not reply to the complaint as it had been made outside the 30 working days stipulated in the Editorial Complaints and Appeals Procedure. The Committee concluded that the BBC had acted reasonably in not accepting that the explanation given justified disregarding the time limit in this case.

The Committee agreed that the substance of the complaint was unlikely to be successful if brought on appeal. The Committee was satisfied that there was no reason to conclude that the complaint was so serious as to warrant the Trust over-riding the normal complaints procedure.

The Committee concluded that the appeal did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further at stage 1b regarding the BBC's description of political parties such as the BNP & National Front as "right-wing"

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of BBC Audience Services not to respond further to his complaint regarding what he considered to be the "incorrect labelling of socialist groups as right wing" by the BBC.

Audience Services had responded to him:

"...it is not our role to get involved in on-going debates about the classification of political ideologies, we only respond to concerns about the BBC's programme or coverage. If you want us to investigate anything in more detail, we will need examples of specific coverage including dates and times. We appreciate you may continue to have concerns around this issue, but as previously stated, we have nothing more to add to our previous correspondence on this matter. If you want us to investigate anything in more detail, we will need examples of specific coverage including dates and times."

The complainant's original concern was that he believed the BBC was guilty of institutional bias. He considered the BBC referred to racist organisations as right-wing when they were not. He said that the basic principle of the "Right" was the freedom of the individual from the state and that this is freedom for all.

The complainant said there was no history of racism on the right of politics and quoted Adolf Hitler saying "we are socialists" in support of his thesis.

The complainant added that the fascists were socialist, nationalists and, in the German case, racists, but never right-wing. He said "socialists" wanted to distance themselves from this extreme form of socialism and so label racist parties as right-wing.

The complainant asked the BBC to look at both the SNP and BNP manifesto. He said that they are very similar, but he observed that the BBC refers to the SNP as socialists and the BNP as far-right which, he said, amounted to bias.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and an Independent Editorial Adviser also examined all the material. No specific programme or web content was reviewed as the complainant had not cited any either in his appeal or in the earlier correspondence. The Trust's Adviser did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser noted that the Editorial Complaints Procedure states:

At all stages of this Procedure, your complaint may not be investigated if it:

- 1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or
- 1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

The Trust's Adviser did not consider the complainant had provided any evidence to support the complaint he was making. She considered that it would not be "appropriate, proportionate and cost-effective" to search the BBC's archive for material that would support the complainant's contention when they had not been given by the complainant himself.

She noted that BBC Complaints had several times advised the complainant that it was not its role to "get involved in on-going debates about the classification of political ideologies" and she agreed with that response and considered that, by extension, neither did it fall within the Trust's role.

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

Challenge to Trust Unit's decision

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the BBC had ignored his points rather than responding to them.

He believed that the response he had received saying that the BBC did not "get involved in on-going debates about the classification of political ideologies" was "untrue as in virtually every political article the BBC publishes or broadcasts, parties are classified by the BBC as left or right wing and these classifications are not from the parties but from the BBC."

In support of his complaint, the complainant provided specific examples of BBC content which he alleged inaccurately described various political parties as far-right.

The complainant also provided a link to a blog post as evidence that he was not alone in his thinking on this issue.

The complainant reiterated the points of complaint to which he considered the BBC had yet to respond.

The complainant concluded that there was a socialist bias within the BBC which was attempting to associate racism with the right wing – the subject of his original complaint. He considered that the BBC's "unwillingness to enter into a debate about the definitions they use" supported his belief.

The Committee's decision

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

The Committee noted that, in response to his complaint, BBC Audience Services had explained that it needed examples of specific coverage including dates and times, and that if he wanted them to investigate anything in more detail they would need examples of specific coverage including dates and times.

The Committee noted that the complainant had not provided Audience Services with this information. The Committee noted the relevant section of the Editorial Complaints and Appeals Procedure which states:

At all stages of this Procedure, your complaint may not be investigated if it:

1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or

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

The Committee agreed that in the absence of any specific examples the complaint was hypothetical and therefore it fell into the category which the Editorial Complaints Procedure states may not be investigated.

The Committee noted the specific examples which had been provided in the complainant's response to the Trust Adviser's decision, but it considered that these examples should have been provided when BBC Audience Services requested them.

The Trustees considered that they would be likely to find that Audience Services had acted appropriately in closing down the complaint and that an appeal against this decision therefore had no reasonable prospect of success.

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