

Editorial Standards Findings

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

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In order to provide clarity for the BBC and licence fee payers it is the Trust's policy to describe fully the content that is subject to complaints and appeals. Some of the language and descriptions used in this bulletin may therefore cause offence.

Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

¹

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

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

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

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

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

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

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

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

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

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

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

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

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

Summaries of findings

BBC Scotland news reports, 25 January 2013 and thereafter

The complainant alleged that BBC Scotland breached the BBC Editorial Guidelines in its coverage on 25 January 2013 and thereafter of views expressed by Lucinda Creighton, who was at that time Ireland's European Affairs Minister.

The complainant said that BBC Scotland gave the misleading impression that Ms Creighton thought an independent Scotland would be forced to leave the EU and would then have to negotiate its way back in from outside, and that her views were at odds with those of the Scottish Government.

Further, the complainant alleged that BBC Scotland was not accurate or impartial because it failed to report adequately a later statement from Ms Creighton which made clear these were not her views and that she had been misrepresented.

The Committee concluded:

- That it was not possible to say, based on her interview with BBC Scotland, whether or not Ms Creighton thought Scotland would be forced to leave the EU and negotiate its way back in from outside in the event of a 'yes' vote in the referendum on independence.
- That, despite this, in the report broadcast during *Reporting Scotland* on 25 January 2013, the juxtaposition of clips of Ms Creighton and the then Secretary of State for Scotland, would have led viewers to believe that Ms Creighton and the UK Government shared the view that Scotland would need to negotiate its way back into the EU from the outside.
- That this report was in breach of the BBC's Editorial Guideline on Accuracy, but there was no evidence that the BBC had knowingly and materially misled audiences.
- That other broadcasts in question, including a report broadcast during the *Newsdrive* radio programme on 25 January 2013, were duly accurate. That website articles and commentary of 25 January were duly accurate.
- That that there had been no breach of the Accuracy or Impartiality guidelines in respect of the allegation that BBC Scotland did not report adequately a further statement from Ms Creighton.
- That the Scottish Government had been given a significant opportunity to set the record straight, in so far as that had been needed, on *Sunday Politics Scotland* on 27 January 2013.
- That during that interview, Fiona Hyslop, Scottish Cabinet Secretary for Culture and External Affairs, had plenty of opportunity, which she employed to some extent, to emphasise that Ms Creighton understood the Scottish Government's timetable and that Scotland would not be "thrown out" of the EU.

The complaint was partially upheld with regard to Accuracy and not upheld with regard to Impartiality.

For the finding in full see pages 7 to 15.

"Why have the white British left London?", BBC News Online, 20 February 2013

The complainant alleged that a BBC News website article entitled "Why have the white British left London?" breached the Guidelines on Accuracy and Impartiality. He alleged the introductory paragraphs of the article were inaccurate because they implied that white British people were in a minority in London only because 620,000 had moved out during the period in question. He said the article had failed to mention the increase in the number of those he termed "ethnics". He alleged this increase had been deliberately omitted and the article was therefore not impartial.

The Committee concluded:

- that the Home Editor's argument was perfectly tenable in the context of the article and was his considered professional judgement.
- that it was duly accurate, in accordance with the BBC's Editorial Guideline on Accuracy, for the article in question to have stated that a fall in the number of white British people in the capital of 620,000 had had the direct consequence of that group now being a minority in London.
- that the Home Editor would have been familiar with the figures for the growth of various ethnic groups during the period, but it did not follow that he had *"deliberately omitted [the figures] because of bias,"* as the complainant had alleged.
- that there had been no breach of the Accuracy or Impartiality Guidelines.

The complaint was not upheld.

For the finding in full see pages 16 to 19.

5 Live Drive, BBC Radio 5 Live, 15 April 2013

The complainant alleged that it was a breach of the Impartiality guideline to broadcast an interview with a representative of The Taxpayers' Alliance, without explaining the stance of this pressure group.

The Committee concluded:

- that it was not made clear by the programme, specifically or by the context, that Jonathan Isaby and the Taxpayers' Alliance came from a particular, campaigning viewpoint.
- that although the interviewee's view might well have had support from people of all political persuasions, audiences should have been made aware of the political nature of the organisation.

- that there was a breach of the Impartiality guidelines and there was a need for content producers to take particular care in considering when signposting of contributors' credentials is required.

The complaint was upheld.

For the finding in full see pages 20 to 23.

Ben Goldacre's Bad Evidence, BBC Radio 4, 6 January 2013

The complainant was concerned that listeners were not informed that the content was the personal view of the presenter and nor were they told about the presenter's prior connection to the subject matter. The complainant was also concerned that the presenter was not qualified to comment on the issue and that aspects of the programme were inaccurate and misleading.

The Committee concluded:

- that the programme (which considered the use of Randomised Control Trials (RCTs) to test the efficacy of medical treatments) covered a matter of public policy and political controversy which constituted a controversial subject as defined in 4.4.5 of the Impartiality guideline.
- that the requirement in 4.4.8 - that the expression of a single view on a controversial subject should be clearly signposted, and the existence of a range of views existed and the weight given to them should be acknowledged and that such views should not be misrepresented - was met within the programme.
- that the programme met the overarching requirement for due impartiality as defined in 4.1, the Introduction to the Impartiality guideline, which states:

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

- that the presenter's formal connections to the Cabinet Office Behavioural Insights Team and its advocacy of public policy through the use of RCTs constituted a material fact that should have been made known to the audience: it was, as the complainant maintained, essential information, the omission of which would have left the audience unable to reach an informed understanding on the issue.
- that the presenter's involvement in the issue should not have prevented him from presenting the programme, given that the fact that he was in favour of the use of RCTs in public policy was made clear, but that the audience should have been told of the connection.
- that the programme observed due accuracy in its description of RCTs, both in the public policy context and with regard to the concept in general and that the content in this respect was well-sourced, based on sound evidence, thoroughly tested and presented in clear precise language.

- that the reference to doctors being “struck off” (for ignoring RCTs) was duly accurate; it was unlikely the audience would take the statement literally and that the degree of poetic licence used on this occasion was acceptable.
- that the ECU acted within the procedures laid down in the complaints framework in referring the conflict of interest aspect of the complaint to the Head of Editorial Standards, BBC Radio for a Stage 2 response. However, Trustees sympathised with the complainant’s concerns about the lack of clarity in this process and considered that any future amendment to the Editorial Complaints Procedure should try and clarify this issue to aid complainants.

The complaint was upheld with regard to Conflicts of Interest and not upheld with regard to Impartiality, Accuracy and Accountability.

For the finding in full see pages 24 to 40.

Appeal Findings

BBC Scotland news reports, 25 January 2013 and thereafter

1. Background

On 25 January 2013 BBC Scotland broadcast TV and radio reports and published online material drawn from an interview in Dublin with Lucinda Creighton, who was at that time Ireland's European Affairs Minister.

Ireland held the presidency of the European Union from January to June 2013 and the interview concerned Scotland's status in relation to EU membership in the event of Scotland voting for independence in a referendum in September 2014.

The Scottish Government's plan is that Scotland would become independent in March 2016 and elections to an independent parliament would take place in May 2016.

Nicola Sturgeon, Scotland's Deputy First Minister, was in Dublin that day, giving a speech at a conference, and she met Ms Creighton, who was also at the conference. BBC Scotland filmed Ms Sturgeon's speech, which was about Scotland and the EU, and also filmed an interview with Ms Creighton during the conference. The interview was conducted by Raymond Buchanan, who was at that time BBC Scotland's Political Correspondent.

Edited versions of the interview were used in TV and radio broadcasts on 25 January 2013 and online, together with analysis by the interviewer on the import of Ms Creighton's comments. A fuller version of the interview with Ms Creighton was played on the TV programme, *Sunday Politics Scotland*, on 27 January 2013.

2. The complaint

The complainant said that BBC Scotland, in its coverage of the interview with Ms Creighton, gave the misleading impression that Ms Creighton thought an independent Scotland would be forced to leave the EU and would then have to negotiate its way back in from outside, and the misleading impression that her views were at odds with those of the Scottish Government.

The complainant further alleged that BBC Scotland was not accurate or impartial because it failed to report adequately a later statement from Ms Creighton which made clear that these were not her views and that she had been misrepresented.

Stages 1 and 2

The complainant received a reply to his complaint from BBC Scotland's Head of News, via BBC Audience Services, at Stage 1 of the complaints process. The complaint was considered by BBC Scotland's Head of Public Policy and Corporate Affairs at Stage 2 but was not upheld.

Appeal to the Trust

The complainant's appeal correspondence raised the following point in relation to the accuracy of BBC Scotland's news coverage:

Point (A) BBC Scotland gave the inaccurate and misleading impression that Ms Creighton believed that an independent Scotland would be forced to leave the EU and then have to negotiate its way back in from outside, and that her views were at odds with those of the Scottish Government.

The complainant raised the following point in relation to the accuracy and impartiality of BBC Scotland's news coverage of Ms Creighton's views:

Point (B) BBC Scotland did not report adequately a further statement from Ms Creighton which complained that she had been misrepresented and made clear Ms Creighton's view that, in the event of a "Yes" vote, Scotland would not be forced out of the EU but could negotiate the terms of its membership from within the EU, and that her views were in line with those of the Scottish Government.

3. Applicable Editorial Standards

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

4. The Committee's decision

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

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

The Committee considered in turn each of the two elements raised by the complainant in his appeal.

On **Point (A)**, the Committee began by considering the most complete version of the interview with Ms Creighton, as played on *Sunday Politics Scotland* on 27 January 2013. This was as follows:

Political Correspondent: In Scotland we're dominated by a constitutional debate. You have the EU presidency at the moment, one of the issues is, would an independent Scotland be welcomed by its EU neighbours? What's your view on that?

Lucinda Creighton: Welcome, I think, by all means, but obviously there are legal constraints. If Scotland were to become independent, Scotland would have to apply for membership and that can be a lengthy process, as we see even with the very advanced and well-integrated countries like Iceland, where I've just come from. Iceland is obviously a member of Efta, has been deeply involved in the single market for many years, but still has a task in terms of transforming its legislation and fitting into the European requirements for membership, and that would be the case, I think, for Scotland as well. It may not take as long but there

would be an application and a negotiation process, as there is for any candidate country.

Political Correspondent: Do you think that would be a fairly smooth process or do you think it would be a difficult one?

Lucinda Creighton: [laughs] I don't know. It's kind of unprecedented, it hasn't happened before. I don't see why it would be a terribly complex process but negotiations for membership are always painstaking and they're always complex, but I don't see why it would be difficult. I think it would certainly lead to accession at the end of the process. But it would take time. But we're speaking in a hypothetical sense obviously, and it's very much up to the people of Scotland as to what they choose to do between now and when that question might arise.

The Committee noted that this transcript showed that BBC Scotland's Political Correspondent had not actually asked Ms Creighton about the timing of any negotiations with the EU regarding Scotland's membership; he had asked only about how welcome an independent Scotland was likely to be as an EU member and the expected level of difficulty of membership negotiations. Ms Creighton had responded to those questions, the Committee noted, by saying that Scotland would have to apply, that the process could take some time, but that she thought it would lead to Scotland's accession in the end.

The Committee agreed that it was unfortunate that the Political Correspondent had not established what Ms Creighton's view was with regard to the assumption inherent in the Scottish Government's proposed timetable - that Scotland would still be within the EU as it negotiated for membership. This timetable, the Committee understood, involved negotiations with the EU starting immediately following any vote in favour of Scottish independence in 2014 (at which point Scotland would still be a member of the EU by virtue of being within the UK) and concluding before independence took effect in 2016.

This proposed timetable and the assumption that Scotland would still be part of the EU as it negotiated, had not been an area of the Political Correspondent's questioning so the Committee noted it was not possible to say, based on this interview, whether or not Ms Creighton thought Scotland would be forced to leave the EU and then negotiate its way back in from outside.

The Committee then looked at whether BBC Scotland had, indeed, suggested that she did think Scotland would be forced to leave the EU and negotiate its way back in from outside, as the complainant had alleged.

The first report in contention was broadcast during the TV news programme, *Reporting Scotland*, at about 13:45 on 25 January 2013.

The relevant part of this report was as follows:

Political Correspondent: [voiceover] Ireland currently hold the EU presidency. Nicola Sturgeon claims Scotland could also take its place among Europe's independent nations, but not automatically, according to the Irish Government.

Lucinda Creighton [clip from interview]: If Scotland were to become independent, Scotland would have to apply for membership and that can be a lengthy process **[edit indicated]**. There would be an application and then a negotiation process as there is for any candidate country.

Political Correspondent: [voiceover, film of Michael Moore, then Secretary of State for Scotland] And that's a view shared by the UK government.

Michael Moore: [clip] Scotland would be outside the EU having to negotiate its way back in. For all the reasons I want the UK to stay in the European Union, I want Scotland to be part of that...

The Committee noted that the complainant said viewers were told by the Political Correspondent, correctly, that Ms Creighton had said Scotland would have to apply for EU membership, and he had then said Ms Creighton and Mr Moore "shared" the same view. The complainant said viewers after that heard Mr Moore state that Scotland "would be outside the EU having to negotiate its way back in," but, said the complainant, "at no point had Lucinda Creighton remotely suggested that Scotland would be outside the EU".

The complainant said that this report, and others from the BBC, had been used by anti-independence campaigners in an attempt to damage the pro-independence position.

The Committee noted the BBC had said the following in response:

"...Lucinda Creighton says Scotland would have to apply for membership of the EU. So too does Michael Moore, albeit that he believes it would, specifically, be from a position 'outside the EU'. At no point in any of the broadcast pieces is it claimed that the views of Lucinda Creighton and the UK Government are identical in all aspects. And [the Political Correspondent], at no point, asserts this. Nor did he claim, as you [the complainant] suggest, nor insinuate, that Scotland would be outside the EU. Consequently I cannot agree with you that he misled viewers in his report of the interview with Lucinda Creighton."

The Committee also noted that the BBC in response to the Trust's enquiries identified:

"... two opposing viewpoints. Lucinda Creighton believes 'If Scotland were to become independent, Scotland would have to apply for membership': Nicola Sturgeon believes 'Scotland would continue to be a member of the European Union on a continuing basis'."

And:

"Ms Creighton was given every opportunity to explain her view, as an Irish Government minister, on the question of Scotland's membership of the EU. This she did clearly and with reference to Iceland, which she indicates she had recently visited ...

"The reason for that visit ('for talks on the country's EU accession negotiations') is noted on her website ...

"Consequently the whole issue of EU membership, from a position outside of the EU, with specific reference, by way of comparison, to the case of Iceland, was one which Ms Creighton herself raised. In this respect, there is far greater alignment between her comments and those of Mr Moore than there is between what she says and the position of the Scottish Government, as articulated by Ms Sturgeon."

The Committee, on balance, agreed with the complainant in relation to this particular broadcast. As the Committee had already noted from examination of the full interview

with Ms Creighton, it could not be known from that interview what she thought about whether Scotland would be in (by virtue of still being part of the UK) or out of the EU before negotiations were concluded, and the reason for this lack of clarity was that she had not been specific in the matter.

The Committee considered the guidelines on accuracy and noted that the use of the word “and” in the phrase “and that’s a view shared by the UK Government” set up the immediately-following clip of Mr Moore saying “Scotland would be outside the EU having to negotiate its way back in”. The Committee agreed that this juxtaposition of clips, connected as they were by the word “and”, would have led viewers to believe that Ms Creighton and the UK Government shared the view that Scotland would be outside the EU and would need to negotiate its way back into the EU. The Committee concluded that this piece was therefore, in breach of the BBC’s Editorial Guideline on Accuracy.

Trustees considered that the BBC had clearly indicated it believed the interview did provide evidence to show that Ms Creighton’s views were in alignment with Mr Moore’s in relation to an independent Scotland having to negotiate the terms of membership. Following that, the BBC did not believe its subsequent news coverage had given the impression that her view was that an independent Scotland would have to leave the EU before renegotiating the terms of membership. With this in mind the Committee concluded there was no evidence that the BBC had knowingly and materially misled audiences, contrary to principle 3.2.3 of the Editorial Guidelines.

The Committee looked at the other broadcasts in question. These broadcasts formed part of the *Newsdrive* radio programme on 25 January 2013 in bulletins and longer reports from 16:00.

This report, for example, which went out at 17:00, had the following:

Political Correspondent: Nicola Sturgeon was here in Dublin to say Scotland could learn from Ireland’s example of being a small, independent member of the European Union. The Deputy First Minister also argues EU membership would be automatic, although there would need to be some negotiations. But that isn’t the view of Ireland’s Europe Minister. Lucinda Creighton says an independent Scotland would be welcomed into the EU but would need to apply first and that process would be lengthy. That chimes with the view of the Scottish Secretary, Michael Moore. He says Scotland benefits from being in the European Union as part of the United Kingdom.

The Committee noted that the complainant had particularly objected to the later part of this extract, when the Political Correspondent said, “Lucinda Creighton says an independent Scotland ... would need to apply first and that process would be lengthy. That chimes with the view of the Scottish Secretary, Michael Moore.” He argued that to say her views “chimed” was misleading.

The Committee considered this point carefully but concluded that, in this particular context, the use of the word “that” referred back to the preceding sentence and the word “chimes” was duly accurate; the full interview with Ms Creighton had made it clear that she did not think an independent Scotland’s EU membership would be “automatic” but had said she thought Scotland would need to apply and this would take time. The Committee considered that that did, indeed, “chime” with Mr Moore’s view, as referred to in this particular *Newsdrive* report; the report had not gone further and did not juxtapose a quote from Mr Moore saying that Scotland would be outside the EU at the point when

negotiations would be taking place, in the way that the *Reporting Scotland* item had done.

For these reasons, the Committee decided this *Newsdrive* report was duly accurate. Other transcribed extracts from *Newsdrive* were also examined by the Committee, and its view was that the same considerations applied and they were also duly accurate.

BBC website news and commentary articles of 25 January were studied by the Committee and, again, the Committee could find no reference to the BBC saying or implying that Ms Creighton thought or had said an independent Scotland would be forced to leave the EU and then negotiate its way back in from outside. It considered, therefore, that the website articles were duly accurate.

Overall on Point A, the Committee partially upheld the complaint, because the *Reporting Scotland* item had not been duly accurate. The Committee regretted that this breach of the BBC's Editorial Guidelines had occurred.

The Committee then turned to **Point (B)**, the allegation that BBC Scotland did not report adequately a further statement from Ms Creighton which complained that she had been misrepresented. The complainant said the statement also made clear Ms Creighton's view that, in the event of a "Yes" vote, Scotland would not be forced out of the EU but could negotiate the terms of its membership from within the EU, and that her views were in line with those of the Scottish Government on this particular point.

The Committee noted that on 26 January 2013, the day after the items that were the subject of Point (A), the Scottish Government's referendum website published the following from Ms Sturgeon:

Ireland's Minister for European Affairs

I had the pleasure of meeting Lucinda Creighton, Ireland's very impressive Minister for European Affairs, when I was in Dublin yesterday.

You may have seen a clip of an interview she gave to BBC on the news last night and reported in some papers today – the impression given was that there was a difference of opinion between her and the Scottish Government on the issue of Scotland's continuing EU membership.

The email she sent me earlier today – attached here with her permission – makes clear that is not the case.

Dear Nicola,

I want to thank you for a brief but informative meeting yesterday. I am concerned that an interview which I conducted with the BBC is being misconstrued and wanted to assure you that it certainly was not my intention to interfere in any way with your domestic debate.

It certainly was not my intention to intervene in the Scottish debate about the future of your country. As I stated clearly to the BBC (though perhaps they did not show it) this is a question exclusively for the Scottish people and I fully respect that fact.

I was asked about the future of negotiations with the EU in the event that Scotland votes for independence. I thought that my reply was largely in line with that of the Scottish Government. I certainly did not at any stage suggest that Scotland could, should or would be thrown out of the EU. Scottish people are clearly citizens of Europe.

I did answer the question about hypothetical negotiations with the EU. I think it is clear that a newly independent state would have to (and would have the right to and indeed should) negotiate the terms of membership, as they would undoubtedly be somewhat different to the existing terms. I did say that this would take some time, which I expect it would. I also went on to say that a newly independent Scotland would be welcome as an EU partner (and I think that applies to all EU member states including Ireland).

My understanding is that the Scottish Government has already committed to a negotiation with the EU between 2014 and 2016, if you vote for independence in 2014. If my interview suggested something other than that, this was not my intention. I think my comments have been misconstrued. I sincerely regret this.

As SNP Westminster Leader, Angus Robertson said 'Negotiations on the terms of membership would take place in the period between the referendum and the planned date of independence', and that 'The EU would adopt a simplified procedure for the negotiations, not the traditional procedure followed for the accession of non-member countries'."

I think that sums up the situation quite well.

I hope that this clarifies my position, and again I regret that my words seem to have been presented or taken out of context.

Warm regards,

Lucinda Creighton

The Committee noted that the complainant considered the BBC had refused to report this further statement from Ms Creighton. He said the statement was "a crucial development in the story that would have undermined the thrust of the initial reports" and, by not reporting it, the Accuracy and Impartiality guidelines had been breached.

The Committee noted that the complainant thought it was reasonable to assume that Ms Creighton was referring to misrepresentation by the BBC when she said the following:

"I am concerned that an interview which I conducted with the BBC is being misconstrued...

"I regret that my words seem to have been presented or taken out of context."

The Committee looked at the evidence on this point and decided it did not agree with the complainant that it was reasonable to make any assumptions about what Ms Creighton was referring to here. Ms Creighton, herself, had made no complaint to the BBC, the Committee noted, and had not wished to make any comment when invited to do so during an investigation carried out on behalf of the BBC Trust.

Moreover, the Committee noted the following evidence from the Political Correspondent:

"...I contacted the foreign affairs ministry in Dublin and asked them if they felt the BBC had misinterpreted Ms Creighton's comments. They made no such claim. I then offered to do a further interview (given the controversy generated by her original comments) with Ms Creighton if she felt the need to clarify matters. Her spokesman said she wouldn't be making any further comments on the Scottish situation.

"Separately, I contacted special advisers in the Scottish government inquiring as to whether the Deputy First Minister, Nicola Sturgeon, thought the BBC had misinterpreted Ms Creighton's interview. I was reassured they had no issue with my coverage...

"So, in sum, neither the interviewee, her then ministerial department or the Deputy First Minister, who also featured in the report, have ever, to my knowledge, accused the BBC of inaccurately interpreting Ms Creighton's interview comments."

The Committee agreed that there was some new information in Ms Creighton's statement about what Ms Creighton understood in relation to the Scottish Government's intended timetable for negotiations. It noted that BBC Scotland's judgement had been that this clarified little and did not constitute a further news story in its own right.

In the Committee's view, a significant opportunity to set the record straight, in so far as that had been needed, was presented to the Scottish Government on the following day.

The Committee noted that the *Sunday Politics Scotland* programme on 27 January 2013 carried an interview with Fiona Hyslop, Scottish Cabinet Secretary for Culture and External Affairs, whose brief included Europe. The interview, conducted by Andrew Kerr, included film of the full interview with Ms Creighton and discussion with Ms Hyslop about Ms Creighton's further statement.

In the Committee's view, Ms Hyslop had plenty of opportunity, which she employed to some extent at least, to emphasise that Ms Creighton understood the Scottish Government's timetable and that Scotland would not be "thrown out" of the EU. For example, the Committee noted the following extracts from Ms Hyslop during the interview:

"...I'm very pleased that the Irish minister has confirmed in an email to our Deputy First Minister that she, too, also sees a continuing membership for Scotland and, indeed, the negotiations that would take place, as we've already said, would take place between 2014 and a 'Yes' vote, and 2016 and independence, is the way she thinks is logical and a way forward...

"Well, I agree with her email when she says she doesn't see any situation that Scotland would leave the European Union and I think that's the point she also makes that Scotland's position is quite unique and... and also the Irish minister, in her email, Lucinda Creighton, has also said she recognises the period of the 'Yes' vote in 2014 and then the period when these terms and conditions in relation to our membership, in terms of how many seats we'd have, some of the technical details would take until 2016. But we've been a member for 40 years, across a

whole range of areas we already comply with the *acquis communautaire* in terms of the European Chapter, so we are in a quite distinct position...

"Well, quite clearly there's the period between a 'Yes' vote in 2014 and independence in 2016 and in terms of what our contribution would be, our membership in terms of numbers etc, making sure that the compliance that we have that, I have every confidence that we would be welcomed, as indeed Lucinda Creighton, the Irish minister, has said..."

Overall on Point (B), the Committee decided that the further interview opportunities and invitations to comment that the Political Correspondent had offered, plus the extensive interview with Ms Hyslop the following day, meant that there had been no breach of the Accuracy or Impartiality guidelines.

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

"Why have the white British left London?", BBC News Online, 20 February 2013

1. Background

On 20 February 2013 the BBC News website published an article entitled "Why have the white British left London?" (<http://www.bbc.co.uk/news/uk-21511904>). The piece was by Mark Easton, the BBC's Home Editor, and drew on the most recent census data (2011) compared with data from the previous census (in 2001).

In answer to the question posed by the title of the article, the piece said the following:

"The movement of the white British is often characterised as white flight – the indigenous population forced out of their neighbourhoods by foreign migrants. That may be part of the story, but I think the evidence suggests it is also about working class aspiration and economic success."

The article set out the way in which the white British population in London fell, while rising in some other parts of the country, and suggested that some white working-class Londoners had been able to take advantage of rising house prices and fulfil the dream of living in the countryside or beside the sea. The introductory paragraphs said:

"Something quite remarkable happened in London in the first decade of the new millennium. The number of white British people in the capital fell by 620,000 - equivalent to the entire population of Glasgow moving out.

"The consequence, as revealed by the latest census, is that white Brits are now in a minority in London, making up just 45% of its residents."

2. The complaint

The complainant said the article was inaccurate and biased because the introductory paragraphs implied that white British people were a minority in London only because 620,000 had moved out. He said the article had failed to mention the increase in the number of those he termed "ethnics". He alleged this increase had been deliberately omitted and the article was therefore not impartial.

The complainant also raised other issues that were not progressed to appeal (see below).

Stages 1 and 2

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

Appeal to the Trust

The complainant's letter of appeal to the Trust set out three points for consideration, including one that concerned the alleged failure of the article to provide evidence to support the theory that it was "aspiration" and "success", rather than "white flight" that was driving the population changes. This point and one other, concerning the handling of the complaint by the ECU, were not progressed for consideration by the Committee. The

complainant's challenge to this decision was considered by the Editorial Standards Committee in September 2013. The challenge was not upheld:
(http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2013/sep.pdf)

The remaining point, which did progress to appeal, concerned the statistics featured in the first two paragraphs of the article. The complainant said the article was misleading and biased because it implied that white British people were a minority in London only because 620,000 had moved out. He said:

"But that's not true, they are only a minority because millions of immigrants have been brought in. The BBC also fail to mention this, yet the BBC are obliged to mention both sides of the story."

Specifically, the complainant said the story failed to mention that, in the period in question, "the number of ethnics increased by 1,471,000". This fact must have been known to the BBC but it was deliberately omitted and the article was therefore not impartial, he said.

3. Applicable Editorial Standards

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

4. The Committee's decision

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

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

The Committee began by looking at the stated purpose of the article and considered that it was made clear early on in the piece that it was principally an examination of the economic factors driving white British migration out of London, looking at a continuing trend of "working class aspiration and economic success".

The Committee noted that the piece made reference to the growth of other, non-white and non-British, groups during the decade in question, and the effect these groups might have had on population patterns and the ethnic make-up of the capital. However, these groups were not the focus of this particular piece, the Committee noted, and this had been an entirely legitimate editorial decision, particularly given that the Home Editor had covered wider issues of immigration and ethnicity on many other occasions. Other recent coverage by the same author, the Committee noted, had included the following:

- "2011 Census: the changing face of London." 11 Dec 2012
<http://www.bbc.co.uk/news/uk-20685777>
- "2011 Census: rise in foreign-born residents." 12 Dec 2012
<http://www.bbc.co.uk/news/uk-20667872>
- "Multiculturalism in the London Borough of Newham." 31 Dec 2012
http://news.bbc.co.uk/today/hi/today/newsid_9781000/9781347.stm

- “How will government implement rules curbing immigration?” 8 May 2013
<http://www.bbc.co.uk/news/uk-22457278>

In this appeal, the question for the Committee was whether it is duly accurate to state, as the article had done, that a fall of 620,000 in the number of white British people in the capital had had the direct consequence of making that population group a minority in London, comprising just 45 per cent of the population.

The Committee examined in some detail figures drawn from the 2001 and 2011 censuses, published by the Office for National Statistics (ONS). It noted that in 2001 white British people made up 60 per cent of London’s population of 7.2m; by 2011 white British people were 45 per cent of a population of 8.2m.

It discussed, in particular, what would have happened if the white British population had remained stable at its 2001 figure, instead of dropping, as it had done, and whether white British people would have remained a majority. The Committee noted that, in this hypothetical situation and from the bald figures, it appeared that the white British population would still have been reduced to a minority, just, at 49 per cent of London’s total population.

The Committee considered the Home Editor’s argument that, if the white British population had remained stable between 2001 and 2011, instead of dropping, there would have been consequences, particularly in relation to housing, for other elements of London’s population, which, as the article had referenced, were growing during this period.

The Home Editor had said the following in written submissions to the Committee:

“The point is that if white British people still lived in the capital then there wouldn’t have been the capacity for new migrants to move in. White British people were replaced by people from other ethnic groups. The population of London did increase, but the changing ethnic make-up could not have happened without white Brits vacating properties.”

The Committee noted that this point was also made in the article, with examples from both the top of the housing market and from lower down:

“Even central boroughs that experienced a decline in white British may have seen an increase in the number of white residents. Kensington and Chelsea recorded 17,300 fewer white British residents but the category ‘white other’ now makes up 28 per cent of the local population. The immigrants here are rich white Europeans and Russians.

“It is a different story in Barking and Dagenham.

“The people moving into the borough tend to be of black African heritage. I was introduced to Victor and Victoria, whose parents came to Britain from Ghana in the 50s. He works for London Transport and she is a nurse in the NHS – typical of the professional black families who’ve arrived from inner London to take advantage of available housing as the borough’s white residents leave.

“With a time-lapse camera, it would appear that London is pulsing as generations and ethnic groups move up and move out.”

The complainant, the Committee noted, considered this argument was spurious and argued that immigrants are housed “regardless of whether White Brits come or go”.

The Committee noted that a degree of uncertainty must inevitably remain about putting precise figures on the outcome of a hypothetical situation (i.e. no fall in the white British population and so no freeing up of housing), particularly when it could be demonstrated that comparatively small differences in numbers would move the white British population from a majority to a minority position.

Overall, while noting the complainant’s reasoning, the Committee considered that the Home Editor’s argument was perfectly tenable in the context of the article and was his considered professional judgement. The Committee understood that the Home Editor was not suggesting that without white British people vacating suitable housing there would have been no growth at all in other groups but, rather, that the availability of suitable housing was a factor which was likely to have played at least a part.

The Committee decided that it was duly accurate, in accordance with the BBC’s Editorial Guideline on Accuracy, for the article in question to have stated that a fall in the number of white British people in the capital of 620,000 had had the direct consequence of that group now being a minority in London.

The Committee also examined the complainant’s allegation that the BBC’s Editorial Guideline on Impartiality had been breached because the article had not drawn attention to the increase between 2001 and 2011 in groups that were not white British.

It noted that the article had, in fact, made reference to these groups, and the way in which their increase had changed the ethnic make-up in certain parts of London. For example, there was the following passage:

“The years between the last two censuses have witnessed significant cultural change in London, particularly in the outer boroughs. Some white British may have moved because their neighbourhood has been culturally transformed, the tea rooms and restaurants replaced by takeaway chicken shops and halal supermarkets serving the new arrivals.”

The Committee noted that the article had not specified numbers, as the complainant said it should have done. Looking at the census data, the Committee could see that there had been an overall increase in the population that was not white British of 1.6m in the period (the complainant had quoted a figure of 1.5m, but he had been using an earlier, estimated, source).

The Committee appreciated that if this growth had not happened then white British people would have remained a majority, at 56 per cent, of London’s total population.

The Committee agreed with the complainant that the Home Editor would have been familiar with the figures for the growth of various ethnic groups during the period, but it did not see that it followed that he had “deliberately omitted [the figures] because of bias,” as the complainant had alleged. This piece was principally about the historical trend of migration out of London.

The Committee thus concluded that there had been no breach of the Accuracy or Impartiality Guidelines.

Finding: Not upheld.

5 Live Drive, BBC Radio 5 Live, 15 April 2013

1. Background

5 live Drive on BBC Radio 5 Live transmits every weekday afternoon between 16:00 and 19:00. This edition included a live interview with Jonathan Isaby, Political Director of the Taxpayers' Alliance.

2. The complaint

The complaint concerned this interview and its introduction. The item was about a dispute between a Scottish Labour MP, Jim McGovern, and the Independent Parliamentary Standards Authority (IPSA) over a £24 rail fare. It had been reported that Jim McGovern was travelling from his home in his constituency to Westminster but wanted to go via Glasgow so he could attend a Labour party meeting on the way. He was told he could not claim for the extra leg of his journey. He appealed the decision and lost. The dispute had cost £27,000 of public money. The complainant said that the programme had not explained what the Taxpayers' Alliance is and said they had been allowed to comment "as if they were a non-partisan body". He added that in fact the group is largely financed by private wealthy donors and is "at the heart of Conservative Party policy lobbying".

Stages 1 and 2

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

Appeal to the BBC Trust

The complainant appealed to the Trust.

The Senior Editorial Strategy Adviser, BBC Trust, replied and explained that she did not think there was a reasonable prospect that the Trustees on the Editorial Standards Committee (ESC) would find the matter in breach of the Editorial Guidelines. She therefore did not propose to put it in front of them.

The complainant appealed this decision and the ESC decided on 12 September 2013 that it would consider the full appeal.

The complainant said the programme should have introduced the spokesman for the Taxpayers' Alliance in such a way that the audience was aware of his stance and that not doing so was a breach of the Impartiality guideline.

3. Applicable Editorial Guidelines

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

4. The Committee's decision

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

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

Regarding the complainant's allegation that the programme should have introduced the spokesman for the Taxpayers' Alliance in such a way that the audience was aware of his stance, the Committee considered whether the Impartiality guideline had been breached.

The Committee noted that the ECU had not upheld this complaint. It had considered that this was not a party political matter but was about the spending of public money and that a range of voices had been heard, including that of the MP in question and of the Independent Parliamentary Standards Authority (IPSA). In addition, the ECU argued that listeners would not have assumed that the Taxpayers' Alliance spoke for all taxpayers and it was not claimed that they did.

The Committee noted the context of the allegation: *5 live Drive* was reporting the decision of Mr McGovern to appeal a finding on a minor expenses claim and on the fact that the subsequent tribunal process – which he lost – had cost £27,000 of public money. The matter had been discussed on Victoria Derbyshire's programme that morning and Mr McGovern had been interviewed at length then. That programme, the Committee noted, had also quoted statements from Mr McGovern's union, the GMB, and from IPSA. The Committee noted that the introduction included a 50 second clip of the interview with Mr McGovern and then continued as follows:

"... Well, let's pick up on some of those points. That was Jim McGovern and the independent tribunal ruled that Jim McGovern could not claim the money. He referred to IPSA, didn't he? That's the Independent Parliamentary Standards Authority who took that to the tribunal.

"Jonathan Isaby is the Political Director of the Taxpayers' Alliance. He joins us now.

"Jonathan what's your view on this? I mean, you know he has his principles, the Independent Parliamentary Standards Authority say we didn't want to go to a tribunal, we were taken there and the question for us is, when challenged by an MP over a claim we don't pay, What do we do?

"What do you think they should have done?"

The Committee noted that the complainant's allegation was that the BBC had provided a platform for a special interest group, when conducting an interview on this subject, without providing information to the audience on the group's aims.

The Committee noted the BBC's response, which came from the Head of Editorial Compliance & Accountability, BBC News, who replied on behalf of BBC News. She said that there had been concern within BBC News for some time about the need for consistency in providing descriptions of pressure groups in reports and interviews, and action had been taken to ensure greater consistency.

She noted that the News Group was aware that an occasional theme of complaints is that the BBC is generally not effective at signposting the provenance or political orientation of think tanks and other organisations. The Committee noted that the issue had been discussed at editorial meetings and that she had given the example of a reply from the former Director of News to one complainant which said:

"The facts are that we constantly keep our use of language under review and there is often internal dialogue about how best to describe people or bodies. Maintaining our high levels of audience trust is a core commitment and we know how important it is to be precise as well as neutral in the descriptions we give. We often discuss how to give context to aid audience understanding, no matter what the subject matter or the organisation."

The Committee noted that, in 2012, the BBC News Head of Analysis & Research was requested to draw up a list of suggestions on how to describe think tanks and pressure groups, which is circulated daily to most journalists in BBC News. The Committee further noted that, on this specific complaint, the Head of Editorial Compliance & Accountability, BBC News commented:

"5 Live Drive's editor says it's impossible to say now why the labelling didn't happen on this occasion and the teams are aware of the importance of labelling. He thinks it would have been better if the label had been included but that it was fairly clear given the context of the interview from which direction the Taxpayers' Alliance were coming."

The Committee noted that it is apparent from the BBC's response that there is some concern about how such campaign groups are described on air. The Committee noted that its editorial adviser had asked the Taxpayers' Alliance's Political Director about the experience the organisation has of how it is described by programmes. He had said that mostly the Taxpayers' Alliance is described in some way, but certainly not all the time. Sometimes the role or background of specific interviewees is explained while their opposing contributor's is not, and vice versa. He said he would expect to be labelled "centre-right", "right-leaning", "which campaigns for lower taxes, less waste and better public services" or "the campaign group for lower taxes", all of which he says are accurate.

The Committee noted the Political Director would strongly object to being identified as "Conservative Party backed" (or "backing") or "Conservative Party funded". He said, given recent campaigns by the Taxpayers' Alliance on issues such as tax rises, free school meals, inheritance tax, MPs/public servant expenses and stamp duty, he thought the Government is more likely to see the Taxpayers' Alliance as a thorn in its side rather than a loyal supporter. He said officials from the Taxpayers' Alliance would be attending all the party conferences and that they engage with policy makers from across the political spectrum, although he also acknowledged that the Taxpayers' Alliance's sympathies definitely lie on the right.

The Committee decided that it was not made clear by the programme, specifically or by the context, that Jonathan Isaby and the Taxpayers' Alliance came from a particular, campaigning viewpoint. The Committee noted that in this case the interviewee's principal point was to express concern that so much public money had been spent on a tribunal hearing. The Committee recognised that this view might well have had support from people of all political persuasions; however, the tribunal was brought by a Labour MP and the audience might have taken the interviewee's criticism differently in light of the knowledge that he came from a right wing perspective. The Committee decided that,

while this was not an extremely serious error and while it did not see any evidence this was an intentional or wilful omission, it was nevertheless a breach of the editorial guidelines.

The Committee concluded that the editorial guidelines remind producers that they may need to make it clear when contributors are associated with a particular viewpoint if the context does not make it clear. In this case the interviewee's principal point was to express his concern that so much public money had been spent on a tribunal hearing which in his view should never have been instigated. The Committee recognised that this view might well have had support from people of all political persuasions. However, the Committee judged that audiences should have been made aware of the political nature of the organisation. The Committee therefore considered that there was a breach of the Impartiality guidelines in this case and reiterated the need for content producers to take particular care in considering when signposting of contributors' credentials is required.

Finding: Upheld

Ben Goldacre's Bad Evidence, BBC Radio 4, 6 January 2013

1. Background

This was a standalone programme broadcast on Radio 4 on 1 January 2013 and repeated the following Sunday.

This is from the programme billing on the BBC website⁴:

"Medic and author Ben Goldacre explores the idea of evidence-based policy and asks if it can ever become a reality in the UK.

"In medicine, how do we know if a particular treatment works? The simple answer is to subject it to a fair test against other treatments or a placebo. So far the best example of a fair test in medicine is a randomised controlled trial or RCT.

"Often referred to as 'the gold standard' when it comes to determining what works, RCTs are now commonplace in business. But what about government? The idea of evidence-based policy is hardly new – it's what social scientists have been banging on about since the 1960s. But in practice, when evidence has been used to determine policy, it's often been anything but 'gold-standard'.

"In this programme, the medic and author of *Bad Science*, Ben Goldacre, sets out to explore the potential for putting RCTs at the heart of the policy-making process, arguing that not only can they reveal if our existing policies are effective but RCTs have the potential to transform the way we create and implement social policy across the country, from education to health, from welfare to crime...

"What is clear, is that bad policies cost us dear – both socially and economically. The challenges are many but the potential, argues Ben, could be truly transformational, both for society and for government."⁵

2. The complaint

Stages 1 and 2

The complainant contacted the BBC on 28 January 2013 stating that the programme raised issues of disclosure, accuracy and bias. She made a number of allegations concerning the qualifications of the presenter, the potential for a conflict of interest because of his prior connection to the subject matter (he had co-authored a report for the Cabinet Office Behavioural Insights Team) and the accuracy with which some of the concepts were discussed.

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

⁴ The complainant did not consider the billing relevant to her complaint as, in her view, it did not reflect the programme as broadcast.

⁵ <http://www.bbc.co.uk/programmes/b01phhb9>

Appeal to the BBC Trust

The complainant initially appealed to the BBC Trust on 25 June 2013. This is a summary of the points raised in her letter of appeal:

- An investigation had not been undertaken into the complainant's allegation that the presenter had a potential conflict of interest; the audience were not told that the presenter "collaborates" with the people interviewed in the programme.
- There had been no investigation into the complainant's query regarding whether the presenter is a scientist; nor whether he is an "expert" in randomised controlled trials (RCTs).
- There was no claim made in the programme that it was an authored piece as stated by the BBC's Editorial Complaints Unit (ECU).
- The audience were not told that the RCTs described in the programme would not be considered scientifically robust and that RCTs are not seen by all scientists to be "gold standard".
- The comment by the presenter that doctors would be "struck off" for ignoring RCTs was plainly wrong.
- It was unclear why the complaint had been passed from the ECU Complaints Director to the Head of Editorial Standards, BBC Radio.

A Senior Editorial Strategy Adviser at the BBC Trust responded to the complainant in a letter dated 13 August 2013. The Adviser decided that only the first bullet point above qualified for consideration by the Trust and declined to place the remaining aspects of the complainant's argument before Trustees. Both this decision and the complainant's challenge to it were considered by the BBC Trust's Editorial Standards Committee (ESC) on 12 September 2013, and the ESC decided to consider on appeal all of the points raised by the complainant, and the appeal was heard in full by the ESC at its meeting on 7 November 2013.

In correspondence with the Trust Unit prior to the hearing of her appeal, the complainant stated she was dissatisfied with the background paperwork, which had been prepared by an independent editorial adviser, as she considered her complaint had not been set out properly. She considered it contained factual errors and misinterpretations.

However, at the meeting which considered the appeal in November 2013, Trustees had access to the full set of correspondence that had been exchanged throughout the complaints process, in which the complainant had set out her complaint in her own words. Trustees considered the complainant's objections to the paperwork, but were satisfied that they could proceed to hear the appeal.

3. Applicable Editorial Guidelines

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

The editorial guidelines on Accuracy, Impartiality, Editorial Integrity and Independence from External Interests, Conflicts of Interest and Accountability are all applicable to this complaint.

4. The Committee's decision

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

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and subsequent correspondence between the Trust Unit and the complainant.

Point (A) – whether the nature of the programme was made clear to listeners

The Committee noted that the complainant considered the programme was not presenting scientific fact. The complainant said there was no evidence that the programme content was intended to be, or presented as, the personal views of the presenter.

The Committee considered the allegation in the context of how the nature of the programme was signposted to the audience. It noted first the introduction by the Radio 4 continuity announcer and the title of the programme:

"Now on Radio 4: can politicians use science to improve their policies and find out which ones are failing? Perhaps – after a dose of Ben Goldacre's Bad Evidence."

The Committee then noted the relevant section from the presenter's introductory comments at the start of the programme:

"Governments pour huge sums of money into policies on crime, welfare, housing, education and employment. But everyone seems oddly shy about gathering good quality evidence about whether these interventions actually work, let alone which policy works best. Some of this of course is down to politicians who might not always want their ideas subject to fair tests. But some of the problems I think come from sheer scientific ignorance across all parties and civil servants. Mostly new policies are assessed in something called a pilot and this can tell you a lot about whether the admin systems will run okay..."

"In medicine we use randomised trials to test whether a treatment works because these are regarded as the most fair test. You take 200 people, split them into two groups at random. Give one treatment to one group, a different treatment to another and measure how everyone's doing. That's an RCT or randomised controlled trial..."

"But to me an intervention to improve your mood or back pain is no different to one that's supposed to get you a job. Surely if we did more randomised trials in policy we'd find out what works and get better outcomes, better value and better lives."

It noted too additional occasions elsewhere in the programme where the presenter identified himself as a supporter of the concept of RCTs in a public policy context.

The Committee noted the complainant's allegation that there was nothing to inform the listener this was personal-view content and that personalising the title of the programme did not help to inform the audience. The Committee noted the complainant's assertion at Stage 1:

"In small circles he (Ben Goldacre) may be well known, but most people will have no idea who he is."

The Committee also noted the later comment made by the complainant in response to the programme maker's assertion that the presenter is well known:

"The fact that listeners have heard of Ben Goldacre is even more reason to make the viewer aware that he has no expertise in the area of RCT design and to make the viewers aware of his ties to the Cabinet office. Otherwise his fame will unduly influence the viewer."

The Committee noted the complainant's query as to whether the presenter is entitled to be considered a specialist or expert and therefore "qualified" to present a programme on the topic of RCTs in public policy.

The Committee noted the complainant's assertion that the programme failed to reflect alternatives to RCTs in testing public policy and gave only the presenter's (supportive) opinion that they should be used more extensively.

The Committee noted the BBC's responses at various stages in the appeal:

- At Stage 1 the Editor of the programme said that the title made clear it was an authored piece. She also said that an earlier version of the script had a section explaining that the presenter had been one of the authors of "Test, Learn, Adapt" (the Cabinet Office paper advocating wider use of RCTs in formulating public policy), but that it had not appeared in the final version of the script. Similarly, the Head of Editorial Standards, BBC Radio, who had been asked to provide a Stage 2 response on the conflict of interest aspect of the complaint said that the programme's title made clear it was a personal view and that the presenter was already well known for his views on the importance of evidence based policy from his books and other writings.
- The ECU cited the presenter's opening commentary as evidence that it was a "personal view" programme. The Complaints Director said the programme met the guideline requirements for personal-view content which states that this can include the "opinion of a specialist or professional including an academic or scientist" (and observed that he is currently a Wellcome research fellow at the London School of Hygiene and Tropical Medicine):

"It seems to me that Ben Goldacre's view is that of a specialist or scientist and is covered by this guideline subject to the requirement that the output should be clearly identified as a personal view. I believe this was met by the opening remarks ... which make clear that Ben Goldacre is supportive of the idea that RCTs should be more widely used. It is also worth noting that there were other occasions within the programme where Ben Goldacre reinforced this: at various points he says 'Those of us in favour of more trials here...'; 'I'm not so sure about this...' and 'To me this is clear...' all of which make the audience aware that this is essentially a personal view."

- The Head of Editorial Standards, BBC Radio said that many BBC programmes are presented by scientists who are experts in a field and therefore knowledgeable about a subject and may have a particular view, but the BBC "will ensure that the programme covers all the arguments despite any position the presenter holds".

- In relation to the allegation that the programme failed to be impartial because it presented only the presenter's (supportive) view of the topic, the Stage 1 response from the Editor of the programme noted the contributions in the programme from Martyn Hammersley and Nancy Cartwright, both of which were critical and concerned about over-reliance on RCTs as a sound basis on which to make public policy decisions.

The Committee decided that the content, which covers a matter of public policy and political controversy, constitutes a controversial subject as defined in 4.4.5 of the Impartiality guideline. It noted the requirement therefore in 4.4.8, that the expression of a single view on a controversial subject should be clearly signposted, and that the existence of a range of views and the weight given to them should be acknowledged, and that such views should not be misrepresented.

The Committee concluded that this requirement was met within the programme. It noted the contribution from the Open University's Martyn Hammersley cited by the programme at Stage 1:

"I'm anxious not about people doing randomised controlled trials, I'm anxious about the way in which this particular method is presented on some occasions. It is presented in ways that suggest that it is a solution to all of the problems. It isn't. It's one method amongst others. It's important not to contrast evidence from randomised controlled trials with things like hunch or intuition or what people think might be the case. There's a range of different evidence that people can draw on and you have to judge each sort of evidence in its own terms...

"I think we need more evidence from randomised trials and more evidence of other kinds as well. My fear is that the results of randomised control trials are used – or may be used by policy makers as a sort of quick fix if you like. It avoids having to look at the whole range of evidence because you focus down on the results of a randomised control trial. And say well this is the best evidence there is, and this says that. So this is what we have to do."

The Committee noted also this contribution from Jonathan Portes, Director of the National Institute of Economic and Social Research:

Jonathan Portes:

...there's often a view that it's easy to do trials in medicine. You just give some people a pill that has a drug in it and some other people that has only sugar in it and you see which of them die and which don't and then you know the answer. Whereas social policy, it's all very very complicated. There's all sorts of things going on at the same time.

Ben Goldacre:

But medicine is exactly like that. I mean in medicine there's lots of things going on for people at home that make them all completely different.

Jonathan Portes:

That's absolutely right. I do think that the more legitimate objection to the idea that you should just do randomised controlled trial on everything is that actually social policy interventions are typically quite a lot more context-specific than medicine. So for example if you have a drug that is effective on a certain form of breast cancer. Well, it may not be quite as effective in the slums of Venezuela as it is in the rich suburbs of Cheshire. Or maybe it's more effective in one than the

other. But if it works it'll probably work in the other. Whereas if you say an active labour market programme that's about helping disadvantaged young people to get work experience and hopefully getting them a job, it's quite possible that it'll work in Cheshire but not in Chelsea. It isn't simply often like saying well we're giving a drug here and nothing here. These things are quite complicated to understand what's going on underneath the service.

The Committee noted that the editorial guidelines do not prescribe how a programme should signpost that the content is the personal view of the presenter; rather it is left to the editorial judgement of the programme makers as to how to communicate this information to the audience.

Whilst the Committee agreed that those already familiar with the presenter's published works and his broadcasting would have understood the nature of the programme from the title, it did not agree that this would have been the case for all listeners. It noted that some programmes which are duly impartial expositions by the BBC's journalists acting as a professional expert also include their name in the title. A name in the title alone is not clear signposting of a personal view.

However, the Committee did accept that the presenter's introduction to the programme and opening remarks made it clear where he stood and that elsewhere in the programme he continued to clearly identify himself as a supporter of RCTs in public policy.

The Committee acknowledged that it would have been helpful if the credentials and stance of the presenter had been more explicitly stated. However, it considered that because the programme also reflected a range of views on the topic and was not a pure polemic, the requirement to more explicitly signpost it was less crucial.

Regarding the complainant's assertion that the presenter does not qualify as a specialist, the Committee noted 4.4.29 of the Impartiality guideline:

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

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

The Committee noted that the guideline does not limit who might be considered to be appropriate "authors", rather it suggests any personal opinion can be reflected in BBC output and offers a range of examples. It noted the key requirement is that audiences are aware that it is personal view content.

The Committee noted that it was not required to consider whether the presenter is a scientist or whether he is an expert on RCTs to reach a determination of the allegation as neither of these claims were made in the programme.

Accordingly, the Committee concluded that the programme met the overarching requirement for due impartiality as defined in 4.1, the Introduction to the Impartiality guideline, which states:

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

Finding: Not upheld

Point (B) – whether the presenter, as co-author of a Cabinet Office paper advocating the wider use of RCTs in public policy, had a conflict of interest which should have been shared with the audience

The Committee noted that the presenter of the programme which is the subject of this appeal, was one of the co-authors of the Cabinet Office paper, "Test, Learn, Adapt: Developing Public Policy with Randomised Controlled Trials"⁶

The Committee noted that this information was not included in the programme.

The Committee noted the following clauses from the section on Principles in the Editorial Integrity and Independence from External Interests guideline:

14.2.1

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

14.2.2

We must not endorse or appear to endorse any other organisation, its products, activities, services, views or opinions.

The Committee noted the following clauses from the section on Principles in the Conflicts of Interest guideline:

15.2.1

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

15.2.2

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

The Committee noted the complainant's arguments that "As a Cabinet Office collaborator... he [the presenter] clearly has a potential conflict of interest", and that listeners should have been told that the presenter "collaborates with the people interviewed".

The Committee noted the complainant's comments in correspondence subsequent to the lodging of her appeal:

"At the very least listeners should have been informed of Goldacre's potential conflict of interest and relationship to interviewees should have been made overt.

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62529/TLA-1906126.pdf

Armed with these two facts the listeners would at least have been in a position to exercise their judgment when assessing the veracity of the programme's claims. According to BBC's editorial guidelines the programme should not have been broadcast with this information withheld from the viewer."

The Committee noted the response from the Editor of the programme to the complainant's allegation on appeal:

"We had no intention to mislead the audience about Ben Goldacre's previous relationship with the Cabinet Office. The report that he co-authored is only a small part of his body of work on the need for evidence based policy. In addition, Ben Goldacre informed me that he was not paid for his contribution to the report. The programme included interviews with a number of experts from other organisations outside the Cabinet Office, namely universities in the UK and the US, the Medical Research Council and the National Economic Social Research Foundation, that demonstrate there is currently a wide debate about the pros and cons of applying evidence based policy.

"We believed that by calling the programme Ben Goldacre's Bad Evidence it was clear that it was an authored piece. We do not think there was a conflict of interest."

The Committee noted the comments in the ECU's provisional finding:

"The fact that the programme was presented as a personal view programme removes, it seems to me, any residual difficulty which might arise from Ben Goldacre's involvement with the BIT report not being made clear. Given that Ben Goldacre had no material interest at stake, mention of the report would only have reinforced the point that he was committed to a particular view on the subject – something that was, in any case, perfectly apparent from the way that the programme was presented.

"There was, clearly, a high degree of alignment between Ben Goldacre's views and those expressed in the BIT report but, given his role, that is not surprising. The key thing, it seems to me, is that the thrust of the programme reflected Ben Goldacre's own view on the subject but this was clearly presented as a personal view programme. It also covered counter arguments to the case he was making."

The Committee noted the second Stage 2 response from the ECU:

"There is not a conflict merely because someone has shown themselves on some other occasion to hold a particular view on the subject in question. 'Interest' suggests that they (or someone close to them) might benefit in some way (either personally, or commercially etc.) from their view being promulgated. This might be the case if, for instance, Ben Goldacre had an undeclared interest in a company which was in the business of designing RCTs for social policies, but I know of no such interest and you have not suggested any."

The Committee noted that the paper co-authored by the presenter and published by the Cabinet Office Behavioural Insights Team (BIT) in June 2012 is unequivocally in favour of extending RCTs across government departments. It noted these extracts from the executive summary and introduction:⁷

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62529/TLA-1906126.pdf

"RCTs are not routinely used to test the effectiveness of public policy interventions in the UK. We think that they should be...

This paper argues that we should and could use RCTs much more extensively in domestic public policy to test the effectiveness of new and existing interventions and variations thereof; to learn what is working and what is not; and to adapt our policies so that they steadily improve and evolve both in terms of quality and effectiveness.

Part 1 of this paper sets out what an RCT is and why they are important. It addresses many of the common arguments against using RCTs in public policy and argues that trials are not as challenging to put in place as is often assumed, and that they can be highly cost-effective ways of evaluating policy outcomes and assessing value for money."

The Committee noted that a significant proportion of the programme comprised interviews with two members of the Cabinet Office BIT, including one of the presenter's co-authors on the "Test, Learn, Adapt" paper. It noted also that two of the case studies discussed in the programme are featured in "Test, Learn, Adapt".

The Committee considered that the presenter's involvement in the Cabinet Office publication is a wholly distinct issue from the point as to whether or not the programme was adequately signposted as containing personal view content.

The Committee agreed with the complainant's argument that the reference to "interest" in the guidelines is not confined to any monetary interest that a presenter may have, but clearly includes any involvement or connection of a presenter which is of direct relevance to the programme's subject matter and of which the audience would expect to be informed.

The Committee took the view that the presenter's formal connections to the Cabinet Office Behavioural Insights Team and its advocacy of public policy through the use of RCTs constituted a material fact that should have been made known to the audience: it was, as the complainant maintained, essential information, the omission of which would have left the audience unable to reach an informed understanding on the issue. The programme should, in the Committee's view, have made it clear that the presenter had worked on the policy and that his interest went deeper than acknowledged in the programme.

The Committee agreed with the complainant that omitting the relevant information left the BBC open to accusations that the programme had operated as a platform for the Cabinet Office to convince the public of their desired policy.

The Committee did not, however, accept the complainant's contention that the presenter's involvement in the issue should have prevented him from presenting the programme, given that the fact that he was in favour of the use of RCTs in public policy was made clear, but it did agree that the audience should have been told of the connection.

The Committee concluded that the programme had been wrong to remove the relevant information from the final version of the programme and noted that a single sentence of explanation would likely have been sufficient to have brought the programme into compliance with the relevant guideline.

Accordingly, the Committee decided the programme was in breach of 15.1 of the guideline on Conflicts of Interest, which states:

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

Finding: Upheld

Point (C) – whether the programme was duly accurate in its description of RCTs, both in the public policy context and with regard to the concept in general

The Committee noted the complainant's comments regarding randomised controlled trials (RCTs) and her allegations in respect of how RCTs are described in the programme:

- Even when they are used in scientific research RCTs are not regarded as "gold standard" by all.
- The studies described in the programme are not RCTs; they are "open label" studies and lack the design characteristics associated with RCTs used in medical research – for example they are not blinded.
- The programme gave the impression that the RCTs described in the programme were scientifically robust, which they are not.
- The audience was therefore misled which had the effect of favouring Government policy.

The Committee noted how the complainant summarised her argument in her Stage 2 responses:

"The program made no attempt to inform listeners of these matters, but dressed up inferior research methodology as if it were a fact that open label studies are regarded as gold standard by scientists, when they are not.

"On the issue of what is and is not a RCT. Open label studies are not blinded and they are not considered by anyone to be gold standard, due to the introduction of bias caused by not blinding and several other more complex issues. It is this type of study that was the topic of the program. RCTs are also not considered to be gold standard by many RCT expert scientists due to their limitations. Evidence regarding both RCTs and open label studies you have ignored from my previous emails. RCTs were therefore misrepresented in the program and the point that RCTs could be well designed or badly designed was avoided. Which would clearly favour the Cabinet Office Behavioural insights team and Goldacre's aim to promote the use of open label studies to set Government policy."

The Committee noted the links supplied by the complainant to a number of academic articles which she said supported her assertion that "open label" studies such as those described in the programme are inferior and not scientifically robust.

The Committee noted the complainant's further comments, in correspondence following the lodging of her appeal:

"RCTs are double blind and based on empirical measurements. The designs discussed in this programme did not meet the standards required of a scientific RCT. This is highly misleading. RCTs can adhere to scientific principles and be of high quality or not and be of low quality. Goldacre was selling a brand name without explaining these issues to the listener. One might speculate that the Cabinet office might wish to give the public the impression that any study bearing the RCT title was of high quality and thus its results should be beyond question."

The Committee noted the response from the Editor of the programme at Stage 1, on the subject of whether RCTs as a whole are considered "gold standard":

"RCTs are without a doubt the gold standard in medical research. This is a fact in this area. RCTs can be of variable quality but in medical research they are seen to be the best method of testing different approaches."

The Committee noted the ECU finding at Stage 2:

"The view that RCTs are fair and represent a gold standard is certainly one which is very widely held in the scientific world and it is a claim which underpins much scientific research. It seems to me that it is a perfectly reasonable claim for a scientist to embrace in the course of making his argument without having to set out the contrary, less widely accepted view."

The Committee noted the ECU's comments with regard to "open label" trials:

"I'm afraid that I cannot agree that Open Label Trials and RCTs are distinct to the point where, as you say, '...open label studies can never be a RCT'. As I understand it, open label studies are widely seen as a category of RCTs that have not been 'blinded'. The NHS describes them thus:

Open label means that investigators and participants in a randomised controlled trial are aware of what treatment is being given and received (the study is not *blinded*)⁸.

There are also many examples of clinical trial reports which describe them in the same way."

The Committee noted that the programme did not use the phrase "gold standard", although there was a reference to the term in the programme billing on the BBC website (which the complainant had not complained about):

"In medicine, how do we know if a particular treatment works? The simple answer is to subject it to a fair test against other treatments or a placebo. So far the best example of a fair test in medicine is a randomised controlled trial or RCT.

"Often to [*sic*] referred to as 'the gold standard' when it comes to determining what works, RCTs are now commonplace in business. But what about government? The idea of evidence-based policy is hardly new – it's what social scientists have been banging on about since the 1960s. But in practice, when

⁸ <http://www.nhs.uk/news/Pages/Newsglossary.aspx>

evidence has been used to determine policy, it's often been anything but 'gold-standard'."

The Committee considered it would be reasonable to conclude that the programme implied that RCTs when used in medicine are the fairest test and therefore by implication "gold standard".

The Committee noted the sample quotes from peer-reviewed papers published in the *British Medical Journal* and randomly selected by the editorial adviser when compiling the background note for this appeal. Frequent reference is made to the "gold standard" character of RCTs, suggesting for example they are (variously):

- The "gold standard" for studying the efficacy and safety of medical treatments.
- Regarded within medical science as the "gold standard" research methodology.
- Perceived as the gold standard method for evaluating healthcare interventions.
- Randomised, placebo-controlled, double-blind clinical trials are considered the "gold standard" for clinical research.

The Committee noted the complainant's comment in her response to the ECU at Stage 2 acknowledging that a well-designed RCT can provide robust science.

The Committee noted that the programme discussed the distinction between RCTs in medicine, noting there are differences from those used in public policy.

The Committee noted the comment in the programme from Dean Karlan of Yale University who referred to the relevance of a "well-designed trial" and also the presenter's acceptance that even trials such as those he advocates are not infallible:

"Of course you can say that evidence isn't perfect. And I'd agree. ... But it's a million miles better than hunches or political expediency and we'd all benefit from more fair tests of policies."

The Committee noted the definition of an "open-label" trial from the Online Medical Dictionary:

"An open-label trial or open trial is a type of clinical trial in which both the researchers and participants know which treatment is being administered."

The Committee noted that the fact that a trial might be "open-labelled" does not mean it cannot be randomised and controlled, such as those described in the programme.

The Committee concluded that the programme observed due accuracy in its description of RCTs, both in the public policy context and with regard to the concept in general. The Committee concluded that the content in this respect was well sourced, based on sound evidence, thoroughly tested and presented in clear precise language.

Finding: Not upheld

Point (D) – whether the audience was misled by the statement in the commentary that doctors would be "struck off" for ignoring RCTs

The Committee noted the relevant section from the commentary (the sentence to which the complainant objected is in bold):

"In medicine we use randomised trials to test whether a treatment works because these are regarded as the most fair test. You take 200 people, split them into two groups at random. Give one treatment to one group, a different treatment to another and measure how everyone's doing. That's an RCT or randomised controlled trial. **There have been hundreds of thousands done already and you'd be struck off as a doctor for ignoring them.**"

The Committee noted the complainant's allegation in her letter of appeal:

"The remark by Goldacre that doctors would be struck off for ignoring RCTs is (also) plainly wrong. Considering that Goldacre is at least a junior doctor, he should know full well that comment was wrong."

The Committee noted the comments from the Editor of the programme at Stage 1:

"This is Ben's opinion. He says, if you simply ignored what good quality RCT evidence says on the risks and benefits of a treatment, you'd be knowingly harming patients, you'd be, (in his words) 'in big old trouble'. Wilfully ignoring quality RCT evidence could quite easily put your patients at serious risk of harm – even death – so whilst there may be [a] touch of poetic licence here too, we cannot agree that there is 'no basis' for this statement."

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

"Goldacre does not make it clear that he is voicing his opinion when he said a doctor would be struck off. Regardless, doctors in the UK are not legally beholden to take any notice whatsoever of a RCT, or an open label study, which was the actual topic of the program."

The Committee noted the ECU's comments about the "degree of overstatement" in the terminology used but that it did not amount to a serious breach of editorial standards:

"The question is whether the degree of inaccuracy involved amounted to a serious breach of editorial standards. The guidelines, as you may know, do not require absolute accuracy at all times but rather 'due accuracy' which is defined as accuracy 'adequate and appropriate to the output'. In the case of an inaccuracy in news or factual output such as this we would take a view on whether, as a result of the inaccuracy, the audience was likely to have been significantly misled on a material point at issue. I have to say, I do not believe this to have been the case. Ben Goldacre may have overstated the extent to which the results of RCTs might be binding upon doctors but given the extent to which the medical profession does rely upon such results I don't think that the audience was being seriously misled. The inaccuracy was in the degree of reliance rather than whether there was significant reliance or not."

The Committee concluded that while there was no likelihood of a doctor being struck off in the circumstance suggested, evidence from clinical trials, such as RCTs, was a serious consideration for doctors and the statement was therefore not without foundation.

The Committee did not think that the comment would be taken literally by the audience; in the Committee's view it emphasised the importance of evidence-based information in a medical context, compared with the presenter's thesis that equally important public policy decisions are taken on a whim.

In reaching its conclusion that the reference to doctors being struck off in this context was duly accurate, the Committee decided that it was unlikely the audience would take the statement literally and that the degree of poetic licence used on this occasion was acceptable.

Finding: Not upheld

Point (E) – whether the ECU acted within the procedures laid down in the complaints framework in referring the conflict of interest aspect of the complaint to the Head of Editorial Standards, BBC Radio for a Stage 2 response

The Committee noted the complainant's disagreement with the ECU's decision to pass the conflict of interest aspect of her complaint to the Head of Editorial Standards, BBC Radio and her contention that it was not outside the ECU's remit to consider the allegation. It noted too the complainant's concern that by dividing her complaint as it did the BBC had not fully investigated her concerns.

The Committee noted that the allegation engaged the Accountability section of the Editorial Guidelines, and in particular section 19.4 outlining how the BBC should handle complaints and feedback.

The Committee noted that the guideline refers readers to the complaints framework and that the relevant test to apply relates to 19.4.2 of the Editorial Guidelines. The Committee considered whether the BBC had demonstrated that the handling of the complaint complied with the procedures laid down in the complaints framework.

The Committee noted sections 4.2 and 4.10 of the Editorial Complaints and Appeals Procedure⁹

Investigations by the ECU:

4.2 The ECU investigates complaints about specific items that have been broadcast and published by the BBC and raise an issue of breach of the Editorial Guidelines.

Investigations by a Senior Manager in the Division responsible for the content you are complaining about

4.10 The Division responsible for the matter you are complaining about responds to complaints that do not fall within the ECU's remit as described in paragraph 4.2 above.

The Committee noted the complainant's query to the ECU at Stage 2 following its decision to pass the conflict of interest aspect of her complaint to the Head of Editorial Standards, BBC Radio:

"On what basis are you dividing my complaint in two? If you have not finished your investigation into Ben Goldacre's conflict of interest then you cannot rule on the issues relating to this separately. You are merely dividing my complaint in order to look at the issues separately and out of context, and to limit the damage the program has done. This will also interfere in the BBC Trust looking at this

⁹

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

complaint as a whole. I do not give you permission to split my complaint up to suit your purposes.”

The Committee noted the complainant’s correspondence to the Trust in which she said it was not clear why her complaint had been passed to the Head of Editorial Standards, BBC Radio and her interpretation of the Editorial Guidelines:

“That is not what the BBC editorial guidelines state. These matters are part of the ECU’s remit as per the guidelines. There is no other complaints system available to listeners.”

The Committee noted the explanation given to the complainant by the ECU Complaints Director:

“I am unable to look into your complaint that Ben Goldacre has a vested interest in the subject of Randomised Controlled Trials and that this amounted to a conflict of interest which should have been made clear in the programme. As I explained in my last email, the ECU can only look at material actually broadcast or published by the BBC to see if it seriously breaches the BBC’s editorial standards. Issues of conflict of interest bearing on BBC programme-makers do not fall within that remit. Even if a conflict of interest were identified it would not necessarily result in a breach of editorial standards being reflected in what was actually broadcast. I might add, in any case, that I am not convinced that what you complain of – the fact that Ben Goldacre was previously involved in a government project looking at the efficacy of RCTs in assessing government policy – itself amounts to a conflict of interest. It does not, it seems to me, necessarily suggest that Ben Goldacre has any material interest in RCTs being more widely used this way and you have not actually suggested that it does.”

It noted the further clarification provided by the Complaints Director in a subsequent response:

“If I did not explain myself clearly then I do apologise. The situation is this: the ECU has a remit which is confined to investigating editorial issues relating to the material actually broadcast. Conflicts of interest per se do not fall within this remit. Issues of impartiality, which may arise from a conflict of interest, would normally fall within it. That was why I had to limit myself, in considering this aspect of your complaint, to a possible issue of impartiality. I have, as I said I would, referred the conflict of interest point to the Head of Editorial Standards at BBC Radio to look into and he will be responding to you separately.”

The Committee noted the information provided to the complainant following the lodging of her appeal, by the BBC Trust’s Senior Editorial Strategy Adviser:

“I have noted the query you raise as to why this aspect of your complaint was forwarded to the Head of Editorial Standards in BBC Radio to complete the BBC’s Stage 2 response. As [the Complaints Director] explained in his letter, the ECU’s remit is confined to investigating editorial output against the Editorial Guidelines. What that means is that the role of the ECU is confined to looking only at content as broadcast and testing that for compliance with the Editorial Guidelines. It is not charged with investigating any wider issues, such as allegations relating to the affiliations of presenters or contributors, as was the case here. [The Complaints Director] was not suggesting your allegation wasn’t covered by the Editorial Guidelines, only that the ECU was not the appropriate body to fully investigate

that particular allegation. That is why that aspect of your complaint was passed to [the Head of Editorial Standards, BBC Radio]. I appreciate it can seem convoluted to those outside the BBC and I do apologise if the approach left you confused. I am confident that this wasn't the intention and can also assure you that [the ECU] adopted the correct approach. I note you have received a response from [The Head of Editorial Standards BBC Radio]."

The Committee recalled a decision it took in September 2012 not to uphold a similar allegation regarding the division of a conflict of interest allegation¹⁰ and the summary of the relevant points from that finding:

"The Committee considered the complainant's assertion that the ECU had not explained the basis for its decision to exclude the Guidelines on Conflicts of Interest from its consideration of his complaint. The Committee disagreed. It noted that there is a separation of responsibility within the BBC Executive at Stage 2 of the editorial complaints procedure, and that any complaints that do not fall within the ECU's remit are dealt with by the relevant Division... In relation to the remit of the ECU, the Committee understood that a key distinction is between the Guidelines which define and describe editorial standards (such as Guideline 14 on Editorial Integrity and Independence from External Interests) and the Guidelines which set out rules or practices intended to increase the probability that proper editorial standards will be observed (such as Guideline 15 on Conflicts of Interest).

"The Committee noted that the ECU had explained to the complainant that its remit was confined to the effect of any perceived conflict of interest. In other words, whether any perceived conflict of interest affected the editorial integrity and independence of BBC output as broadcast... The Committee noted that the ECU had explained to the complainant that its role was to investigate complaints about broadcast content and that an investigation within those terms of reference had subsequently been conducted by the ECU. ...

"The Committee noted, moreover, that all of the issues considered by the ECU and the [Division] were due to proceed before it on appeal and that, therefore, any prejudice which might have been caused to the complainant by the way his complaint was handled at Stage 2 (which, for the avoidance of doubt, the Committee did not accept had been caused to the complainant) would be effectively remedied at Stage 3 of the complaints process in any event.

"The Committee concluded that all aspects of the complainant's appeal had received an effective Stage 2 response as required by the Complaints Framework and that it ... would not have disagreed with the ECU's description of its remit."

The Committee considered that the salient facts of the present appeal were similar to those dealt with in the September 2012 decision. The Committee confirmed that the ECU had acted within the procedures laid down in the complaints framework in referring the conflict of interest aspect of the complaint to the Head of Editorial Standards, BBC Radio. It confirmed also that the division of the complaint at Stage 2 had had no bearing on its consideration of the entire complaint on appeal.

In reaching its decision not to uphold this aspect of the complaint the Committee nevertheless acknowledged that in respect of what comes within the ECU's remit it could

¹⁰ Full finding published at http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/19_sep.pdf

sometimes be unclear to audience members who wish to raise concerns. The Committee therefore sympathised with the complainant's concerns and considered that any future amendment to the Editorial Complaints Procedure should try and clarify this issue to aid complainants.

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.

Today, BBC Radio 4, 27 September 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint. It related to a report on the *Today* programme looking ahead to a vote at the UN on a bid by Mahmoud Abbas to seek non-member status for Palestine. The complainant said the report was "knowingly inaccurate and biased" in stating that the Gaza Strip was still occupied. He noted the response from the ECU which had stated:

"Bearing in mind the position of the UN (and national governments), I do not believe the reference in this context was likely to be materially misleading."

The complainant said that the different organs of the UN "don't always take the same position as each other" and argued that "no democratic national government has taken the view that Gaza remains occupied by Israel since Israel left the Gaza Strip"; indeed, he submitted, the governments of Qatar, Egypt and Iran had recognised Hamas as an independent government. The complainant also stated that the UN is biased against Israel and argued that international law is determined not by UN resolutions but by a body of international treaties, such as the 4th Geneva Convention and the 4th Hague Convention, neither of which, in the complainant's opinion supported the legal view that Gaza remains occupied.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser ("the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Adviser noted first the context of the item: a two-minute conversation between the *Today* programme presenter and a BBC correspondent in the West Bank, which comprised two responses, neither of which was specifically about the Gaza Strip.

She noted the discussion was previewing an address later that day to the UN by the Palestinian President Mahmoud Abbas. The content which was the subject of this appeal was a response from the reporter as to whether a vote in favour of Mr Abbas' bid for upgraded status for Palestine at the UN would change anything on the ground:

Presenter:

Is this going to promise any practical benefit to the people of Gaza or the West Bank at all?

Reporter:

No I don't think it does to be honest. It won't change anything on the ground and it's not going to end Israel's occupation of Gaza, the West Bank and East Jerusalem.

Palestinians would say well it puts diplomatic pressure on Israel. It could allow them to join institutions such as the International Criminal Court, the International Court of Justice. But it isn't going to change anything on the ground.

The Adviser considered the due accuracy of the reporter's response in which he asserted that he did not think a vote in favour would change anything on the ground for the Palestinian people. She noted this was the key information that was being communicated in the answer and that it appeared to be duly accurate. She noted too that the reporter explained what changes might be affected by a positive vote for the Palestinians at the UN: the opportunity to join institutions such as the International Criminal Court and the International Court of Justice.

The Adviser noted that for the purposes of the question and answer exchange and for assessing the due accuracy and due impartiality of the content, the status in law of the Gaza Strip was the most relevant to understanding the impact, if any, the vote might have. In that context the Adviser noted the BBC's view that the prevailing international consensus held that Israel remained the occupying power in the Gaza Strip and that the territory's status in international law was not considered to be any different to that of the West Bank (including East Jerusalem), notwithstanding that Israel had completed a military withdrawal from the Gaza Strip in 2005.

The issue, in the opinion of the Adviser, was whether the BBC's view was duly accurate; that is, whether it was well sourced, based on sound evidence and presented in clear, precise language. She sought to assess this alongside the complainant's view that Israel did not occupy the Gaza Strip either in law or on the ground.

The complainant's submissions on appeal were considered by the Adviser.

In relation to the official visits to the Gaza Strip by Qatar and Egypt referred to by the complainant as evidence that these nations regarded Gaza as independent, these took place after the item in question was broadcast and after the complaint was originally lodged and were therefore not capable of being considered in assessing the merits of the complaint.

The complainant's argument (in response to the ECU's reasoning) that the UN did not necessarily speak with one voice was noted. Also noted was the assertion that to the complainant's knowledge there had not been any resolutions at the UN stating that the Gaza Strip is occupied since 2005.

In that context, the Adviser considered how the UN Secretary General's spokesperson, Martin Nesirky, characterised the status of the Gaza Strip in international law at a press briefing in January 2012:

Question:

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

Spokesperson:

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

Question:

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

Spokesperson:

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

This response, in the opinion of the Adviser, demonstrated that the UN’s view relied not on individual member states or committees of the UN, but rather on Security Council and General Assembly resolutions, and that in the case of the former these were binding under international law.

While the Adviser noted the complainant’s contention that under the 1907 Hague Convention Israel no longer fulfilled the criteria of occupation in regards to the Gaza Strip, it was clear from Mr Nesirky’s comments that the UN view did not rely on the exercise of authority or on physical occupation of the Gaza Strip by Israel but rather it was derived from a view that the Gaza Strip was an integral part of the Occupied Palestinian Territory and was not separable from the other territories occupied in 1967 and for which there had been no final agreement between the parties.

The Adviser noted that in the Gaza Strip, while the military withdrawal and evacuation of settlements was generally welcomed at the time by the international community and by the UN, it was in the context of it being a positive first step in following the road map to peace rather than an end of occupation.

She noted too that Israel’s disengagement was a unilateral move and that the basis on which it was generally agreed (in addition to the UN’s interpretation above) that under international law Israel remained the occupying power in the Gaza Strip in law was due to its continuing control over many aspects of life there, and that this was explicitly provided for in the Disengagement Plan approved by the Israeli cabinet in 2004:

“The State of Israel reserves its fundamental right of self-defense, both preventive and reactive, including where necessary the use of force, in respect of threats emanating from the Gaza Strip

...The State of Israel will guard and monitor the external land perimeter of the Gaza Strip, will continue to maintain exclusive authority in Gaza air space, and will continue to exercise security activity in the sea off the coast of the Gaza Strip."

The Adviser therefore took the view that while it would have been misleading for the *Today* programme to have suggested that Israel's physical occupation of the Gaza Strip was continuing, in the context of a short discussion about the constitutional and legal status of the occupied territories, listeners were not likely to have taken that meaning.

She agreed with the assessment of the ECU that regular listeners to *Today* would have been aware that Gaza had been governed by Hamas for a number of years and there were no longer any Israeli troops or settlers based or living there. That, coupled with the fact that missile and rocket attacks on southern Israel from Gaza were a frequent occurrence, as reported in the media, would have guarded against any impression that Israel was occupying or controlling Gaza in any common or colloquial meaning of the word.

Accordingly the Adviser considered the complaint did not have 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 continued to assert that: the United Nations is not a legal body and is institutionally biased against Israel and argued that his complaint was not about whether a vote at the UN in favour of "upgraded status for Palestine" would change anything on the ground but about whether the reporter was accurate in referring to "Israel's occupation of Gaza".

The Committee's decision

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

The Committee noted that the complainant did not accept the reasoning given by the Trust's Senior Editorial Strategy Adviser not to proceed with the appeal.

The Committee noted the additional arguments put forward by the complainant in his challenge.

The Committee agreed with the Adviser that the audience of the *Today* programme would likely be aware that Hamas has day to day control of the Gaza Strip. In addition, the Committee noted the Adviser's decision reflected the basis on which it is considered by the UN that the Gaza Strip remains officially under Israeli occupation pending an agreed final settlement to cover all of the territory occupied by Israel since 1967. The Committee concluded that in the context of an item which was discussing a specific event at the UN and what that might mean on the ground the audience would not have expected any greater detail on the range of arguments brought to the definition of the legal status of Israel in relation to the Gaza Strip.

The Committee agreed that it would be likely to conclude that this was a factually accurate and duly impartial report.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

Today, BBC Radio 4, 4 March 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 (ECU) not to uphold his complaint about an item on the *Today* programme broadcast on 4 March 2013 in which John Humphrys interviewed Cardinal Cormac Murphy-O'Connor. The complainant considered the item was inaccurate, offensive and biased.

The complainant had made a number of points at Stage 1 and Stage 2 of the complaints process which were not upheld.

The complainant escalated his complaint to the BBC Trust on 24 July 2013, saying that he was dissatisfied with the response received at Stage 2. His appeal was confined to one point of his complaint – relating to the comment that priests and paedophiles were “almost synonymous”. He said that he did not consider this to be acceptable hyperbole. The complainant considered the response ignored the context in which the interview had been given – namely, that the Catholic Church had a poor image among many – and he considered this comment might embed that idea in people's minds, irrespective of the facts of the matter. The complainant drew parallels with recent news reports and suggested that the BBC would not report either that being a Muslim man was synonymous with targeting white girls, or that being a black man was synonymous with knife crime. He considered that by extension, it should not have broadcast the line that being a priest was almost synonymous with being a paedophile.

The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence which had passed between the complainant and the BBC and listened to the item in question. She acknowledged the strength of the complainant's feelings on this subject and his strongly expressed view that the Catholic Church had done much to tackle sexual abuse and put measures in place to guard against future abuse. She noted the parallels the complainant had offered, but could only consider the item as it was broadcast, rather than hypothetical situations.

She noted the introduction to the interview, which included the phrase that is the subject of the appeal:

“The Catholic Church is in turmoil – how many times have we said that recently? A few years ago it was paedophilia that tore apart the church in Ireland. It had been concealed for decades, children forced to stay silent. And it wasn't only Ireland – in the United States, more than ten thousand children abused over the years and again a massive cover up. The words ‘paedophile’ and ‘priest’ became almost synonymous as we learnt more about what was going on in Catholic institutions around the world...”

She noted that the interview started by referring to the recent scandals that had been widely reported and went on to discussion about what kind of person Cardinal Murphy-O'Connor considered ought to be the next Pope, following Benedict XVI's decision to step down.

The Adviser noted the Editorial Guidelines relating to Accuracy and Impartiality.

The Adviser noted that it was not a breach of the Editorial Guidelines to cause [unjustifiable] offence – and it would be an impossible requirement to never cause offence. However, she noted the introduction to the guidelines on Harm and Offence stated:

“...When our content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards...”

She noted points made in the response from the Editorial Complaints Unit (ECU), in particular, the letter stated that:

“I think it is clear that John Humphrys intended to say that, within the context of the coverage of the scandals mentioned, the two words had become inextricably linked, not that all priests were paedophiles. There may indeed be an element of hyperbole involved in putting it this way but I am quite sure that the average *Today* listener is intelligent enough to take from it the meaning that was actually intended rather than a meaning which relies on an over-literal interpretation of the words John Humphrys used.”

The Adviser noted the phrase used by the presenter came after he had described the history of sexual abuse of children by priests in Ireland and the US. He had then said: “The words ‘paedophile’ and ‘priest’ became almost synonymous as we learnt more about what was going on in Catholic institutions around the world.”

She agreed with the ECU Complaints Director that listeners would not have been likely to believe this meant all priests were paedophiles, but would have understood the comment in the context of the extensive coverage, over recent years, of sexual abuse scandals that had involved the Catholic Church.

She noted the Complaints Director had suggested the comment might have included an “element of hyperbole” and the complainant considered this was inappropriate. However, the Adviser noted and agreed with the Complaints Director that most of the *Today* listeners would have understood what the remark was intended to mean.

She noted that the Cardinal had been asked directly about child abuse and had been given an opportunity to respond; his response had included the following statement:

“...the [Catholic Church’s] leadership has been on a learning curve, as we were here in our own country – and therefore what has the Church done? It’s made quite sure that in future there will not only be transparency but that we will care for victims and that the procedures put in place, the safeguarding of children will be clear and strong. So, yes, it has been a shame, but the church has to face up to that and see that it doesn’t happen again and see that the procedures are in place for that kind of safeguarding which are essential.”

The Adviser considered that Trustees would be likely to conclude that the programme met the requirements of due accuracy and impartiality and, while regretting the offence that had been caused, overall it would have been within the expectations of the majority of *Today* listeners. She noted that, when Pope Benedict announced his intention to step down, there had been widespread media reports that his decision had been influenced by

the scandals that had affected the Church and therefore considered Trustees would be likely to conclude there was a clear editorial justification for the programme to have approached the interview in this way. She therefore decided that the appeal did not have a reasonable prospect of success and should not proceed to 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 did not disagree with the general thrust of what the presenter had said about the state of the Church in the context of the sexual abuse scandals. However, he did disagree with some of the “facts” and statements which the presenter used in order to illustrate the point.

There were three points of the decision he wished to contest:

- The finding that the hyperbole was acceptable despite the very serious nature of the matters discussed
- The decision said that the parallels which the complainant offered could not be admitted as they were “hypothetical” – the complainant argued that recently Muslim men have figured disproportionately in abuse cases and black men figured disproportionately in knife crime and so it was not hypothetical to imagine that the presenter could make a similar remark about these groups as he did about the Catholic Church
- The claim that the presenter meant that the two words “had been inextricably linked, not that all priests were paedophiles” – in response the complainant argued that the average listener may have misunderstood or been unduly influenced by the presenter’s remarks and assumed that he was speaking literally.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints 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 concerns about the linking of Catholic priests with paedophilia in the interview, and in particular during the presenter’s introduction to the interview in which he stated that

“The words ‘paedophile’ and ‘priest’ became almost synonymous as we learned more about what was going on in Catholic institutions around the world.”

The Committee acknowledged that the complainant had been offended by the presenter’s comments but noted that the Editorial Guidelines state:

“When our content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards.”

The Committee believed it was likely to conclude that there was a clear editorial purpose in the programme approaching the introduction and interview in the way it did, and that the introduction was a summary of the effect instances of paedophilia have had on the

Church, and public perception of the Church, in recent years.

While the Committee agreed with the complainant that the topic of the interview was an extremely serious one, it did not consider that the *Today* audience would have been misled by the element of hyperbole in the presenter's comments into thinking he was asserting that all Catholic priests were paedophiles. The Committee did not consider that any evidence had been presented which would be likely to lead Trustees to conclude that the interview had breached the Guidelines on Impartiality, Accuracy or Harm and Offence.

The Committee also noted the complainant's points about the parallels he had put forward in support of his appeal, but agreed that these hypothetical examples did not provide evidence of a possible breach of the Editorial Guidelines.

The Committee therefore decided that this appeal had no reasonable prospect of success and did not qualify to proceed for consideration.

Israel: Facing the Future, BBC Two, 17 April 2013

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that her 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. She had raised a series of allegations about the accuracy and impartiality of an hour-long documentary discussing the internal tensions between religious and secular Jews in Israel and how that might affect prospects for a resolution to the Israeli/Palestinian conflict.

This is a summary of the points raised by the complainant in her appeal:

- The programme talked of many freedoms and equal rights and an “open and dynamic society” but this is not impartial because it does not mention the numerous laws which discriminate against Palestinian citizens of Israel.
- It was inaccurate for the programme to state, “Israel has survived many challenges in its short life including near destruction” and “Israel defeated Arab armies threatening to attack [in 1967]”.
- The statement in the programme that Iran’s president “has threatened to wipe Israel from the map” is based on a disputed translation of a speech he made in 2005.
- The statement in the commentary in which the programme’s presenter, John Ware, said of contributor Avraham Burg, that “he feels Israelis are in danger of being trapped in a long history of persecution”, should have made clear that he was referring to Israeli Jews and not Israelis.
- The inclusion in the programme of a quotation, “In spirit and in blood we shall redeem you Al’aqsa”, should also have included a reference to Israeli excavations underneath the mosque and of the constant attacks on Al-Aqsa by settlers.
- It was inaccurate to say that “Israel occupies most of the West Bank”.

The Trust Unit’s decision

The Trust’s Senior Editorial Strategy Adviser (“the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Adviser noted the requirement in the Editorial Guidelines for due accuracy and due impartiality.

The Adviser noted the clauses from the Accuracy guideline most relevant to the issues raised in the appeal. She noted these clauses on achieving “due weight”.

The Adviser noted the complainant’s contention that many Israeli Arabs prefer to self-identify as Palestinian and consider it offensive to be referred to in a way which they say

denies their heritage. The Adviser acknowledged that, while "Israeli Arab" could be considered a label that is in the process of transition, it is not universally considered to be offensive nor is it rejected by all those Israeli citizens of Arab origin¹¹. The Adviser noted the important distinction in the context of the issues raised in this appeal, between those people of Arab origin who remained in Israel following 1948 and were granted citizenship, and the stateless Palestinian Arabs in the occupied territories. She therefore considered that, other than where she was quoting directly from the complainant's correspondence, it was most helpful for clarity in communicating her decision to use the same terminology as that used in the programme. In choosing to approach the drafting of her decision in this way, the Adviser nevertheless noted that the programme included a clear reference to the affinity that Israeli Arabs feel towards their fellow Palestinians:

"...increasingly, Israeli Arabs emphasise their Palestinian identity and kinship with their relatives who in 1948 fled across the border just a mile from here."

Turning to the issues raised in the appeal, the Adviser noted how the programme defined its scope of ambition in the opening pre-title sequence, which in the guidelines is referred to as "signposting". Whilst the introduction noted that the changes of government in many neighbouring countries in the wake of the Arab Spring had brought a new dimension to Israel's security concerns, the focus of the introduction were the challenges from inside Israel:

"...but as my journey across the Holy Land shows, Israel faces new challenges from within the country. The religious population is growing and so are the tensions. There's increasing disaffection from Israel's Arab minority. And yet Israel is also a country that can surprise; what you see here is not always what you are told to expect."

"This is an extraordinary scene, thousands and thousands of Israeli citizens, all of them anti Zionists all of them Jews. Israel is approaching a crossroads, the path it takes could have a huge impact on this the most volatile region of the world and therefore all of us."

The Adviser noted the complainant's first assertion that the programme failed to reflect sufficiently the inequality and discrimination of Israeli Arab citizens in Israel, by overlooking "the numerous laws which discriminate against Palestinian citizens of Israel" and by inaccurately stating that "they were given full and equal citizenship and many Israeli Arabs [sic] have benefited from what the Israeli state has to offer like good education and health care".

The Adviser noted the fuller context for the section of commentary which the complainant highlighted:

"One in every five Israeli citizens is an Arab, descendants of those Arabs who remained when the state of Israel was formed in 1948. They were given full and equal citizenship and many Israeli Arabs have benefitted from what the Israeli state has to offer like good education and health care...But in general Israeli Arabs are much poorer than their fellow Jewish citizens; they have fewer jobs and believe they're treated as second class citizens."

¹¹

http://www.academia.edu/171195/Identity_Grievances_and_Political_Action_Recent_Evidence_from_the_Palestinian_Community_in_Israel pp175-176

The Adviser noted that the clearly stated ambition of the programme (as articulated in the introduction quoted above) was to discuss the rise of religious nationalism amongst the Jewish population of Israel. The programme went on to discuss how that might impact on the continued search for a solution in the Israeli/Palestinian conflict. Therefore in the Adviser's view the programme had already managed audience expectation regarding the extent to which it might discuss other related matters and the requirement would therefore be, in choosing to raise the issue of Israel's Arab citizens, that the programme was duly accurate and had not misrepresented the issue.

Any decision to omit or include specific information would be a legitimate exercise of editorial judgement and not as a rule a matter which could be tested against the guidelines.

With regard to the omission of any reference to specific laws which might discriminate against Israeli Arabs, the Adviser noted the legal situation is complex and it would not have been a straightforward matter for the programme to have declared, as perhaps the complainant would have wished, that there is a substantial body of legislation that discriminates against Israel's Arab population. Much of the Adalah database cited by the complainant referred to proposed legislation rather than active legislation, some of the laws related only to the occupied territories and those that related to Israel, while they may have had the effect of discriminating against the Israeli Arab population, were not drafted quite so transparently and would therefore be a matter of interpretation and implementation.

The Adviser noted therefore how the programme reflected the inequality in other ways. She noted the following exchanges from the programme:

John Ware:

How do you think the average Israeli Jew sees, thinks of the average Israeli Arab?

Sayed Kashua, Israeli Arab comedy writer:

As a threat, as someone that you cannot really trust...

Israelis think that there is something called the culture of the Arabs, by which they mean the mentality of the Arab. The average Israeli would think that the Arab because of his culture, the mentality is more violent and most of the Israelis would think that you are much more primitive. It's like hell and you are not really accepted like a real citizen...

John Ware:

You've elected Arabs to the Knesset, there are Arab judges... So on the ground in what way do Israeli Arabs feel discriminated against?

Sayed Kashua:

Discriminated? In all aspects of life that you can imagine, first of all it's, I think it would be impossible to make us feel comfortable or welcome in Israel if there is no solution with the Palestinians, that's for sure. We can survive if they fix it with the Palestinian people. That's still the major problem for us, it's very complicated to belong to a state that's fighting your nation.

She noted too that the comedy writer's views were reinforced later in the programme by a group of Palestinians from the Occupied Territories. The programme included a dramatic sequence in which the group highlighted Israeli restrictions on their freedom of

movement, that they can't visit Jerusalem without a permit. The Adviser noted also the following exchange:

John Ware:

But the old guard is losing its appeal, this generation of Palestinians say they're no longer interested in a separate Palestinian state their focus is on getting full civil rights to give Palestinians a better life.

Do you think it's still got life in it or do you think the two-state solution is now dead?

Samir Khraisha:

I think it's dead. I don't see even myself involved in this political process if we're talking about the West Bank. West Bank is nothing, it's a few rocks and mountains... Share it with them... I want to take my basic rights, that's it.

Hurriyah Ziada:

The West Bank for us is a big prison so putting me and locking me in the West Bank and preventing me to go anywhere I want preventing me to go to Jerusalem where I was born, preventing me from going to Faluja which is where I am originally from, this is treating me like an animal in a cage. I don't think a two-state solution will live because I don't think it's a just solution so we're never gonna have peace without justice.

John Ware:

Sorry, what's full justice? Is it one state or two states?

Samir Khraisha:

Full justice simply simply simply is going from Ramallah to the beach, having a moment of peace ... the beach in Jaffa, in Acre, in Haifa...

John Ware:

Which is in Israel, I know you call it Palestine but they call it Israel

Samir Khraisha:

They call it Israel, I don't really care if I'm ruled by a rabbi or a sheikh or a PA (Palestinian Authority) or an Israeli or whatever, all I care is to just go peacefully to move, not being shot, not being harassed, not being humiliated in the checkpoints, just peacefully just like that, want to have a beer on the beach, that's it.

The Adviser noted the complainant's comment that the programme failed to challenge the negative Palestinian attributes portrayed in clips from a comedy show, and as such left the audience with a misleading impression. The Adviser took this to mean that the audience might form the conclusion that Israeli Arabs were violent and/or stupid as reflected in the drama. The Adviser noted that this was clearly satirical comedy, that it was presented as having been written by an Israeli Arab, and that the commentary from the writer alongside the clips made it clear that these were comedy stereotypes. In particular she noted that the storylines and the context made clear that the Jewish Israelis had reacted to the events portrayed based on their pre-existing prejudices. The Adviser did not accept that the audience would be left with the impression that these were accurate portrayals of the Israeli Arab mentality.

The Adviser then considered the complainant's query regarding the assertion that "many Israeli Arabs have benefitted from what the Israeli state has to offer like good education and health care". She noted the complainant's citation of a range of studies showing the historic under investment of state funds in areas of Israel with large Arab populations.

The Adviser acknowledged there are reliable statistics showing for example that Israeli Arabs are proportionately underrepresented at Israeli universities, both in the numbers who apply and the percentage who are accepted. But she noted also that there are a range of initiatives which the state say they are doing to address this, including Arab support services, additional language tuition and making it compulsory to include Arabic language versions of university websites – all with the aim of improving higher education access. More than 5,000 Israeli Arabs attended Israeli universities in 2010/2011, a substantial number, although proportionately half that of Jewish Israelis in higher education.

Likewise with regard to healthcare, the Adviser acknowledged there are reliable statistics showing that Israeli Arabs do not receive the same access to health care as Jewish Israelis, particularly at the primary care level. Nevertheless, Israel has world class medical facilities and access to health care services is guaranteed under the National Health Insurance Act for all citizens. The disjunction between rights and access is where the problem appears to lie and therefore the Adviser considered whether the programme reflected this in other ways.

The Adviser considered the fuller context of the comment highlighted by the complainant:

"...many Israeli Arabs have benefitted from what the Israeli state has to offer like good education and health care..."

"But in general Israeli Arabs are much poorer than their fellow Jewish citizens; they have fewer jobs and believe they're treated as second class citizens."

The Adviser considered that the inclusion of the information that Israeli Arabs are generally poor, that they have fewer jobs and they feel they are treated as second class citizens, along with the testimony heard in the programme about the discrimination Israeli Arabs face ensured that overall the due accuracy was achieved. She took into account that this was not the main focus of the programme and that therefore there would be no requirement for a detailed examination of health and education provision to Arab Israelis. Many Arabs have demonstrably benefitted from Israel's first world education and health provision, and elsewhere in the programme the audience was made aware that it may not have been to the same extent as that enjoyed by Jewish Israelis.

Next the Adviser considered the allegation that it was inaccurate for the programme to make the following statements:

"Israel has survived many challenges in its short life including near destruction"

and separately

"Israel defeated Arab armies threatening to attack [in 1967]".

The Adviser observed that there have always been competing narratives about the extent of Israel's vulnerability and to what extent the various wars in which she has been involved could be characterised purely as defensive wars. She noted that in the last thirty years some of the strongest evidence that the situation was more nuanced than Israel's

earlier writers of history allowed has come from a group of Israeli historians who became known as "revisionist". Avi Shlaim, Professor of International Relations at Oxford University, is a member of that group and is widely respected, including in Arab circles, for his authoritative and well-sourced critique of Israel's military and diplomatic history using primary documentary sources and first hand testimony from some of those most closely involved, on both the Israeli and "Arab" sides. The Adviser noted that Avi Shlaim is also one of the sources cited by the complainant.

In relation to the statement in the programme regarding the 1967 war, this was Mr Shlaim's unequivocal conclusion in a book he authored:

"The speed and scale of Israel's military victory led some observers to suspect that Israel launched the war not in self-defence but in order to expand its territory. Arab observers, in particular, were inclined to believe that Israel deliberately provoked the Six-Day War in order to fulfil its long-standing territorial ambitions. This view is without foundation. The Six-Day War was a defensive war. It was launched by Israel to safeguard its security not to expand its territory. The main enemy was Egypt. The chief aims were to open the Straits of Tiran, to destroy the Egyptian army in Sinai, and to restore the deterrent power of the IDF. Political and territorial objectives were not defined by the government when it gave the IDF the order to strike. War aims emerged only in the course of the fighting in a confused and contradictory fashion.¹²"

The Adviser noted the complainant's assertions from the sources she quoted, including for example that the Israeli government knew that Egypt was not prepared for war and separately that the Israeli Government knew Egypt did not want a war. In the Adviser's view this did not mean that there would not have been a war if Israel had not launched its pre-emptive strike. What is generally accepted is that tensions were high, that there was a military build-up of Egyptian forces in the Sinai and that it was this and Syria's closing of the Straits of Tiran that prompted Israel to launch its pre-emptive strike. She concluded that the evidence demonstrates there was a clear threat of attack to which Israel made the decision to respond. The statement in the programme was in her opinion well sourced, based on sound evidence and presented in clear precise language.

Turning to the statement in the programme,

"Israel has survived many challenges in its short life including near destruction",

the Adviser noted the complainant's assertion that it was in fact the Palestinian population who had "survived many challenges... including near destruction". Whilst that may be a valid observation, the Adviser did not consider it relevant to whether Israel faced destruction nor that it required to be considered in the context of a programme about the challenges facing Israel.

The Adviser noted from the correspondence that the programme had in mind the wars of 1948 and 1973. Whilst Israel survived both in a stronger position than when the wars began, that would not necessarily have been the expectation at the outset of either conflict. In 1973 Israeli forces were taken by surprise and as a consequence, despite their military superiority on paper, they suffered significant losses in the first two days of fighting.

¹² Shlaim, Avi *The Iron Wall* pp241-242 (paperback edition 2000)

The Adviser further noted that, in 1948 an untested Israeli fighting force faced a coalition of the established armies of the Arab nations surrounding the region. Since the aim of the Arab coalition was to ensure that Israel did not survive as a nation, and that Israel met the challenge and defeated it was not a foregone conclusion, the Adviser concluded that the commentary was therefore duly accurate.

Next the Adviser turned to the complainant's third main point relating to this section of commentary:

"... Hamas (is) backed by Iran whose President has threatened to wipe Israel off the map."

She noted the accuracy of the statement was disputed by the complainant who asserted that "there has never been a definitive translation of what Ahmedinejad said" and the BBC should have reflected that the matter was disputed and controversial. The Adviser noted from correspondence at Stages 1 and 2 the sources cited by the complainant to support her assertion. The Adviser noted that there are invariably a number of ways in which any word or phrase can be translated from one language into another. The Adviser considered it was clear from the comment that the intention was to communicate that Iran would like there to be no Israel and that that was how Mr Ahmadinejad's comments had been understood across the world. She noted too that Iran had not chosen to issue any clarification and that comments from Mr Ahmadinejad throughout his presidency consistently showed him to be hostile to Israel and to the Jewish people. For example, she noted that even as recently as February 2013, ahead of his speech at the United Nations, President Ahmadinejad angered UN diplomats by talking positively of Israel's future elimination. The Adviser considered the complainant's argument that the President was not authorised to make such a threat, and as such it carried no weight. The Adviser disagreed. In her view, both directly and indirectly Iran has been shown in the past to support those who wish for Israel's destruction, including Hamas (which she noted was the context for the comment's inclusion in the programme). The Adviser did not agree that either the likelihood of Iran carrying out its threat, or whether it had the means to do so, needed to be considered in deciding whether the programme's reference to what the President had said, was duly accurate. Finally, she noted, as had the ECU at Stage 2, a decision by the BBC Board of Governors in 2006, which upheld the translation as duly accurate (it was with reference to the use of the quote by Andrew Marr during an edition of *Sunday AM*):

"The Committee noted the inherent problem with accuracy in translations. It noted that all the translations varied to a greater or lesser degree, and it was difficult to decide which, if any, was the most accurate..."

"The Committee felt that the language used by the Iranian President was highly emotive by its nature and had been recognised as such in the international condemnation of what he had said. Andrew Marr had done nothing more than highlight this in his introduction." ...

"I therefore do not believe the use of the quote was misleading or that it was a breach of the impartiality guidelines."¹³

The Adviser considered that it was unlikely that the Editorial Standards Committee would regard it appropriate or necessary to revisit a decision made by its predecessor committee on the Board of Governors.

¹³ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/govs/apps_aprjun06.pdf

Next, the Adviser considered the allegation concerning the following section of commentary:

"Avraham Burg is also a leader of Israel's peace movement,... he fears Israelis are in danger of being trapped by their long history of persecution."

She noted the complainant's allegation: that it should have been made clear to the audience that the presenter was referring to Israeli Jews and not Israelis and that:

"To use the term Israeli in this context completely ignores the presence of 20% population of Palestinians with Israeli citizenship and this is unacceptable, and I don't see why viewers should have been left in any doubt whatsoever who was being talked about..."

"It would have cost nothing to ensure accuracy of language and not to do so contributes to the airbrushing of Palestinians from Israeli history which we repeatedly witness in Israeli propaganda."

The Adviser did not consider the audience would have formed a misleading impression as to which group of people were being referred to given the context in which the statement was made. The interviewee's subsequent contribution would have cleared up any doubts that might have been remaining as to which section of the Israeli population was being discussed:

"We came here 70 years ago in order to go out of the pathological relations between the Jew and the non Jew, mainly in the Christian world which, in which we lived in ghettos which we called our villages called shtetls in Yiddish so we had confined communities, confined ghettos, walled ones sometimes we moved to the Middle East and all of a sudden we have here the largest shtetls ever..."

"We had holocaust and we were traumatised and the world recognised it and we needed a safe haven but ever since we made the trauma our strategy it is not needed anymore, we must start planning, moving from the strategy of trauma to the strategy of trust."

"Maybe we don't have many out there to trust but we have some, let's start with them."

With regard to the complainant's additional assertion that the comment contributed to the airbrushing of Palestinians from history; as noted previously in the Adviser's decision, the situation faced by both Israeli Arabs and by Palestinians living in the Occupied Territories is discussed at length elsewhere in the programme.

Next the Adviser considered the archive clip of Sheikh Raed Salah featured in the programme, in which he said "In spirit and in blood we shall redeem you Al-aqsa". The Adviser noted this was the context:

John Ware:

Sheikh Raed Salah is the head of the Northern movement. He frequently accuses Israeli political leaders of plotting to destroy Islam's third holiest site, the Al-Aqsa mosque in Jerusalem.

Archive clip of Sheikh Salah addressing a rally (with the original Arabic and a subtitled translation):

In spirit and in blood we shall redeem you Al'aqsa

The Adviser noted the complainant's submission at Stage 2 that there was no reference in the programme to Israeli excavations underneath the mosque or to constant attacks at Al-Aqsa by settlers. She noted the complainant's assertion that the Sheikh's allegations are well founded and that the commentary should have noted this. The Adviser noted the evidence supplied by the complainant, quoting a series of pledges made by Israeli politicians in relation to their wish to re-establish a synagogue on the site. The Adviser noted too the references by the complainant to news stories about settlers attacking Al-Aqsa.

The Adviser noted the response at Stage 1, that the programme was "unaware of any evidence which can withstand scrutiny, that any activity at the mosque is endangering it". The Adviser noted that the complainant had not supplied any evidence that there was information available to the programme makers at the time of filming which might dispute this, and she noted also that the programme had reflected the substance of the Sheikh's allegation, including why he was threatening to "redeem... Al-Aqsa".

With regard to the omission of any reference to settlers attacking Al-Aqsa, the Adviser noted again that the decision on what to include or omit in a given context is a legitimate exercise of editorial judgement. The Adviser also noted that, whilst no reference was made to settler attacks on Al-Aqsa, the archive footage of Sheikh Salah at a rally was followed immediately by archive pictures of a Jewish demonstration:

"In 2010 ultra nationalist Jews demonstrated in Om Al Fahim calling for the banning of the Islamic movement. It ended in a riot."

The Adviser considered the complainant's final point, relating to the following section of commentary:

"I'm on my way to Ramallah, although Israel occupies most of the West Bank most Palestinians are governed day to day by the Palestinian Authority based here. The PA says it is committed to a peaceful resolution of the conflict but what Israelis see is something else."

The Adviser noted the complainant's allegation that it was inaccurate to say Israel occupies most of the West Bank as it in fact occupies the whole of the West Bank.

The Adviser agreed with the complainant and acknowledged that under international law Israel occupies the whole of the West Bank. She shared the ECU's view at Stage 2, that the language used was open to misinterpretation. In considering whether it raised a substantive issue for consideration against the guidelines the Adviser considered whether the audience would be misled about the status of the West Bank as a consequence.

The Adviser noted the context of the comment, in which the reporter was arriving in Ramallah, which is under the day-to-day control of the Palestinian Authority. She noted that this is different from the situation in what is known as Area C of the West Bank, over which Israel continues to hold full military and civilian control. In her view it was clearly this distinction which the reporter was making, albeit the language might have been more precise. The Adviser noted that the intention of the distinction was made clear by the content of the rest of the sentence. And she noted too where earlier in the programme the reporter accurately explained the scope of Israel's occupation:

"20 years ago a plan was brokered to build a separate state for the Palestinian people on the West Bank and Gaza. And for the last 20 years the two states, the two peoples have been a sort of Holy Grail for peace negotiators trying to solve this intractable conflict. Separated by checkpoints and a wall, Israelis and Palestinians barely talk any more, they can't agree the terms of two states and it doesn't look as if they ever will. I'm on my way to the West Bank to find out why. The West Bank has been under Israeli control since 1967 when Israel defeated Arab armies threatening to attack. Faced with unexpected territorial gains, Israel is reluctant to part with the new territory, fearing the Arabs might strike again."

The Adviser concluded that given the specific context and also the information provided elsewhere in the programme the audience would not have been left with a misleading impression as to the extent of Israel's occupation of the West Bank.

In summary, the Adviser did not consider that any of the issues raised by the complainant would have a reasonable prospect of success and they should not therefore proceed to be heard on appeal.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She reiterated the points she had made in her letter of appeal and argued that the Senior Editorial Strategy Adviser had not provided evidence to refute them.

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 letters asking the Committee to review her decision.

The Committee noted that the complainant did not accept the reasoning given by the Trust's Senior Editorial Strategy Adviser not to proceed with the appeal.

The Committee noted the additional arguments put forward by the complainant in her challenge.

The Committee agreed with the Adviser that many of the points concerned information the inclusion of which was a legitimate exercise of editorial judgement rather than issues for consideration against the guidelines, in light of the clearly stated aim of the programme to discuss the rise of religious nationalism among the Jewish population of Israel.

The Committee considered that the Adviser's decision had dealt comprehensively with all of the points raised by the complainant in her appeal; in the Committee's view the additional comments made by the complainant challenging the Adviser's decision did not include any new evidence that required that decision to be set aside.

The Committee agreed that it would be likely to conclude that this was a duly accurate and duly impartial report.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

Israel: Facing the Future, BBC Two, 17 April 2013

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint. He made a number of allegations about an hour-long documentary on the tensions between religious and secular Jews in Israel and how that might affect prospects for a resolution to the Israeli/Palestinian conflict.

In his appeal the complainant stated that he was unhappy with the response he had received at Stage 2. His concerns related to the statement in the programme about the status of Arabs who remained in Israel when the state of Israel was formed in 1948. The complainant alleged the commentary was inaccurate in stating that, at that time, Israeli Arabs "were given full and equal citizenship".

The complainant stated that this was not the case and that, "Israel's Arab citizens were discriminated against already when the state was formed in 1948".

He noted the information provided by the programme that presenter John Ware's commentary was based on Israel's 1948 Declaration of Independence. But he said:

"...that does not make the statement correct. Of course the Declaration of Independence would say that all citizens will be given full and equal citizenship".

The complainant noted too the ECU's contention that it was also made clear in the programme that Arab Israelis have not enjoyed equal citizenship and rights in the subsequent years but regarded this point as irrelevant to his complaint. He also provided what he regarded as evidence of discrimination against non-Jews by Israel, including references to "the Jewish State" in the Declaration of Independence; preferential treatment for Jews in land allocations; the prohibition of non-Jews from membership of a kibbutz; and some 30 or more laws in Israel "which specifically privilege Jews", some of which, he said, dated from the creation of the Israeli state.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Adviser noted the fuller context for the statement in the programme which the complainant alleged is inaccurate:

"One in every five Israeli citizens is an Arab, descendants of those Arabs who remained when the state of Israel was formed in 1948.

"They were given full and equal citizenship and many Israeli Arabs have benefitted from what the Israeli state has to offer like good education and health care...

"But in general Israeli Arabs are much poorer than their fellow Jewish citizens; they have fewer jobs and believe they're treated as second class citizens."

The Adviser noted the Stage 1 response which clarified the basis on which the programme maintained the statement was accurate:

"The statement refers to the provision made for Arab/Palestinian citizens of Israel on the formation of the Israeli State in 1948 through the Declaration of Independence of 1948.
(http://www.knesset.gov.il/docs/eng/megilat_eng.htm)

This called for a state

'based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.'"

The Adviser noted the requirements in the guidelines on Accuracy as relevant to the appeal. In particular she tested the statement against the requirement that content is well sourced, based on sound evidence and presented in clear precise language. She noted too that content relating to Israeli/Arab (Palestinian) relations would generally be considered controversial within the guideline definition for controversial subjects and that accuracy "is not simply a matter of getting things right. If an issue is controversial, relevant opinions as well as facts need to be considered".

Whilst the Adviser noted the complainant's contention that Israel was not set up with "equal citizenship" for Jews and non-Jews, she noted this was not what the programme actually said. The Adviser considered that the language at this point was particularly precise. The commentary referred to Israeli Arabs and specifically to those "Arabs who remained when the state of Israel was formed in 1948". The Adviser concluded the clearly defined timeframe and precise description of whom the commentary was referring to were important factors in reaching her decision that the content was duly accurate.

As was made clear in the correspondence at Stage 2 and acknowledged by the complainant in his responses, there was considerable space devoted elsewhere in the programme to the situation post 1948. The Adviser noted both in the commentary and in the interviews with Israeli Arabs, Palestinians and commentators, it was made clear that neither Israeli Arabs nor Palestinians living in the Occupied Territories, enjoyed equal rights alongside Jewish Israelis. The Adviser noted that this had been addressed in the response at Stage 2, which had referred to exchanges in the programme which outlined how different the experiences of Jews were in Israel to Arabs who lived there. The Stage 2 response had begun by drawing attention to the interview with Sayed Kashua...

"... an Israeli Arab comedy writer, who described the lead character in his popular comedy:

Amjad is trying to do his best to fit in Israeli society, I think that they know, that he, he knows that he will never be accepted into that society, the Israelis would always look at him in a different way.

He went on to say:

The Israelis think that there is something called the culture of the Arabs which they mean the mentality of the Arab. The average Israeli would think that the Arab because of his culture, the mentality is more violent and the most of the Israelis would think that you are much more primitive. It's like hell and you are not real, you are not accepted like a real citizen.

Later, [the presenter] said:

The West Bank may now be home to both Israelis and Palestinians but only the Israelis enjoy the rights that go with citizenship. The Palestinians here are stateless.

Towards the end of the programme, Mr Ware spoke to a group of Palestinian 'activists' to get a sense of how Israel's policies affect their lives. One of them told him:

Hurriyah Ziada: The West Bank for us is a small, is a big prison so putting me and locking me in the West Bank and preventing me to go anywhere I want, preventing me to go to Jerusalem where I was born, preventing me from go to Fallujah which is where I am originally from, this is treating me like an animal in a cage. I don't think a two state solution will live because I don't think it's a just solution so we're never going to have peace without justice.

Finally, I note that in the interview with a Jewish settler who described Ma'ale Adumim as 'incredibly diverse'. Mr Ware responded 'Diverse if you're Jewish, Palestinians aren't allowed to live here but they can come here to work'."

The Adviser considered the complainant had been given a reasonable response at Stage 2 that outlined how the programme reflected that Arabs continued to be disadvantaged within Israeli society.

In this context, the Adviser considered the editorial purpose of the statement which is the subject of this appeal was clearly to distinguish between Israel's stated founding principles (as contained in its Declaration of Independence) and what then became the reality for Israeli Arabs once the state was up and running.

The Adviser then considered the complainant's contention that "Israel's Arab citizens were discriminated against already when the state was formed in 1948," and the evidence he submitted in support of his allegation. The Adviser did not agree that references in the Declaration of Independence to the Jewish nature of the state in themselves demonstrated that Israeli Arabs were disadvantaged at the outset, given that the same Declaration made clear the new state's intention to respect all religious places and to ensure equality of social and political rights to all its inhabitants irrespective of their religion.

Neither did the Adviser agree that references in that same Declaration inviting the immigration of Jews, negated or otherwise affected that commitment. The omission in the Declaration of Independence of the same invitation to those Arabs (Palestinians) who had fled or been forcibly evicted, did not in the Adviser's opinion have any impact on the accuracy of the statement which is the subject of this appeal. She noted that elsewhere in the programme it was made clear both explicitly and implicitly that finding a solution for the plight of the dispossessed Palestinians is the key challenge facing Israel if it is to survive as a democratic state and to gain full acceptance in the international community.

The Adviser noted for example this extract from the long exchange with the Arab Israeli comedy writer Sayed Kashua:

John Ware:

So on the ground what, in what way do Israeli Arabs feel discriminated against?

Sayed Kashua:

Discriminated? In all aspects of life that you can imagine, first of all it's, I think it would be impossible to make the, the, us feel comfortable or welcomed in Israel if there is no solution with, with er, with the Palestinians, that's for sure.

We can survive if they fix it with the Palestinian people that's, that's still the, the major problem for us, it's very very complicated to, to belong to a state, that's fighting your nation.

John Ware:

What Sayed Kashua refers to as his nation are the Palestinian Arabs with whom Israel has been locked in conflict since the foundation of the state in 1948. Most Arabs fled or were evicted. The descendants of the minority who stayed largely reconciled themselves to living in a Jewish state but divisions have been growing especially in the Arab town of Om Al Fahim in Northern Israel.

The Adviser considered the remaining arguments put forward by the complainant. The Adviser again noted the precise language in the statement, namely that Israeli Arabs who remained after 1948 were given "full and equal citizenship". She noted the complainant's contention that Israeli Arabs were disadvantaged from the outset and his specific reference to land allocation and kibbutz membership, both of which he said were only for the benefit of Jews living in Israel. She noted too his contention that there were some 30 laws which disadvantaged Israeli Arabs. However, she noted that the complainant did not give specific examples of these laws or suggest which ones were in force at the founding of the State of Israel in 1948, which was the timeframe covered by the statement that is the subject of this appeal.

Whilst the Adviser accepted that the complainant's specific examples may have been or may still be valid (although she noted that there are now Arab members of Israeli kibbutzim), she did not consider the examples cited had any bearing on the status of Israeli Arabs as citizens of the new State of Israel at a specific point in its history, i.e. 1948. She considered that citizenship is a well-understood concept and is generally taken to mean membership of a nation and access to political representation. As noted earlier in her finding, the Adviser considered that elsewhere in the programme the broader impact of being an Arab in Israel and the "second class" character of that citizenship in practice was discussed in depth, thus guarding against any misleading impression that the commitment to social and political equality announced in the Declaration of Independence meant that Israeli Arabs were not, including from perhaps the very beginning, discriminated against in comparison with their fellow Jewish citizens of Israel.

For the reasons set out above, the Adviser considered the complaint did not have a reasonable prospect of success and should not proceed to be heard on appeal.

Request for review by Trustees

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

He said that the crux of his complaint was that from the outset Israel was a discriminatory state because there was no right of return for the hundreds of thousands of Palestinians who had left Israel following the creation of the state of Israel. He reiterated his view that the Declaration of Independence was “not an objective document”.

The Committee’s decision

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

The Committee noted that the complainant did not accept the reasoning given by the Trust’s Senior Editorial Strategy Adviser not to proceed with the appeal.

The Committee noted the complainant’s assertion that Palestinians (Arabs) have always been discriminated against, and that those who had left in 1948 had not been allowed back. However, the Committee noted that the reference in the programme to equal citizenship rights was defined as being in relation to those Arabs “who remained in 1948”. The Committee agreed that the programme made clear elsewhere that those who had not remained in Israel were stateless. The Committee noted this reasoning was included by the Senior Editorial Strategy Adviser in her decision that the complaint did not qualify to be heard on appeal.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

Israel: Facing the Future, BBC Two, 17 April 2013

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that her 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. She had alleged that a documentary about the tensions between religious and secular Jews in Israel was blatantly pro-Israel, that the balance of interviews was entirely weighted on the side of Jewish Israelis and that the programme overplayed the threats to Israel from its neighbours, using highly emotive language. She contended that a discussion of terrorist attacks by Palestinians was inaccurate and biased unless it was countered by references to Israeli attacks on Palestinians, the living conditions endured by many Palestinians and the historical context of the Israeli-Palestinian dispute.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Adviser noted the requirement in the Editorial Guidelines for due accuracy and due impartiality. She noted too that content relating to Israeli/Arab (Palestinian) relations would generally be considered controversial within the meaning of the guideline definition for controversial subjects and that accuracy "is not simply a matter of getting things right. If an issue is controversial, relevant opinions as well as facts need to be considered".

Turning to the issues raised in the appeal, the Adviser noted how the editorial purpose of the programme was outlined in the opening pre-title sequence, which in the Guidelines is referred to as "signposting". Whilst the introduction began by noting that the changes of government in many neighbouring countries in the wake of the Arab Spring had brought a new dimension to Israel's security concerns, its focus was of the challenges from inside Israel, particularly the growth of (Jewish) religious nationalism, and how that might impact on the country and, by extension, the region's future:

"...But as my journey across the Holy Land shows Israel faces new challenges from within the country. The religious population is growing and so are the tensions. There's increasing disaffection from Israel's Arab minority. And yet Israel is also a country that can surprise; what you see here is not always what you are told to expect.

"This is an extraordinary scene, thousands and thousands of Israeli citizens, all of them anti Zionists all of them Jews. Israel is approaching a crossroads, the path it takes could have a huge impact on this the most volatile region of the world and therefore all of us."

The Adviser noted that by defining the scope of the programme's ambition, the programme makers had managed the audience expectation regarding the extent to which it might discuss other related matters. She noted that the content of the programme was consistent with its stated aim as outlined in the introduction, with much of the programme

discussing aspects of what it described as a “battle for the soul of the Jewish state”. The Adviser noted the observation in the commentary:

“The one issue that barely registered in the election was Israel’s conflict with its Palestinian Arab neighbours.”

The Adviser noted that the complainant had raised a wide number of issues in relation to the conflict between Israel and the Palestinians as warranting discussion and reflection. The Adviser noted the guidelines do not require that every aspect of the issue is reflected on every occasion, nor that an assertion by one party to the conflict should necessarily be balanced on each occasion by a competing viewpoint. What she considered was important in the context of this programme was that the viewer was able to reach an informed opinion about the proposition of the programme, i.e. what the tensions within Israel as a result of the rise of religious nationalism might mean for the prospects of a two-party state or indeed any solution to the conflict. The Adviser therefore concluded that the audience would have expected a preponderance of Israeli voices. By contrast the requirement in relation to reflecting the Palestinian narrative would be only that the programme acknowledged that a range of views exists and the weight of those views, and did not misrepresent them.

The Adviser then considered each of the points raised by the complainant in her Appeal.

I. It was misleading and unbalanced to refer to the threat to Israel from terrorists

The Adviser noted the detail of the allegation:

“...examples of the ‘Palestinian perspective’ were clearly designed to reflect the ‘terrorist’ nature of the P.A. and the very reasonable and justifiable Israeli fears, as well as casting doubt on ‘what the world saw’.

“To continue to quote acts of terrorism by the Palestinians, however horrendous these are acknowledged to be, without balancing this with historical background (the fact that Israel is constantly conducting targeted assassinations, imprisonments without trial, night raids and kidnappings, undermining of water supplies, destruction of homes and villages, desecration of land, checkpoint delays for work, for hospital treatment, to worship or visit families etc.) leads to imbalance and misrepresentation of the facts.

“Far more weight was given, by referring to specific numbers of civilians and children killed by one Palestinian terrorist, to the effect on Israelis, while the reference to Gaza left no doubt that, in using force of arms against a captive population, the IDF were perfectly justified and it was surprising that ‘the world’ did not sympathise with Israel, acting as they were in ‘self-defence’.

“The billions of dollars being spent on arms and drones for use by Israel against her neighbours give a much more accurate comparison of the ‘threat’ experienced from Israel by the neighbours.”

The Adviser noted some of the occasions in the programme where the threat of terror was explicitly discussed (some of which the complainant specifically cited in her appeal):

- In the opening sequence:

"Over the last two years Jihadists have launched several attacks from across the Egyptian border killing Israeli civilians and soldiers"

- In contributions from a group of Israeli musicians, who are also Air Force Reserve pilots:

"...the way we live in Israel, always on alert, always on some kind of worry about your life."

"You're living on the edge more."

- In the lengthy section with the Israeli Arab comedy writer, including the clips from a comedy scene which highlighted what he saw as widespread Israeli prejudice: that every Israeli Arab posed a threat and should be treated like a terrorist.
- In the comment from the Palestinian developer, Basher Nasri, trying to establish a city on the West Bank to start a new chapter for the Palestinian people in a state they can call their own:

"We also want to send a message to the world that we the Palestinian people are ready to build and to make a good living for ourselves, we're not the terrorists that you think about, we are the builders, we wanna live like any other nation."

- In the archive clip of a tribute on state-run Palestinian Authority TV to a terrorist who had been involved in killing 38 civilians including 13 children, and the comment by the reporter that the broadcast fuelled Israeli fears that the PA has not abandoned the terrorist option.
- In the reference to the rockets fired from Gaza into residential areas in Southern Israel.
- In the reference to the suicide bombing attacks which Israel experienced during the second intifada.
- In the commentary over the pictures of Israel's invasion of Gaza in 2008:

"When Israel invaded Gaza in 2008 far from sympathising with Israel that it was acting in self-defence what the world saw were pictures of dead Palestinians."

The Adviser did not agree that the content of the programme supported the complainant's assertion that the programme misled the audience in how it reflected the terror threat to Israel. The inclusion of the archive clip from PA TV demonstrated the source of Israeli doubts that they had a partner for peace. The Adviser noted the clip was well sourced and accurate and that the inclusion of the clip and the way in which it was used was editorially justified as it illustrated a key point in the programme's narrative. The Adviser noted the clip was followed with this line of commentary:

"PA President Mahmood Abbas says he does believe in a two state solution and under his leadership Palestinian terrorist attacks from the West Bank have significantly decreased."

Neither did the Adviser agree that, in noting in the commentary that the world had not supported Israel's invasion of Gaza, the programme had sympathised with Israel. The Adviser noted that the pictures accompanying the commentary here were of acute Palestinian grief and fear and Israeli firepower and that the preceding sentence included a reference in the commentary to Israel's use of "overwhelming force".

Next the Adviser considered the broader allegation that the detailing of the threat felt by Israelis was not balanced with any sense of the Palestinian experience under Israeli occupation. Whilst the programme did not refer to every issue highlighted by the complainant, throughout the programme it was made clear that life under occupation was difficult and dangerous for many Palestinians. The sequence depicting Israel's invasion of Gaza was one such example; elsewhere contributors discussed other issues, such as this extract from a contribution from the Israeli Arab Samir Khraisha:

"...all I care is to just go peacefully to move not being shot, not being harassed, not being humiliated in the checkpoints."

With regard to the assertion that the programme omitted the broader historical background, while the Adviser noted that this was not within the scope of the issues discussed, she considered the programme nevertheless included additional context where relevant. She noted that the commentary acknowledged the Palestinians' historic connection to the land, referring to the Palestinian Arabs who either "fled or were evicted" in 1948. The programme also noted that the Palestinians on the West Bank were stateless and that the Israelis had built settlements on occupied land that had been set aside for a Palestinian state. The programme included a sequence which showed what the commentary describes as "extreme Jewish nationalists" building illegally on private Palestinian land. There were a number of references to Palestinians' lack of civil rights and to the second class citizenship enjoyed by Israeli Arabs, and an entire sequence depicting a peaceful demonstration against the inability to travel to Jerusalem without a permit. The Adviser concluded that the viewer would be left with the impression that life for Palestinians in the Occupied Territories and in Israel itself could be unpleasant and that, particularly in Gaza, the population felt under threat and that their fear was justified.

2. It was inaccurate to refer to the deliberate targeting of civilians by Palestinians without noting the reasons for it

The Adviser noted the detail of the allegation:

"The targeting of Israeli civilians was hardly even about challenging the existence of a Jewish State, but always about occupation of indigenous Palestinian land and destruction of homes and livelihoods

"...what about frequent Israeli attacks on Palestinian civilians, of which no mention was made."

The Adviser noted how the programme reflected the point:

"For Israelis the deliberate targeting of civilians has destroyed whatever faith they had that their Arab neighbours will ever accept the permanent existence of a Jewish state"

The Adviser noted the editorial purpose of the commentary here, reflecting the source of Israel's doubts that it had a partner for peace. The Adviser noted that the assertion was well sourced, based on sound evidence and presented in clear, precise language. Preceding the comment were references to two figures who had demonstrably targeted Israeli civilians, the Hamas bomb-maker Yahya Ayyash and Dalal Mughrabi who led an attack in 1978 in which a bus was hijacked in Tel Aviv, culminating in the killing of 38 Israeli civilians, including 13 children. There was no requirement nor would the audience have expected in this context for the programme to include a reflection of Palestinian concerns; this had been signposted as a programme that would explore the tensions within Israel's Jewish population. As noted in discussion of point one above, the programme showed graphic imagery of civilian casualties on the Palestinian side during Israel's invasion of Gaza.

3. It was misleading to refer to the unwillingness of the Palestinians to make peace

The Adviser agreed with the Stage 1 response, that there is no statement in the programme which refers to an unwillingness of the Palestinians to make peace. This was how the issue was reflected in the commentary:

"But the two state solution is on its death bed and what's killing it is mutual distrust. While the Palestinians accuse Israel of not being serious about peace, the Israelis feel the same about the Palestinians."

The Adviser concluded, as had the response at Stage 1, that this reference was balanced and illustrated the evidence that both sides mistrust the other's commitment to peace. The Adviser noted too that the commentary acknowledged elsewhere that for Palestinians, settlements were a major stumbling block to a negotiated peace, thus reflecting a possible reason for the Palestinians' mistrust.

In relation to the complainant's allegation that other information should have been included; the Adviser noted the discussion in the first point that across the programme there were numerous references to the difficulties of life under occupation.

4. It was inaccurate to say Israel is surrounded by enemies that want to wipe her out

The Adviser noted the detail of the allegation:

"John Ware [the presenter] comments that Iran's president has threatened to 'wipe Israel off the map'. This is an obvious attempt to resurrect a controversial and mythological statement, which all but the BBC (including the Israelis themselves) have acknowledged to be inaccurate.

"'Israel being surrounded by enemies' is again, of course, the Israeli perspective, resulting from the frequency of attacks by her on Gaza, the Golan Heights, Lebanon, Syria and Sinai. Again, this was not a balanced picture.

"On the same subject, John Ware refers to 1967, when he says 'Israel defeated Arab armies, threatening to attack', giving the false impression that Israel was an innocent victim. This is rewriting history again.

"International law, U.N. declarations on H.R. issues and accurate historical documentation all bear out the facts, and Israel's constant claim that its

aggressive and violent dealings with neighbours is due to 'security' needs is not borne out by these facts."

The Adviser noted the relevant section of commentary in relation to the first allegation:

"... Hamas (is) backed by Iran whose President has threatened to wipe Israel off the map."

The Adviser noted the complainant's assertion, citing an article in the *New York Times*, that comments by Mr Ahmadinejad had been wrongly translated and widely misquoted and that this had been acknowledged by Israel's Deputy Prime Minister, Dan Meridor. The Adviser noted that the NY Times article stated that a literal translation might have read instead that Israel would "vanish from the page of time". The Adviser noted the *New York Times* article included further comments from Mr Meridor in which he said that Iran's leader had stated they wanted Israel to cease to exist, and that "when you hear this from these people, you need to take it seriously".

The Adviser noted that there are invariably a number of ways in which any word or phrase can be translated from one language into another, and "wipe off" would be no exception. The Adviser considered it was clear from the comment that the intention was to communicate that Iran would like there to be no Israel, and that that was how Mr Ahmadinejad's comments had been understood across the world. She noted too that Iran had not chosen to issue any clarification and that comments from Mr Ahmadinejad throughout his presidency consistently showed him to be hostile to Israel and to the Jewish people. For example, she noted that even as recently as February 2013, ahead of his speech at the United Nations, the then President Ahmadinejad angered UN diplomats by talking of Israel's future elimination.

Finally the Adviser noted, as had the ECU at Stage 2, a decision by the BBC Board of Governors in 2006, which upheld the translation as duly accurate (with reference to the use of the quotation during an edition of *Sunday AM*):

"The Committee noted the inherent problem with accuracy in translations. It noted that all the translations varied to a greater or lesser degree, and it was difficult to decide which, if any, was the most accurate..."

"The Committee felt that the language used by the Iranian President was highly emotive by its nature and had been recognised as such in the international condemnation of what he had said.

"I therefore do not believe the use of the quote was misleading or that it was a breach of the impartiality guidelines.¹⁴"

The Adviser noted that it was unlikely that the Editorial Standards Committee would consider it appropriate or necessary to revisit a decision made by its predecessor committee on the Board of Governors and that there was no recent evidence which would give it any reason to do so.

The Adviser concluded that the reference in the programme to Iran's intentions towards Israel was duly accurate and did not mislead the audience.

The Adviser then considered the complainant's assertion that it was unbalanced to state that Israel was surrounded by enemies without mentioning it was because of the

¹⁴ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/govs/apps_aprjun06.pdf

frequency of attacks by Israel on Gaza, the Golan Heights, Lebanon, Syria and Sinai. The Adviser noted that the complainant's argument was not that Israel was not surrounded by enemies, but that the commentary omitted to say why they might be enemies.

The Adviser noted that with respect to Gaza, discussion in other points above had already noted that the principle reasons for the conflict were reflected in the programme. The Adviser did not agree that it was necessary in the context of this programme to go into any detail on the additional reasons why Israel had an ongoing conflict with its Arab neighbours; she did not agree with the complainant's assertion that it was simply because it attacked them frequently. The reasons are many and complex and in the Adviser's view outside of the scope of the themes of the programme. In addition, the Adviser noted that the main criticism of Israel from those countries related to Israel's continued occupation of land set aside for a Palestinian state and the failure to reach an agreement with the Palestinians, both of which were discussed in the programme.

With regard to the allegation that it was inaccurate to state that in 1967 "Israel defeated Arab armies, threatening to attack", that the commentary gave the false impression that Israel was an innocent victim; the Adviser observed that there have always been competing narratives about the extent of Israel's vulnerability and whether the various wars in which she has been involved could be characterised purely as defensive wars. She noted that in the last thirty years some of the strongest evidence that the situation was more nuanced than Israel's earlier writers of history allowed had come from a group of Israeli historians who became known as "revisionist". Avi Shlaim, Professor of International Relations at Oxford University, is a member of that group and is widely respected, including in Arab circles, for his authoritative and well-sourced critique of Israel's military and diplomatic history using primary documentary sources and first hand testimony from some of those most closely involved, on both the Israeli and "Arab" sides.

This was Mr Shlaim's unequivocal conclusion in a book which was published in 2000:

"The speed and scale of Israel's military victory led some observers to suspect that Israel launched the war not in self-defence but in order to expand its territory. Arab observers, in particular, were inclined to believe that Israel deliberately provoked the Six-Day War in order to fulfil its long-standing territorial ambitions. This view is without foundation. The Six-Day War was a defensive war. It was launched by Israel to safeguard its security not to expand its territory. The main enemy was Egypt. The chief aims were to open the Straits of Tiran, to destroy the Egyptian army in Sinai, and to restore the deterrent power of the IDF. Political and territorial objectives were not defined by the government when it gave the IDF the order to strike. War aims emerged only in the course of the fighting in a confused and contradictory fashion.¹⁵"

The Adviser noted the sources quoted by the complainant, which suggested that the Israeli government knew that Egypt did not want a war. In the Adviser's view this did not mean that there would not have been a war if Israel had not launched its pre-emptive strike. What was generally accepted was that tensions were high, that there had been a military build-up of Egyptian forces in the Sinai and that it had been this and Syria's closing of the Straits of Tiran that prompted Israel to launch its pre-emptive strike. She concluded that the evidence demonstrated there was a clear threat of attack to which Israel made the decision to respond. She considered Trustees would be likely to conclude that the statement in the programme was well sourced, based on sound evidence and presented in clear precise language.

¹⁵ Shlaim, Avi *The Iron Wall* pp241-242 (paperback edition 2000)

Finally the Adviser considered the assertion that "Israel's constant claim that its aggressive and violent dealings with neighbours is due to 'security' needs is not borne out" by "international law, UN declarations on human rights and accurate historical documentation". The Adviser noted that the programme accurately reflected the understanding that Israel's occupation of the West Bank and Gaza is considered illegal under international law. She noted too the programme reflected a range of criticism relating to Israel's behaviour towards both Palestinians in the Occupied Territories and Israeli Arab citizens of Israel, both in the commentary and in contributions from interviewees. She considered Trustees would be likely to conclude that the degree to which these aspects were reflected was adequate and appropriate taking into account the subject and nature of the content, as required by the guidelines. The Adviser did not accept that because Israel chose to justify its actions by reference to its security concerns it therefore followed that those concerns were any less valid.

5. It was inaccurate to refer to Gaza as a terrorist state

The Adviser noted the detail of the allegation:

- that although the comment was made by a contributor (Tzipi Hotovely), it should not have been allowed to stand "as if it was a definitive point of view"
- the presenter's statement alongside, that " Hamas seeks the destruction of the Jewish State", was misleading and inaccurate as Hamas had repeatedly said it would recognise Israel within its pre-1967 borders if Israel recognised Palestinian national rights
- the statement that "rocket attacks from Gaza increased after withdrawal of settlers in 2005" was misleading in absence of the information that Gaza remains blockaded by Israel.

The Adviser noted the fuller context for the first point:

John Ware:

They (Israel) point out that when Israel forcibly removed 9,000 settlers from Gaza in 2005 rocket attacks increased.

All this has entrenched Israel's ideological right, now the largest single voting block in the Israeli parliament. Whereas Prime Minister Netanyahu has committed himself to the two state solution, most MPs in his ruling party Likud support annexing some or all of the West Bank into one state as part of a greater Israel. I've arranged to meet one of their rising stars. Tzipi Hotovely calls the West Bank by its biblical name, Judea and Samaria.

Just explain to me in simple terms what your vision is for the West Bank?

Tzipi Hotovely:

My vision is that Israel will have the sovereignty on all the territory and in order to understand this is a solution, you need to understand that the idea of separation failed dramatically in 2005 and Hamas ruined Gaza and made it a terror, a small terror state and when we saw that results we can't do the same thing in Judea and Samaria, we can't afford ourselves to build another Iranian, Iranian terror state in our east border

John Ware:

How will it be a democratic state if you take over the whole of the West Bank?
You'll have as many Arabs almost, as Jews, without the same rights.

The Adviser did not agree that the assertion that Gaza was a terror state was left to stand as a "definitive point of view": it was presented by a right-wing Israeli MP as her definitive point of view. Tzipi Hotovely was described in the programme as a rising star of the "ideological right", and not a supporter of the two-state solution. It was clearly her reason for rejecting the Gaza approach as a solution to the occupation of the West Bank.

The Adviser noted that the extent to which a remark by an interviewee which included a potentially controversial or disputed view required to be challenged would depend on the context. In circumstances such as this, the Adviser considered that the identity and credentials of the speaker were well signposted, such that the viewer would be able to judge for themselves what weight to accord to her views. In addition the interviewer would be expected to use their editorial judgement on which aspects of a response might require to be explicitly challenged, taking into account the subject and nature of the content.

The Adviser noted that Ms Hotovely's comment was in answer to John Ware's invitation to the MP to outline her vision for the West Bank. The Adviser considered Trustees would be likely to conclude that the reporter exercised legitimate editorial judgement in robustly challenging her vision and querying, for example, whether the new Palestinian Israelis in an annexed West Bank would get equal rights alongside Jewish Israelis. It would not have been either necessary or appropriate for the programme to have entered into a discussion about the extent to which Gaza might be considered a terror state.

With regard to the second point, the Adviser noted this was the relevant section of commentary:

"Umm Al Fahm has been the centre of Arab Islamic protest against the creation of the Israeli state, this is the heart of what's called the Islamic movement Northern branch, it's a pretty radical movement, it's closely aligned to Hamas which seeks the destruction of the Jewish state."

The Adviser noted the complainant's assertion that Hamas had stated it would be prepared to recognise Israel under certain circumstances. The Adviser noted that the allegation of inaccuracy in relation to the statement in the commentary had not been made previously in the course of the complaint. As the complaints procedure requires that the BBC Executive (in this case BBC News) should have the opportunity to respond to an allegation prior to it being considered by the Trust, she did not consider it appropriate for this point of the appeal to proceed to be put before Trustees.

Finally the Adviser considered the complainant's assertion that to state that rocket attacks increased after Israel's withdrawal from Gaza in 2005 was totally misleading without also noting that Gaza remains blockaded by Israel. The Adviser did not consider that the information was necessary in order for the statement to be considered duly accurate. It was a statement of fact that rocket attacks had increased and the comment was editorially justified: the relevant section of the programme was noting the reasons some Israelis give for withholding their support for a two-state solution.

6. It was inaccurate to state that the separation barrier was built to prevent Palestinian suicide bombers from targeting civilians in Israel

The Adviser noted the detail of the allegation:

- "It is only necessary to point out the way in which this colossal wall is built, and where it goes – especially around Jerusalem – to recognise that it can only be described as a means of gaining and controlling more land and driving away the unwanted indigenous population."
- "No mention was made of the 1948 or 1967 borders or the destruction of thousands of homes, farms and villages in the Occupied Territories. What about the purpose of protecting the settlements built on Palestinian land? By claiming that the Jewish people have established the State of Israel in 'the biblical land of their ancestors' John Ware totally overlooked the fact that the Palestinian people have the same ancestors, many of whom trace their families back to before the time of Christ and have far greater claim to the land than new settlers, many of whom have barely a drop of Jewish blood in their veins."
- "The reference to the settlements and Israel's other motivation was too little too late, and the number of settlers quoted is out of date - being now well over half a million and rapidly growing."

The Adviser noted how the programme discussed the separation barrier:

John Ware:

This is the concrete separation wall which was built by the Israelis to separate Israelis from Palestinians, to prevent Palestinian suicide bombers from coming into Israel to target the civilians as they did during the second intifada.

The Adviser noted and agreed with the response given by the ECU at Stage 2:

"It is clear from the context that it is the view of Israeli Jews that the separation barrier is necessary to ensure their security and provide protection from suicide bombers and the like. I would point out that the programme reflected the Palestinian view of the separation wall, including an interview with activists who staged a protest 'highlighting Israeli restrictions on their freedom of movement, the fact that they can't visit Jerusalem without a permit'. I would add that earlier in the programme, Mr Ware explained that Israeli Jewish settlements continue to be built in the West Bank in order to occupy land which would likely form part of any future Palestinian state:

A viable Palestinian state on the West Bank would require Israel to withdraw from almost all of it but since this was first discussed the number of settlers have tripled and moved ever deeper into the territory. Unlike Ma'ale Adumim they weren't built to strengthen the Israeli border, 350,000 settlers now live here. The faster these settlements grow deep into the West Bank the harder it's surely going to be for any Israeli government to dismantle them by force if necessary in the event of a peace deal with the Palestinians.

I believe that this would have helped to ensure that viewers were aware that Israel has other motives beyond security, and that the Palestinians believe Israel is illegally occupying land which is rightfully theirs."

The Adviser noted the complainant's contention that the figure given for the number of settlers was inaccurate. She noted that the 500,000 figure cited by the complainant refers

to the total number of settlers in the West Bank and East Jerusalem. The Adviser noted that international law does not differentiate between the two, considering them both to be under Israeli occupation in contravention of UN resolutions. However, Israel accorded each entity a different status.

The Adviser noted therefore the statistic quoted in the programme was in the context of settlements in the West Bank. The most recent figures from Israel's Bureau of Statistics put the number of settlers living in the West Bank at around 341,000, with a further 200,000 in East Jerusalem. The settlements in East Jerusalem were in territory which was annexed by Israel. Although the annexation is not recognised internationally, the numbers are counted differently by the Israeli authorities and given that the discussion at this point was specifically about territory that Israel had not annexed the Adviser considered the statement would have fulfilled the guideline requirement for due accuracy.

For the reasons set out above, therefore, the Adviser considered Trustees would be likely to conclude the programme was duly accurate and duly impartial.

Therefore, she considered the appeal had no 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 her appeal. She said that the programme was without due context or balance and that the signposting at the beginning of the programme indicated there was no intention to include the "real underlying reasons for a lack of solution to the conflict".

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 the Adviser's decision not to proceed with the appeal she had given detailed responses to all the allegations made by the complainant. The Committee noted that the request by the complainant that the Committee review the Adviser's decision did not include any specific challenges to any of the responses or offer any additional evidence in support of the points she had asked to be considered. The complainant had alleged that what she regarded as passing references to the Palestinian perspective were not enough to achieve balance in the programme, but the Committee did not agree with this view, for the reasons given by the Adviser.

The Committee agreed that it would be likely to conclude that this was a factually accurate and duly impartial report.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

Israel: Facing the Future, BBC Two, 17 April 2013

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that her 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. She had alleged that a documentary about the tensions between religious and secular Jews in Israel was biased and inaccurate and asked the Trust to consider the following points:

1. The title of the programme proved that the BBC had ignored how Israel is an illegitimate power occupying the whole of pre-1948 Palestine.
2. An online article by the programme's presenter John Ware demonstrated his partiality towards Israel and should be considered in determining this appeal.
3. Israel was presented as an "open and dynamic society" with "full and equal citizenship", but the programme failed to mention that the Palestinians who remained there in 1948 are deliberately maintained as a minority.
4. There was no mention of the massacres, kidnappings, expulsions, destruction, land theft and the numerous other ill treatments of Palestinians.
5. The presentation of Israel as a country under threat is a "Zionist myth"; in 1967, for example, Israel did not face being wiped out by invading Arab armies.
6. The barrier in the West Bank was inaccurately described in the programme: the reporter should have used the word "segregation", rather than "separation", given that Palestinians are not allowed to use or even cross the roads built for settlers.
7. The programme inaccurately stated the number of settlers in the West Bank.
8. The programme should have explained why the Palestinians mainly distrust Israel's motives.
9. The reference in the programme to the "long history of persecution" (of the Jews) were the reporter's own words and not those of a contributor, as the ECU had alleged; there is no mention about the long persecution of the Palestinian people.
10. It was "anything but neutral" to present Hamas as an extremist group and as the villain that wants "the destruction of the Jewish state"; the audience should have been told "that Israel did wipe Palestine off the map" or that Israel controls the whole of the West Bank.
11. Mentioning the "biblical land" of Israel had the effect of associating the Israelis with the "very land they stole from the present day indigenous Palestinians who are in fact the people having been there all the time".
12. The programme avoided stating unequivocally that the settlements are illegal.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Adviser noted the requirement in the Editorial Guidelines for due accuracy and due impartiality with regard to controversial subjects. She noted the stated ambition of the

programme was to consider the rise of religious nationalism amongst Israeli Jews and how that might impact on the prospects for a two-state solution.

Turning to the issues raised in the appeal, the Adviser noted how the editorial purpose of the programme was flagged in the title and elaborated upon in the opening sequence. This constituted what the guidelines referred to as "signposting". The introduction began by noting that the changes of government in many neighbouring countries in the wake of the Arab Spring had brought a new dimension to Israel's security concerns and then moved to what was to become the focus of the programme:

"...But as my journey across the Holy Land shows, Israel faces new challenges from within the country. The religious population is growing and so are the tensions. There's increasing disaffection from Israel's Arab minority. And yet Israel is also a country that can surprise; what you see here is not always what you are told to expect.

"This is an extraordinary scene, thousands and thousands of Israeli citizens, all of them anti Zionists all of them Jews. Israel is approaching a crossroads, the path it takes could have a huge impact on this the most volatile region of the world and therefore all of us."

The Adviser considered that Trustees would be likely to conclude that by defining the scope of the programme's ambition, the programme makers had managed audience expectation regarding the extent to which it might discuss other related matters. She noted that the content of the programme was consistent with its stated aim as outlined in the introduction. Much of the programme considered tensions between different Jewish groups. The Adviser noted the commentary stated:

"Ever since the foundation of the state of Israel there's been a clash of values between secular liberalism and religious Judaism but the religious population of this country is growing very fast, much faster than the secular population and the tension between these two groups is also growing..."

The Adviser noted too that the programme referred to this tension, in the commentary as the "battle ... for the soul of the Jewish state".

The Adviser noted that the complainant had raised a wide number of issues in relation to the conflict between Israel and the Palestinians as warranting discussion and reflection. The Adviser noted the guidelines did not require that every aspect of the issue is reflected on every occasion or that an assertion by one party to the conflict should necessarily be balanced on each occasion by a competing viewpoint. The relevant consideration was that the viewer should have been able to reach an informed opinion about the proposition of the programme, i.e. what the tensions within Israel as a result of the rise of religious nationalism might mean for the prospects of a two-party state or indeed any solution to the conflict.

The Adviser therefore considered that Trustees would be likely to conclude that the audience would have expected a preponderance of Israeli voices and Israeli views. By contrast, the Adviser noted, the requirement in relation to reflecting the Palestinian narrative would be only that the programme acknowledged that a range of views exists and the weight of those views, and did not misrepresent them.

The Adviser then considered each of the points raised by the complainant in her Appeal.

1. The title of the programme was inaccurate because it ignored the fact that Israel is an illegitimate power occupying the whole of pre-1948 Palestine

The Adviser noted the complainant's suggestion that the programme might more properly have been called *Israel/Palestine*.

The Adviser noted that the State of Israel was established in 1948 and is internationally recognised as a sovereign state within its pre-1967 borders. The Adviser did not agree with the complainant that Israel is an illegitimate power. The Adviser noted too that the programme clearly stated that Israel has controlled the West Bank since 1967 and that, apart from Israel, most of the rest of the international community has declared that settlement activity in the West Bank is illegal. It is this aspect of Israel's activities that are considered illegitimate by the international community and in the Adviser's view the programme stated this in clear, precise language as required by the guidelines.

As noted above, there would have been neither a requirement nor any audience expectation that the programme would have also discussed in any detail Palestinians' concerns for the future. Nevertheless, the Adviser noted that the programme did discuss Palestinian concerns at length, with the West Bank property developer, the Israeli Arab comedy writer and the group of young people from Ramallah on the West Bank.

2. An online article written by the presenter demonstrated his partiality and should be considered in determining this appeal

The Adviser noted that there was no mention at Stage 1 of an online article. The Adviser noted the complainant referred in passing to an unidentified article by the presenter, in her submission to the ECU at Stage 2. It was part of the complainant's broader point that the programme had dealt only with the future of Israel and not of occupied Palestine.

The Adviser noted that the complainant did not at that time include a link to the article; neither did she state where the article appeared or that she specifically wanted the ECU investigation to include consideration of the article itself. The Adviser agreed with the ECU's response to the complainant which stated that the investigation had been into the complaints about the television programme and therefore the ECU could not consider what was written by the presenter elsewhere.

The Adviser noted that a link to the webpage explaining the complaints procedure was sent to the complainant with her Stage 1 response. The Adviser noted too that when lodging a complaint online about an item of BBC content complainants are required to identify the output and, in the case of a complaint about online content, complainants are also asked for the relevant URL.

In accordance with the complaints procedure, the Trust is only able to consider allegations which have already received a Stage 2 response. As there was neither a specific allegation about an online article at Stage 2 nor any information in the Stage 2 submission identifying a specific article, the Adviser agreed that the ECU had correctly advised the complainant that it was unable to consider the online content in reaching its finding.

3. Israel was presented as an "open and dynamic society" with "full and equal citizenship" but it was not mentioned that the Palestinians who remained there in 1948 are deliberately maintained as a minority

The Adviser noted the complainant's assertion in her appeal that legal groups have identified 57 laws that overtly discriminate between Jewish and Palestinian citizens, with "a dozen more heading towards the statute books".

The Adviser noted the fuller context for the two citations quoted in the appeal:

"This is Tel Aviv but it could be Barcelona or even San Francisco, there are many freedoms here which are unheard of in almost the entire Middle East region, equal rights for women, for gays, a free press, to name but a few, this is an **open and dynamic society**...

...One in every five Israeli citizens is an Arab, descendants of those Arabs who remained when the state of Israel was formed in 1948.

They were given **full and equal citizenship** and many Israeli Arabs have benefitted from what the Israeli state has to offer like good education and health care...

But in general Israeli Arabs are much poorer than their fellow Jewish citizens; they have fewer jobs and believe they're treated as second class citizens."

The Adviser noted that the broader context makes clear that the reference to an "open and dynamic society" was in relation to gay rights, equal rights for women and a free press, all of which are true and all of which stand out as exceptional in the Middle East.

In relation to the allegation that the programme failed to mention that Israeli Arabs are "deliberately maintained as a minority" as opposed to having the "full and equal citizenship" mentioned in the programme, the Adviser considered that the language at this point was particularly precise. The commentary referred to Israeli Arabs and specifically to those "Arabs who remained when the state of Israel was formed in 1948".

The Adviser noted the Stage 2 finding:

"The question of equal citizenship was based on the Declaration of Independence of 1948 which said there would be 'complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex'. The reality now, of course, may be somewhat different and Mr Ware reflected this on a number of occasions."

As stated in the correspondence at Stage 2, there was considerable space devoted elsewhere in the programme to the situation post-1948. The Adviser noted both in the commentary and in the interviews with Israeli Arabs, Palestinians and commentators, it was stated clearly that neither Israeli Arabs nor Palestinians living in the Occupied Territories enjoyed equal rights alongside Jewish Israelis. Indeed the Adviser noted this was a major focus of the film.

4. There was no mention of the massacres, kidnappings, expulsions, destruction, land theft and the numerous other ill treatments of Palestinians

As noted above, clear signposting of the programme's editorial purpose both in its title and in the opening sequence managed audience expectation about the extent to which the programme would cover wider issues in the Israeli/Palestinian dispute. The Adviser noted above, and continued to note below, where the Israeli viewpoint (or viewpoints) on

the specific issues covered in this programme, included also the reflection of a contrary Palestinian viewpoint.

5. The presentation of Israel as a country under threat is a "Zionist myth"; 1967 was a war of conquest

The Adviser noted the relevant script:

"The West Bank has been under Israeli control since 1967 when Israel defeated Arab armies threatening to attack. Faced with unexpected territorial gains, Israel is reluctant to part with the new territory, fearing the Arabs might strike again."

The Adviser noted the fuller text of the complainant's allegation for this appeal:

"Israel is presented as a country under threat, in 1967 for instance, when the Zionist myth was that Israel had to defend itself against an existential threat as invading Arab armies were about to wipe it off the face of the earth – which General Matti Peled who was involved then, totally denied: The plan was conquest..."

"Facts and points of view keep being mixed: the crucial FACT that the 1967 conquest of the last 22% of Palestine had long been planned becomes 'a point of view'."

The Adviser noted a Stage 1 submission by the complainant in which she quoted an Israeli General, Matti Peled, who had been a military commander in 1967:

"The thesis that.... Israel was fighting for its very existence, was only a bluff."¹⁶

The Adviser observed that there have always been competing narratives about the extent of Israel's vulnerability and whether the various wars in which she has been involved could be characterised purely as defensive wars. The Adviser noted also that those involved in defining events, such as General Peled in the case of the 1967 war, may have a particular perspective. As an IDF military commander in 1967 it may not be surprising that he would have argued both publicly and privately that the Israeli Army was in a strong position.

The Adviser noted separately that General Peled, who shortly after the war became a hero of the left in Israel and a leading advocate for Israeli Arabs and for the Palestinian cause, is also quoted as stating he believed he was leading his troops into a limited war with Egypt, not to conquer territory.¹⁷

The Adviser noted that in the last thirty years some of the strongest evidence that the situation was more nuanced than Israel's earlier writers of history allowed has come from a group of "revisionist" Israeli historians who became known as "the new historians". Avi Shlaim, Professor of International Relations at Oxford University, is a member of that group and is widely respected, including in Arab circles, for his authoritative and well-sourced critique of Israel's military and diplomatic history using primary documentary sources and first hand testimony from some of those most closely involved, on both the Israeli and "Arab" sides.

¹⁶ The Adviser was not able to find a primary source for the citation although it is frequently quoted and has appeared in academic literature about the events surrounding 1967.

¹⁷ <http://www.thehypertexts.com/Mattityahu%20Matti%20Peled.htm>

He did not, however, “revise” the prevailing view of the nature of the 1967 war. This was Mr Shlaim’s unequivocal conclusion in a book which was published in 2000:

“The speed and scale of Israel’s military victory led some observers to suspect that Israel launched the war not in self-defence but in order to expand its territory. Arab observers, in particular, were inclined to believe that Israel deliberately provoked the Six-Day War in order to fulfil its long-standing territorial ambitions. This view is without foundation. The Six-Day War was a defensive war. It was launched by Israel to safeguard its security not to expand its territory. The main enemy was Egypt. The chief aims were to open the Straits of Tiran, to destroy the Egyptian army in Sinai, and to restore the deterrent power of the IDF. Political and territorial objectives were not defined by the government when it gave the IDF the order to strike. War aims emerged only in the course of the fighting in a confused and contradictory fashion.¹⁸”

The Adviser noted that what is generally accepted is that tensions were high, that there was a military build-up of Egyptian forces in the Sinai and that it was this and Syria’s closing of the Straits of Tiran that prompted Israel to launch its pre-emptive strike. She concluded that the evidence demonstrated there was a clear threat of attack to which Israel made the decision to respond. The statement in the programme was in her opinion well sourced, based on sound evidence and presented in clear precise language.

6. The barrier in the West Bank was inaccurately described in the programme

The Adviser noted how the presenter discussed the separation barrier:

“This is the concrete separation wall which was built by the Israelis to separate Israelis from Palestinians, to prevent Palestinian suicide bombers from coming into Israel to target the civilians as they did during the second intifada. A single state would mean dismantling this wall which Israelis have relied on to stop suicide bombing attacks.”

The Adviser noted the detail of the allegation:

“Concerning the Apartheid walls going deep into the West Bank, (the ECU) significantly calls them the ‘separation barrier’ which is being built ‘to keep suicide bombers out’, John Ware failing (sic) to use the precise word segregation. Palestinians are not allowed to use or even cross the roads built for settlers...”

The Adviser did not think there was anything she could usefully add to the ECU’s response at Stage 2, which stated:

“It is clear from the context that it is the view of Israeli Jews that the separation barrier is necessary to ensure their security and provide protection from suicide bombers and the like. I think viewers would have understood that Mr Ware was summarising the position of those Israeli Jews. I would also point out that the programme reflected the Palestinian view of the separation wall, including an interview with activists who staged a protest ‘highlighting Israeli restrictions on their freedom of movement, the fact that they can’t visit Jerusalem without a permit’. I would add that earlier in the programme, Mr Ware explained that Israeli

¹⁸ Shlaim, Avi *The Iron Wall* pp241-242 (paperback edition 2000)

Jewish settlements continue to be built in the West Bank in order to occupy land which would likely form part of any future Palestinian state:

'A viable Palestinian state on the West Bank would require Israel to withdraw from almost all of it but since this was first discussed the number of settlers have tripled and moved ever deeper into the territory. Unlike Ma'ale Adumim they weren't built to strengthen the Israeli border, 350,000 settlers now live here. The faster these settlements grow deep into the West Bank the harder it's surely going to be for any Israeli government to dismantle them by force if necessary in the event of a peace deal with the Palestinians.'

"I believe that this would have helped to ensure that viewers were aware Israel may have other motives beyond security, and that the Palestinians believe Israel is illegally occupying land which is rightfully theirs."

7. The programme wrongly stated the number of settlers in the West Bank

The Adviser noted the relevant script:

"The West Bank may now be home to both Israelis and Palestinians but only the Israelis enjoy the rights that go with citizenship. The Palestinians here are stateless.

"A viable Palestinian state on the West Bank would require Israel to withdraw from almost all of it but since this was first discussed the number of settlers have tripled and moved ever deeper into the territory. Unlike Ma'ale Adumim they weren't built to strengthen the Israeli border. **350,000 settlers now live here.** The faster these settlements grow deep into the West Bank, the harder it's surely going to be for any Israeli government to dismantle them, by force if necessary, in the event of a peace deal with the Palestinians."

The Adviser noted the complainant's submission at Stage 2 stating that the number of settlers was 200,000 more than those quoted in the programme because that figure excluded those settlers in East Jerusalem, which the complainant said was also part of the West Bank.

The Adviser noted that, whilst Israel's annexation of East Jerusalem has not been recognised internationally, from the Israeli Government's perspective it is completely integrated within Israel and the reality on the ground is that it is administered no differently from Israeli "sovereign" territory. The West Bank, she noted, is by contrast administered by Israel as an entirely separate entity. And whilst the number of settlers collectively, including those living in annexed east Jerusalem is the 550,000 or so stated by the complainant, it is clear that at this point in the programme the reporter was referring to the West Bank excluding East Jerusalem. The Adviser acknowledged that it would have been helpful had the script explicitly stated that the figure did not include settlers in East Jerusalem; however, she considered the audience as a whole would have been aware of the area being referred to.

However, the Adviser concluded that the precise number was not the key point in this section. Had the figure been omitted altogether for example, it would not have left the audience any less informed on the key points:

- That Palestinians in this part of the West Bank are currently stateless (by contrast those in “annexed” East Jerusalem can become Israeli citizens and almost all have permanent residency and voting rights in Israeli elections).
- As settlement activity continues “deep into the West Bank” it makes it harder to imagine a viable Palestinian state.

Therefore whilst the Adviser wholly agreed that East Jerusalem is considered part of the West Bank for the purposes of final settlement negotiations, in this specific context she concluded it was duly accurate to exclude from the total quoted those settlers living in East Jerusalem.

8. The programme should have explained why the Palestinians mainly distrust Israel’s motives

The Adviser noted the relevant script:

“But the two state solution is on its death bed and what’s killing it is mutual distrust. While the Palestinians accuse Israel of not being serious about peace, the Israelis feel the same about the Palestinians.”

The Adviser noted the complainant’s allegation for this appeal:

“[The ECU] does not think it was necessary either to explain why there was mainly distrust from the Palestinians who know full well that the Israelis want to keep the almost totality of the West Bank and continue to control it entirely, especially its external borders.”

The Adviser noted the ECU’s Stage 2 response:

“I think the phrase ‘mutual distrust’ implies suspicion or a lack of trust on both sides. Mr Ware reflected the position of both sides. I appreciate you believe there should have been some acknowledgement of ‘kidnappings, assassinations, demolitions, land grab etc’ but I do not believe that was necessary in this context, any more than I think it was necessary at this point to include reasons which might be cited by Israeli Jews.”

The Adviser agreed with the ECU’s reasoning and noted also that the programme explained a great deal about Palestinian scepticism of what a two-state solution might offer. She noted that the programme spelt out the range of views within Israel about what a final settlement ought to look like. David Landau for example suggested that Israel should “just get the hell out of there” and Tzipi Hotovely put the case for total absorption of the West Bank into Israel:

“My vision is that Israel will have the sovereignty on all the territory and in order to understand this is a solution, you need to understand that the idea of separation failed dramatically at 2005...”

The Adviser noted also that the reporter challenged Tzipi Hotovely’s solution by asking her what status Palestinians would have if the West Bank was absorbed into the state of Israel.

The Adviser then noted how, in the sequence with the young Palestinians from Ramallah, the programme reflected the scepticism of a two-state solution being any kind of just solution:

John Ware:

Do you think it's still got life in it or do you think the two state solution is now dead?

Samir Khraisha:

I think it's dead, I don't see even myself involved in this political process if we're talking about the West Bank. West Bank is nothing, it's a few rocks and mountains. 13% of complete Palestine. From my eyes...it's not [about] firing the, the Jewish out, no no not at all

John Ware:

You want to share it with them?

Samir Khraisha:

Share it with them? I want to take my basic rights, that's it

Fadi Quran:

Everyone's going to have to realise eventually that compromises needed to be made on both sides, the problem is, is that no one wants to have a rotten compromise, what I mean by a rotten compromise is that you know, the type of compromise that happens between the master and the slave.

Hurriyah Ziada:

The West Bank for us is a small, is a big prison so putting me and locking me in the West Bank and preventing me to go anywhere I want, preventing me from going to Jerusalem where I was born, preventing me from go to Falujah which is where I am originally from, this is treating me like an animal in a cage. I don't think a two state solution will live because I don't think it's a just solution so we're never gonna have peace without justice.

John Ware:

Sorry what's full justice? Is it one state or two states?

Samir Khraisha:

Full justice simply, simply, simply is going from Ramallah to the beach, having a moment of peace and going back ... all I care is to just go peacefully to move not being shot, not being harassed, not being humiliated in the checkpoints, just peacefully just like that, want to have a beer on the beach, that's it.

John Ware:

While these young Palestinians want one state they don't want what the Israeli right wants, one state whose dominant Jewish character is guaranteed.

In addition the programme noted the continued building of settlements and how it was a "major stumbling block" to any peace deal with Palestinians, because it was making it much more difficult to envisage a Palestinian state with settlements so deep in the West Bank.

The Adviser considered therefore that contrary to the allegation the programme went into considerable detail about the basis for Palestinian mistrust.

9. The programme referred to the "long history of persecution" (of the Jews) but did not mention the long persecution of the Palestinian people

The Adviser noted the relevant script:

John Ware:

Avraham Burg is also a leader of Israel's peace movement, he fears Israelis are in danger of being trapped by their long history of persecution

Avraham Burg:

We came here 70 years ago in order to go out of the pathological relations between the Jew and the non Jew, mainly in the Christian world which, in which we lived in ghettos which we called our villages called shtetls in Yiddish so we had confined communities, confined ghettos, walled ones sometimes we moved to the Middle East and all of a sudden we have here the largest shtetls ever...

We had holocaust and we were traumatised and the world recognised it and we needed a safe haven but ever since we made the trauma our strategy it is not needed anymore, we must start planning, moving from the strategy of trauma to the strategy of trust.

In the Adviser's view the reporter's introduction to Avraham Burg was an accurate paraphrased summary of the subsequent contribution. She noted the substantial evidence in both 20th century and older Jewish history which gives credence to Mr Burg's view. The Adviser noted that the complainant did not allege the observation was invalid. She noted the complainant's allegation was that the programme should have reflected that Palestinians have also been persecuted over a long period.

As noted above, the guidelines do not require that an assertion by one party to the conflict should necessarily be balanced on each occasion by a competing viewpoint. Palestinians have their own distinct history, relevant aspects of which are reflected in the programme.

10. The presentation of Hamas as an extremist group and as the villain that wants "the destruction of the Jewish state"

The Adviser noted the references to Hamas in the script:

1. In the wake of the Arab Spring and not for the first time Israelis are feeling alone. Syria is in flames with the risk of chemical weapons falling into Hezbollah's hands, Jordan where Islamism is on the rise, Egypt now run by the Muslim brotherhood whose core ideology opposes the existence of Israel and Gaza now run by **Hamas** backed by Iran whose President has threatened to wipe Israel off the map and may soon be nuclear armed.
2. Umm Al Fahm has been the centre of Arab Islamic protest against the creation of the Israeli state, this is the heart of what's called the Islamic movement Northern branch, it's a pretty radical movement, it's closely aligned to **Hamas** which seeks the destruction of the Jewish state.
3. So just behind me is the PA Prime Minister's office and I'm now turning into a street called was known by the Israeli's as the engineer because he

designed and built **Hamas** suicide bombs which of course killed dozens of Israeli civilians.

4. Israelis also fear that if they relinquish control of the West Bank to the PA the more radical Islamist group **Hamas** might take over.
5. (Tzipi Hotovely, Likud politician) My vision is that Israel will have the sovereignty on all the territory and in order to understand this is a solution, you need to understand that the idea of separation failed dramatically at 2005 and **Hamas** ruined Gaza and made it a terror, a small terror state.

The Adviser noted that in each of the references in the commentary to Hamas the reporter was reflecting facts rather than opinions. Neutrality is not therefore a relevant consideration. The Adviser noted that all the stated facts about Hamas were demonstrably true. She noted too that the programme did not use the expression "extremist group", and that Hamas is classified by the EU and the US (amongst others) as a terrorist organisation. The only "opinion" voiced in the programme in relation to Hamas was that of the Israeli politician Tzipi Hotovely. She said Hamas had ruined Gaza and turned it into a terror state. Ms Hotovely had been introduced in the commentary as a rising star on Israel's ideological right and the Adviser considered that the audience would therefore have been able to reach an informed judgement on what weight to place on her contribution.

The Adviser noted the fuller text of the complainant's allegation:

"Hamas is presented as an extremist group, the villain who wants 'the destruction of the Jewish state', an expression which seems to be anything but neutral.

"Suddenly, 'the BBC does not have to balance every point of view', i.e. it is not obliged to state the FACT that Israel did wipe Palestine off the map.

"Therefore, for instance, it does not seem to matter if John Ware fails to say that Israel controls the whole of the West Bank: Presumably, the audience does not need to know."

The Adviser noted how the script described the circumstances and fact of Israel's control of the West Bank:

"The West Bank has been under Israeli control since 1967 when Israel defeated Arab armies threatening to attack. Faced with unexpected territorial gains, Israel is reluctant to part with the new territory, fearing the Arabs might strike again."

The Adviser considered that the detail in relation to this was adequate and appropriate to the output, taking account of the subject and nature of the content and the signposting which had clearly outlined the programme's editorial purpose.

11. Mentioning the "biblical land" had the effect of associating the Israelis with the "very land they stole from the present day indigenous Palestinians who are in FACT the people having been there all the time".

The Adviser noted the references in the script to the West Bank as the Jews' "biblical land". She noted that while the majority of the current Jewish population of Israel cannot necessarily trace their lineage directly to biblical times, there is evidence that there has been a continuous Jewish settlement in the region since biblical times. That there is an

historic association between the Jewish people and the land that is now the State of Israel is not a matter of dispute.

Whilst the programme reflected the belief held by some Jews that those biblical links mean the Jewish people have a god given right to all of the land currently occupied by Israel, the Adviser noted also the contribution from the Israeli Jew David Landau who dismissed the notion as irrational and pernicious:

"When Israel found itself in possession of these territories there was this burgeoning, this flowering of this pernicious religious ideology and today this ideology is what fuels the government.

"Does Jewish orthodoxy necessarily entail a desire for the present day state of Israel to impose itself on the whole of the biblical territory which happens to be populated by another people as well as the Jewish people? And my answer to that is a resounding no, the argument is predicated on irrational messianic religion driven thinking not on hard headed politics."

The Adviser noted too the comments of the Palestinian property developer Basher Nasri:

John Ware:

Right next to one settlement legal under Israeli law another construction is under way, this one by Palestinians, it's the largest project in the West Bank today a new city in the making inspired and part funded by Palestinian entrepreneur Basher Nasri...

Basher Nasri:

Yes and this is a settlement of bunch of radicals they don't fit in anywhere even in Israeli society they're er, ultra radical to be part of er, a mean society like this.

John Ware:

So you don't talk much?

Basher Nasri:

We don't talk at all and now they've taken us to court... The basic ground is that this is their land we should not exist.

John Ware:

What even this bit, this is?

Basher Nasri:

That's correct, yes that's their biblical land, I'm not talking about commercial land, this is the land that god promised them and so er, I can't deal with that you know, I don't think they have any legal grounds even an Israeli point of view. The West Bank is not part of Israel...

This is home, this is our nation...

In the Adviser's opinion the programme had adequately and appropriately reflected that a range of views exists on the issue; the inclusion of the "biblical" inheritance claims of the Jewish religious right would have met audience expectation given the stated editorial purpose of the programme. It did not mean the programme supported the validity of those views nor did it signify any rejection of Palestinian claims on the land.

12. The programme avoided stating that the settlements are illegal

The Adviser noted the relevant script:

“...it’s easy to forget that the UN and even most of Israel’s allies have declared these settlements illegal. Israel disputes this; it’s a touchy issue for those who live here.”

The Adviser noted the complainant’s assertion that the programme should have just said they are illegal.

The Adviser did not share the implication behind the allegation that, in the complainant’s view, the language used suggested that a discussion on the legality of the settlements was ongoing. The Adviser considered, as had the ECU, that the use of the word “declared” was definitive and the audience would not have been misled into thinking that the settlements are not considered illegal. In the Adviser’s view, the nuance in the script was to highlight Israel’s isolation and to emphasise that even her allies are not in agreement with her, rather than to avoid a more explicit statement.

Therefore, for all the reasons set out above, the Adviser considered Trustees would be likely to conclude that the programme met the Guideline requirements for due impartiality and due accuracy. She concluded none of the issues raised had a reasonable prospect of success and considered the appeal should not be put before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the Adviser’s decision not to proceed with her appeal. She said that the responses thus far had mixed facts and opinion and that the BBC simply reflects Israeli views.

The complainant reiterated points she had made in earlier correspondence on each of the 12 issues she had raised and received responses for. She made the following substantive additional points to those already raised in her letter of appeal:

- She reiterated that the title of the programme was inaccurate and refuted the assertion that Israel is a legitimate power. She said that, when it applied for membership of the UN, that membership was conditional to a UN resolution concerning repatriation of refugees and the fixing of its borders, both of which have been ignored.
- In relation to 1967, the complainant provided additional sources to support her contention that Israel was not under threat at that time.
- She argued that it is unacceptable that an assertion by one party to the conflict should not necessarily be balanced on each occasion by a competing viewpoint; she said that the Nakba and the years of persecution preceding it should have been mentioned in the programme.
- The programme said that Hamas sought the destruction of the Jewish state and Israel was presented as the victim under threat, rather than as an occupier which destroyed Palestine.

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 the Adviser's decision not to proceed with the appeal she had given detailed responses to all the allegations made by the complainant. The Committee noted that the crux of the complaint is that the programme gave an unbalanced view of the conflict which favoured the Israeli narrative over the Palestinian one.

The Committee concluded that, as detailed in the Adviser's decision not to proceed with the appeal, this was clearly signposted as a programme that would be examining tensions within Israel. The Committee agreed with the Adviser that there would have been no requirement to go into any detail about broader issues in the conflict and that the programme had made clear that a range of other views exist and the weight of those views in relation to the issues being discussed. A viewer of the programme would in the Committee's view have been left with a clear and accurate understanding of the basic roots of the conflict, the basis for Palestinian claims on the territory occupied by Israel and the discrimination and ongoing dangers faced by Palestinians and Israeli Arabs whilst the conflict continues.

The Committee agreed that it would be likely to conclude that this was a factually accurate and duly impartial report.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

Israel: Facing the Future, BBC Two, 17 April 2013

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that her 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. She had made three allegations concerning the documentary, *Israel: Facing the Future*, about the tensions between religious and secular Jews in Israel:

1. The complainant said that the presenter, John Ware, had “repeated the myth” that President Ahmadinejad had threatened to wipe Israel off the map. She said it was a mistranslation: “the word map does not even appear, nor does Israel”. Considering the wider context in which he was speaking, the complainant said the President referred to three regimes which had collapsed: the Shah’s regime in Iran, the Soviet Union and Saddam Hussein’s regime in Iraq:

“He then went on to say that the Ayatollah had said that the regime occupying Jerusalem must vanish from the page of time, and that this statement was very wise.

“It is obvious to any rational person that he was hoping for the collapse of the regime in Jerusalem in the same way as the three regimes he had mentioned disappeared.

“He did NOT express any intention of attacking Israel himself...”

She concluded:

“We all know that President Ahmadinejad is very anti-Israel, but his desire to see Israel disappear is very different from expressing a desire to attack Israel and destroy it himself. Saying that he wants to wipe Israel off the map implies he intends to attack Israel, which is untrue. Therefore it DOES affect the audience’s understanding of Iranian foreign policy to Israel.”

2. The complainant said that the statement by the presenter that the international community regards settlements as illegal although Israel disputes this was presented as though it were a difference of opinion, whereas, she argued, the settlements are illegal as a matter of international law.

3. The complainant contended that the audience was misled into assuming the separation barrier has been built between Israel and the West Bank, whereas it cuts deep into the West Bank, confiscating 9-10% of Palestinian land. She argued that it was part of a land grab; if it had been built solely to stop bombers, they would have built it on the Green Line, the internationally recognised border.

The Trust Unit’s decision

The Trust’s Senior Editorial Strategy Adviser (the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Adviser noted the requirement in the Editorial Guidelines for due accuracy and due impartiality regarding controversial subjects.

The Adviser noted the stated ambition of the programme was to consider the rise of religious nationalism amongst Israeli Jews and how that might impact on the prospects for a two-state solution.

First of all, the Adviser noted that in considering whether a programme met the Guideline requirement for due accuracy and due impartiality, the signposting and likely audience expectations were taken into account. The Adviser noted that the online billing for the programme stated:

"John Ware journeys to Israel for a fresh look at how it has responded to the changes sweeping the region in the wake of the Arab Spring. He meets Israelis from all walks of life to go beyond the news clichés and analyse what is next for the world's only Jewish state as both the religious and the secular battle over its future."

She noted how the editorial purpose of the programme was outlined in the opening pre-title sequence. Whilst the introduction began by noting that the changes of Government in many neighbouring countries in the wake of the Arab Spring had brought a new dimension to Israel's security concerns, its focus was of the challenges from inside Israel, particularly the growth of (Jewish) religious nationalism, and how that might impact on the country and, by extension, the region's future:

"...But as my journey across the Holy Land shows Israel faces new challenges from within the country. The religious population is growing and so are the tensions. There's increasing disaffection from Israel's Arab minority. And yet Israel is also a country that can surprise; what you see here is not always what you are told to expect.

"This is an extraordinary scene, thousands and thousands of Israeli citizens, all of them anti Zionists all of them Jews. Israel is approaching a crossroads, the path it takes could have a huge impact on this the most volatile region of the world and therefore all of us."

The Adviser considered that the content of the programme was consistent with its stated aim as outlined in the introduction, with much of the programme discussing differences between various Jewish factions within Israel about its future – what the programme described as a "battle for the soul of the Jewish state". The Adviser noted the observation in the commentary:

"The one issue that barely registered in the election was Israel's conflict with its Palestinian Arab neighbours..."

The Adviser noted the guidelines do not require that every aspect of the issue is reflected on every occasion. What she considered was important in the context of this programme was that the viewer was able to reach an informed opinion about the proposition of the programme, i.e. what the tensions within Israel as a result of the rise of religious nationalism might mean for the prospects of a two-party state or indeed any solution to the conflict.

The Adviser then considered each of the points raised by the complainant in her Appeal.

1. The programme had “repeated the myth” that President Ahmadinejad had threatened to wipe Israel off the map

The Adviser noted the relevant section of commentary:

“... Hamas (is) backed by Iran whose President has threatened to wipe Israel off the map.”

The Adviser noted the complainant’s assertion, that comments by Mr Ahmadinejad had been wrongly translated and widely misquoted. The Adviser noted her contention, drawing on an article by Arash Norouzi¹⁹ that an accurate translation of the Farsi includes the words “regime” and “Jerusalem” and that the full quote translated into English reads:

“The Imam said this regime occupying Jerusalem must vanish from the page of time.”

The Adviser considered it was clear from the comment that the intention was to communicate that Iran would like there to be no Israel and that this was how Mr Ahmadinejad’s comments had been understood across the world. The nature of the threat posed by the statement was not discussed further in the programme. She noted too that the Iranian President had not then or since chosen to issue any clarification, that the translation had first appeared in a report from the Islamic Republic News Agency (IRNA), the official news agency of the Republic of Iran, and that comments from Mr Ahmadinejad throughout his presidency consistently showed him to be hostile to Israel. For example, she noted that even as recently as February 2013, ahead of his speech at the United Nations, the then President Ahmadinejad angered UN diplomats by talking of Israel’s future elimination.

The Adviser noted the reference in the complainant’s appeal to a refusal by the 25,000-strong Jewish community in Iran to emigrate to Israel as recently as 2007 and her contention that Jews in Iran are very well treated. The Adviser did not consider it relevant to the issue being considered in this appeal, which related to the then Iranian Government’s stance towards Israel and not to the Jewish people as a whole.

In deciding that the allegation should not proceed to appeal the Adviser considered whether the audience would have been left with a misleading impression of Iran’s intentions towards Israel by the reference in the programme. The Adviser acknowledged that “wipe off the map” was not a literal translation into English from the Farsi but did not accept that the literal translation that the “regime occupying Jerusalem must vanish from the page of time” was materially more benign. She did not think either that in this context, there was a substantive difference between the literal reference to the “regime in Jerusalem” and the translation into the single word “Israel”. There had been no indication from any of the President’s public statements that any Jewish state would have been acceptable to him. Furthermore, he had been explicitly invited to clarify what he said, and had chosen not to.

Finally the Adviser noted, as had the ECU at Stage 2, a decision by the BBC Board of Governors in 2006, which upheld the translation as duly accurate (it was with reference to the use of the quote during an edition of *Sunday AM*):

¹⁹ <http://www.antiwar.com/orig/norouzi.php?articleid=11025>

"The Committee noted the inherent problem with accuracy in translations. It noted that all the translations varied to a greater or lesser degree, and it was difficult to decide which, if any, was the most accurate. ...

"The Committee felt that the language used by the Iranian President was highly emotive by its nature and had been recognised as such in the international condemnation of what he had said. ...

"I therefore do not believe the use of the quote was misleading or that it was a breach of the impartiality guidelines.²⁰"

The Adviser noted that it was unlikely that the Editorial Standards Committee would consider it appropriate or necessary to revisit a decision made by its predecessor committee on the Board of Governors and that there was no recent evidence which would give it any reason to do so.

The Adviser therefore considered that Trustees would be likely to conclude that the reference in the programme to Iran's intentions towards Israel was duly accurate and did not mislead the audience.

2. The statement in the programme by John Ware that the international community regards settlements as illegal, but Israel disputes this was presented as though it were a difference of opinion.

The Adviser noted the relevant script:

"...it's easy to forget that the UN and even most of Israel's allies have declared these settlements illegal. Israel disputes this; it's a touchy issue for those who live here."

The Adviser noted the complainant's assertion that the presenter failed to make clear that the settlements are illegal under international law; she contended that merely stating that the UN has declared them illegal is not the same thing.

The Adviser considered, as did the ECU, that the use of the word "declared" was definitive and the audience would not have been misled into thinking that the settlements are not considered illegal. In the Adviser's view, the nuance in the script served to highlight Israel's isolation and to emphasise that even her allies are not in agreement with her, rather than as the complainant contended, to avoid a more explicit statement.

Accordingly, the Adviser considered Trustees would be likely to conclude that the reference to the legal status of the settlements was duly accurate.

3. The audience was misled into assuming the separation barrier has been built between Israel and the West Bank, whereas it cuts deep into the West Bank, confiscating 9 to 10% of Palestinian land

The Adviser noted how the presenter discussed the separation barrier:

"This is the concrete separation wall which was built by the Israelis to separate Israelis from Palestinians, to prevent Palestinian suicide bombers from coming into Israel to target the civilians as they did during the second intifada. A single state

²⁰ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/govs/apps_aprjun06.pdf

would mean dismantling this wall which Israelis have relied on to stop suicide bombing attacks.”

The Adviser noted the detail of the allegation, which was that the presenter:

“stated that Israel had built the barrier to stop bombers, but did not mention that it was built on Palestinian land and is part of a land grab. If the barrier had been built solely to stop bombers they would have built it on the Green Line, the internationally recognised border.”

The Adviser did not agree with the complainant that the audience would have been left with the impression that the separation barrier has been built on Israeli land. At this point in the programme the discussion related to Israel’s stated motivation for building the barrier. Elsewhere in the programme the Palestinian view of the barrier was reflected and the audience was clearly informed that Israel occupies large areas of land set aside for an independent Palestinian state, building settlements which are considered illegal by the international community. The Adviser shared the view taken by the ECU Complaints Director at Stage 2:

“I believe that this would have helped to ensure that viewers were aware Israel may have other motives beyond security, and that the Palestinians believe Israel is illegally occupying land which is rightfully theirs.”

The Adviser noted that the guidelines do not require that a programme includes specific information, particularly when it has signposted its main editorial purpose (in this case to explore the rise of Jewish Israeli religious nationalism). The Adviser was satisfied that across the programme due weight was assigned to a key perspective in the conflict, what the complainant described as Israel’s “land grab” in the West Bank. In the context of this programme, the precise issue of the route of the separation barrier did not require to be covered in any greater detail in order for the programme to achieve due accuracy and due impartiality. Therefore, on this point too, the Adviser considered that Trustees would be likely to conclude the programme was duly accurate and impartial.

Therefore, for all the reasons set out above, the Adviser considered Trustees would be likely to conclude the programme met the Guideline requirements for due accuracy and due impartiality and the appeal did not have a reasonable prospect of success. Therefore she did not propose to put the appeal before Trustees.

Request for review by Trustees

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

In relation to her allegation that reference in the programme to a comment by President Ahmadinejad had been inaccurate, the complainant reiterated points made earlier in her letter of appeal, adding responses with references to the Adviser’s decision. She said the Adviser had ignored the context in which the comment was made and the President’s reference to three regimes which had collapsed. She cited quotes attributed to President Ahmadinejad since his original comment which she said made it clear that he expected Israel to disappear through a decision of the people, but not that he would destroy it himself.

She refuted the legitimacy of using as evidence the fact that the official Iranian News Agency had used the words “wipe off the map”, saying that Iran’s Foreign Minister had made attempts to clarify the President’s words but had been ignored.

She continued to assert that the BBC does not make it clear that settlements are illegal in international law.

With regard to her allegation in relation to the purpose of the separation barrier, the complainant disagreed with the Adviser’s decision, asserting that unless people are very well informed they would naturally assume the wall was built along the Green Line and that the information in the programme, and that which was omitted, reinforces that impression.

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 the Adviser’s decision not to proceed with the appeal she had given detailed responses to all the allegations made by the complainant.

With reference to her assertion regarding the interpretation of comments made by President Ahmadinejad, the Committee concluded that it would be likely to find the brief reference in the programme to have been duly accurate, and that the audience would not have been misled on his attitude towards Israel. The Committee noted that despite others on occasion offering an interpretation of his remarks more benign perhaps than the initial translation by the Iranian News Agency, no evidence had been produced that the President had claimed he had been misquoted, despite a number of specific invitations for him to do so.

With regard to the characterisation of the legal status of settlements, the Committee agreed with the Adviser’s view that the statement in the programme was definitive on the matter and that the reference to Israel’s dissension emphasised that country’s isolation rather than giving the audience the impression that there was any doubt that settlements are illegal in international law.

In relation to the allegation regarding the purpose of the separation barrier the Committee noted that the programme had discussed what it called Israel’s “land grab” in the West Bank on more than one occasion. The Committee therefore agreed with the Adviser that there was no specific requirement that the programme reflect greater detail on the range of issues surrounding the separation barrier, particularly in the context in which it was discussed in the programme. Given the repeated references to Israel’s illegal settlement building and its continuing occupation of land set aside for a future Palestinian state, the Committee did not agree with the complainant’s view that the audience would have assumed from the commentary that the separation barrier was built on the Green Line.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

HARDtalk, BBC News Channel, 18 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 (ECU) not to uphold his complaint. The allegations concerned an interview by Stephen Sackur with Dani Dayan, chairman of the Israeli settler movement.

The complainant raised a range of issues in relation to the accuracy of the programme.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser ("the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Adviser noted the references to "due" accuracy in the Introduction from the Accuracy section of the Editorial Guidelines.

The Adviser noted that *HARDtalk* was a well-established long-form interview programme. The programme's webpage stated:

"In-depth interviews with hard-hitting questions and sensitive topics being covered as famous personalities from all walks of life talk about the highs and lows in their lives."

The Adviser then proceeded to consider each aspect of the complainant's appeal.

First, the Adviser considered the complainant's allegation that the opening section of the programme was misleading, and that the inclusion of the word "arguably" in the following sentence, did not make it less so:

"Arguably the most right-wing government in Israel's history may soon be replaced by a government even further to the right."

She noted the complainant's assertion that, "The Netanyahu government is very far from being the most right-wing government in Israel's history". She noted the complainant's arguments in support of his claim, such as Mr Netanyahu's Bar Ilan University speech in support of a two-state solution and the deals he had made with Yasser Arafat. She noted too the complainant's assertion that, in contrast, Yitzhak Shamir, was further to the right than Mr Netanyahu.

The Adviser took the view that it was not possible to compare directly the responses of the respective prime ministers to specific issues, given the many other factors – both inside and outside Israel – which might distinguish the response of a Shamir premiership on such issues from that of a Netanyahu administration.

The Adviser considered that because the Israeli government prior to the election had been a coalition of parties, the statement that it was "arguably the most right-wing

government in Israel's history" was a clear reference to the political stance of some of the members of his governing coalition prior to the election rather than being a reference only to the character of Mr Netanyahu or his Likud Party. She felt this interpretation was reinforced in the remainder of the point, in which the interviewer defined why the next government may be "even further to the right".

The Adviser took the view that the context in this case was relevant to whether the comment was duly accurate. She considered Trustees would be likely to conclude that it was clear that the opening commentary was intended to set up the interview with Dani Dayan and to discuss his views on the election platform of Jewish Home, a likely partner in a future coalition government, and the support of Jewish Home for annexation of large chunks of the West Bank in preference to a two-state solution.

The Adviser noted that the interviewer was positing one scenario for what might happen following the election, that it was nuanced and tentative and its clear editorial purpose was to set up the interview with Mr Dayan rather than to argue that a particular outcome was more likely than another. She noted, as had the ECU, that the interviewer followed his opening comments by posing a question to his guest:

Stephen Sackur:

The centre of gravity of Israeli politics is shifting ever further to the right – is that the way you see it?

Dani Dayan:

No I am not sure. I think that the outcome of these elections will not be very different from the previous one. By the way I am not sure the elections are already decided, I'm not sure even Mr Netanyahu's victory is a fait accompli. You know Israeli public opinion is very volatile.

The Adviser noted the complainant's assertion:

"The picture that Sackur was painting was one in which the Israeli electorate had voted against peace in the previous election and were likely to vote for even more hardliners in the new election and the premise was wrong as was the scenario he painted for the future."

The Adviser considered that the reference to a right-wing government prior to the election did not also include the assumption that it had been a vote against peace as the complainant suggested. She noted also that the programme was broadcast before the election had been held, and while the result turned out differently from the possible scenario the interviewer had posed, it was, at the time of broadcast, one possible and credible outcome. She felt too that, given the presenter's long association with the region, as a former foreign correspondent based in Cairo and Jerusalem for a number of years, he was qualified to make a professional judgement based on the evidence as to the political climate surrounding the election.

The Adviser noted for example an article published on the same day as the *HARDtalk* broadcast, in the left-leaning Israeli newspaper Haaretz which was headlined:

"The Likud-right-religious bloc ahead by a large margin"²¹

²¹ <http://www.haaretz.com/weekend/week-s-end/garbage-time-the-likud-right-religious-bloc-ahead-by-a-large-margin.premium-1.494801>

The Adviser noted the complainant's assertion that because the Palestinians were "refusing to negotiate", Israelis were voting on other issues, such as the economy. While the Adviser accepted that the Israel/Palestine conflict was not a key theme in the election, it did not therefore follow that after the election, issues such as the annexation of parts of the West Bank (in the event that Jewish Home was part of the new government) would not force their way onto the agenda.

Accordingly, the Adviser concluded that were this point to proceed to appeal there would not be a reasonable prospect of success.

The Adviser considered next the question put by the presenter to the interviewee regarding the likelihood of Israel annexing 60% of the West Bank, "If you want it to happen and a majority of Israelis decide they want it to happen, why shouldn't it happen in terms of the Israeli government and its policies?"

The Adviser considered the complainant's assertion that there was "never any prospect of a majority of Israelis wanting 60% of the West Bank to be annexed".

The Adviser noted the question was posited on the scenario set out in the introduction, that Jewish Home might have a significant role in the new government after the election if they won the number of seats that some commentators were predicting. The presenter asked whether his guest supported annexation and the guest said that he did, but that there was no prospect of it happening, making the very point that the complainant made, i.e. that there was not enough support for annexation.

The Adviser considered the complainant's argument that no opinion poll in Israel had ever come close to showing that that was what the Israelis wanted. The Adviser noted that in the absence of any ongoing peace process at the beginning of 2013 annexation was a "solution" which had significant, albeit minority, support within Israel and was the official policy of Jewish Home, the party that it was predicted might increase their representation in government following the election. Given that the interview was clearly signposted as a discussion of Jewish Home's policy on annexation, the Adviser concluded it was an editorially justified question and would have met audience expectations.

The Adviser therefore did not consider the point would have a reasonable prospect of success were it to proceed to appeal.

The Adviser considered next the complainant's assertion that Jewish Home was not as the presenter stated, a new party, but rather a new name for an old party which had been around for a long time.

She noted the relevant comment by the presenter in the programme which provoked the allegation, "We have seen the rise, frankly from nowhere, of this new party, Jewish Home".

She noted how the complainant put the allegation in his letter of appeal:

"It was misleading to talk of the new party in Israel that would do well in the elections being of the hard right. The genuinely new party in Israel that performed outstandingly well in the election was Yesh Atid, which is/was certainly not a party of the hard right."

The Adviser accepted that since the establishment of Jewish Home in 2009 as the renamed National Religious Party (NRP) and mergers with other smaller parties in Israel,

Jewish Home had gone through a number of identity changes, picking up and losing entities in the process. She acknowledged that by the 2009 election it was in effect just a renamed NRP, because all the parties it had merged with had by 2009 demerged.

However, the Adviser noted that Jewish Home's new leader, Naftali Bennett, was only elected to the position two months before the election and had not even been a member of the party at the 2009 election. She also noted that leading up to the 2013 election, sections of the crumbling National Union collection of nationalist and right-wing parties, some of which had been part of Jewish Home prior to 2009, re-merged with Jewish Home to fight the election on a joint list. This made it more than just a renamed National Religious Party as the complainant contended.

The Adviser concluded that the presenter's comment could reasonably be interpreted as the party being "newly on the map", that while it may have existed before, under the new leadership of Naftali Bennett, it was now on the radar and had an extra dimension from the deal with the remnants of National Union. The Adviser noted that the party went into the election with just three seats from 2009 and that they increased their representation by 400%, seats in the 2013 election and Jewish Home was now the fifth largest party in the Knesset.

The Adviser therefore did not consider the point would have a reasonable prospect of success were it to proceed to appeal.

The Adviser considered the complainant's next allegation concerning the following exchange:

Dani Dayan:

I think that Mr Netanyahu is beginning to understand what I may humbly say I understood quite a long time ago. That after Mr Olmert's offer to the Palestinians that they rejected, that was an offer that included withdrawal from virtually all of Judea and Samaria, territorial swaps one to one, division of Jerusalem, internationalisation of the Holy Basin in Jerusalem. You can read Condoleezza Rice's memoirs, she said she couldn't believe her eyes how far-reaching was Mr Olmert's offer. And Mahmoud Abbas rejected it. Then there is not going to be a two-state solution. Not because of us, because of the Palestinians. Because of their rejection.

Stephen Sackur:

I don't want to go into this history for too long there are other important things to discuss.

Danny Dayan:

This is the important thing.

Stephen Sackur:

We know the Palestinians never believed for one second that Olmert could deliver that deal, so that is by the by. Let us stick to this analysis of what is happening to Israel's attitude to the Palestinian state.

The Adviser noted the complainant's allegation that the comment by the interviewer, "We know that the Palestinians never believed for one second that Olmert could deliver that deal [in 2008]", was inaccurate.

She noted that the presenter did not suggest that his guest had inaccurately described what was on the table, he commented rather that there might be another reason why a deal never came about and explained that he wanted to leave history behind and talk about the analysis of the present. Earlier in the interview the presenter said to the interviewee that when he has Palestinians on the programme he puts questions of that sort to them, but that here he wanted to focus on what the interviewee thought.

The Adviser noted that the reasons why a peace deal was not agreed in 2008 remained disputed and that it was not a settled issue as the complainant implied in his appeal. She noted the citations in the appeal, in particular the interview with Palestinian negotiator, Saeb Erekat, in the Jordanian newspaper, Al-Dustour, and Mr Abbas's comment that "the gaps were wide". However, she took the view that it was conceivable that, given the absence of any written record of what was offered and/or what was rejected, each of the principal parties might have had their own reasons for advancing a particular version of events.

The Adviser noted what evidence there was to support the narrative suggested by the presenter, namely that the Palestinians never believed that Olmert could deliver. The context for this was that Olmert was at the end of his premiership and considered both inside and outside Israel to be something of a lame-duck prime minister. There was therefore a view that Erekat would have little to gain by making concessions to someone who was unlikely to be able to deliver and would not be around to see the process through. This has also been widely reported by respected commentators as the real reason the deal never happened.

The consideration therefore in the Adviser's view was whether the programme reflected the principal narratives in this disputed question. She concluded that the exchange which preceded the presenter's comment in which the interviewee was given space to explain in considerable detail what he understood to have been offered and rejected did this, along with frequent references throughout the interview by the interviewee to his view that it was the Palestinians who had rejected the two-state solution and not Israel who had failed to deliver it.

The Adviser therefore did not consider the point would have a reasonable prospect of success were it to proceed to appeal.

Finally, the Adviser considered the following comment by the presenter, which the complainant had also objected to:

"He (Naftali Bennett) wants to annex, as soon as possible, annex 60% of the land of the West Bank which internationally is regarded as occupied land, illegally occupied land which should be handed over as part of a peace process."

She noted the complainant's contention that the occupation of the West Bank is not considered illegal. She noted too his assertion that it is not currently part of any settlement.

However, she also noted the BBC's position, that the West Bank is under Israeli occupation and that actions carried out there such as the building of settlements are considered illegal under international law. She noted the UN resolution 242 which was passed shortly after the Six-Day War and called on Israel to withdraw from the territories it had occupied in the recent conflict.

The Adviser noted the response from the ECU on this point, which stated:

"...the position of the BBC is that the West Bank is considered to be occupied by Israel because that is the UN position that has been accepted internationally. The question of whether that occupation is illegal is rather more open to question. However, as you can see from the transcript above, Mr Sackur referred to 'illegally occupied land'. He has told me that the phrase he used was intended to be a direct reference to the many Jewish settlements which now 'occupy' a substantial chunk of the land mass of the West Bank. Those settlements are, as you are aware, regarded as illegal under international law according to the UN Security Council (although Israel rejects that assertion). I can see why you might believe the language he used was open to misunderstanding or misinterpretation but I do not believe it can be regarded as seriously misleading. Mr Sackur made the comment in the context of a live interview and bearing in mind the view of the international community towards the building and expansion of the settlements, I do not believe this part of the programme would have given viewers a materially misleading impression."

Whilst the Adviser accepted that in any final settlement there is likely to be some land swap and that some of the territory referred to by Stephen Sackur may in that event become sovereign Israeli territory, its current status is that it is occupied and that it is claimed by Palestinians for their future state.

She then considered the context. The comment was specifically referring to the land which Jewish Home wish to annex, comprising 60% of the West Bank. She noted that it was designated as Area C in the Oslo Accords and is where the vast majority of Israeli settlements have been built, that settlers outnumber Palestinians here by 2 to 1, and that these are considered illegal under international law.

The Adviser accepted that the reference could have been more precise and less open to interpretation. However, she considered that it was a passing comment in the context of a live interview, in which the various perspectives on the future of the territories were covered in considerable detail. She therefore agreed with the ECU that it was not seriously misleading.

Accordingly the Adviser considered the complaint did not have 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 made the following substantive new points in response to the Adviser's decision:

- Most settlers are in the settlements for economic rather than ideological reasons and the suggestion that a (Netanyahu) government may depend on hardliners who support annexation of large chunks of the West Bank for its majority was misleading.
- The possibility that the right would dominate the Knesset was not presented as one possible outcome, it was presented as close as practically a sure thing.
- Haaretz is a left-wing paper and the stance it took in the article quoted by the Adviser was to ensure that the left-wing turned out to vote.

- The article quoted went on to quote the leader of Jewish Home saying Greater Israel is not the main focus of his party and they would work, as ministers, on behalf of all the people of Israel.

The complainant sent a further response asking that the Committee take into consideration the legal views of the ICRC with regard to occupation²² as contained in the following report and an article on the Ma'an News Agency website.²³

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 two letters from the complainant asking the Committee to review her decision.

The Committee noted that the complainant did not accept the reasoning given by the Adviser not to proceed with the appeal.

The Committee noted the additional arguments put forward by the complainant in his challenge.

The Committee was comfortable that the use of the word "may" in the introduction suggesting that a future Israeli government could be (arguably) the most right wing ever, ensured it was signposted to the viewer as a possible outcome. The Committee did not agree that it was presented as a "sure thing", as the complainant maintained in his response.

The Committee noted that the purpose of interviewing someone like Mr Dayan, who comes from a specific perspective on the issue of the future of the Israeli settlements in the West Bank, was to draw out and test his views on that issue. Therefore, as noted in the Adviser's decision, it was wholly appropriate that the interview focussed on where the debate lay within Israel on the options for the future of the occupied territories. That there may be no realistic prospect of Israel annexing the West Bank was allowed for and covered in the exchanges between the presenter and guest.

In relation to what might have been offered and rejected during peace talks in 2008 the Committee noted the complainant's response but considered that the Adviser had explained why she considered the discussion of the issue had been duly accurate, and that the exchange had included Mr Dayan's detailed summary of what he understood was on the table at the time.

The Committee considered the Adviser's decision had comprehensively explained why it was duly accurate for the presenter to refer to Jewish Home as a new party in the context of the discussion.

In relation to the additional evidence supplied by the complainant in regard to the ICRC report, the Committee did not consider its observations as to whether Gaza can be considered occupied (notwithstanding the report's notation that its findings do not reflect agreed ICRC policy) had any relevance to the issues considered in this appeal; neither did the article from the Ma'an News Agency, also cited by the complainant in his second response, have any relevance to the issues considered in this appeal. The Committee

²² <http://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>

²³ <http://www.maannews.net/eng/ViewDetails.aspx?ID=636525>

observed that this appeal concerned the question of whether the West Bank is occupied by Israel, rather than whether the Gaza Strip is so occupied.

The Committee agreed that it would be likely to conclude that this was a factually accurate and duly impartial interview.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

PM, BBC Radio 4, 21 December 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about an interview with a contributor on Radio 4's *PM*. The interview had been pre-recorded and it was conducted by the programme presenter during a visit to the contributor's home. The contributor had previously featured on the programme and had described the decades he had suffered with depression and panic attacks.

The programme presenter described how the earlier interview had prompted a very strong response from the audience and so, in a new interview, the programme wanted to see what progress he had been making. In the new interview, the contributor described how he had taken a journey on his own from Neath to Swansea, that he was now able to go to the cinema and to local restaurants and that his life had radically improved. The contributor said "Christ" or "Jesus Christ" several times during the interview – at points when he was remembering particularly striking moments during the intervening months. For example, when he was aware of the public response to his first interview, when he walked into an old café for the first time and when he was remembering the moment that he came close to taking an overdose.

The complainant contacted the BBC, via the BBC Trust, the same day the programme was aired. He complained about blasphemous language in the broadcast and stated: "I think that disrespect to people's religious beliefs should be prevented." He queried whether blasphemous terms could not be edited out of pre-recorded interviews and whether contributors who were interviewed live could be "required to refrain from such utterances".

The complainant received responses at Stages 1 and 2 of the complaints process. At Stage 1, the programme's Assistant Editor argued that the contributor did not intend to offend but had used the term as an expression of surprise. At Stage 2, the Head of Editorial Compliance & Accountability, BBC News, acknowledged the offence felt by the complainant but stated that the Editorial Guidelines do not require that the terms used should not be broadcast – merely that content should meet "generally accepted standards", so that they are within the general expectations of the audience. She also cited a conclusion of Ofcom that:

"The phrase 'Jesus Christ' was also considered generally acceptable by many across both the general UK sample and minority groups, because it is frequently used in everyday life and not usually used in a context which is likely to offend people."

The Head of Editorial Compliance & Accountability added that other terms suggested by the complainant as offensive when used casually – such as "Allah" – are not used as common expressions of surprise, anger or frustration in the same way.

The complainant appealed to the BBC Trust on 24 July 2013. He argued that BBC policy should be changed to prevent occurrences of blasphemy, stating: "...the Second of the Ten Commandments prohibits in all circumstances the disrespectful use of God's name".

He disputed the research carried out by Ofcom referred to by the Head of Editorial Compliance & Accountability, BBC News, and considered the position that the words used in the *PM* broadcast met generally accepted standards – including among minority groups – “inherently untenable” as far as it related to Christians within those groups.

The Trust Unit’s decision

The Trust’s Senior Editorial Complaints Adviser (the 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 considered the relevant section of the Editorial Guidelines that applied were those related to Harm and Offence and to Religion.

She noted that the Editorial Guidelines required programme makers to balance the right to freedom of expression against the requirement not to cause unjustified offence. However, she noted that the Editorial Guidelines did not require that programmes should never cause offence – which would be an impossible expectation – but that there needed to be editorial justification if material was to be broadcast which was potentially offensive.

She noted that broadcast material should meet “generally accepted standards” and that programme makers’ understanding of what constituted “generally accepted standards” should be informed by relevant research.

The Adviser noted that the BBC had referred at Stage 2 to relevant research to support its position that the language used was within “generally accepted standards”. She noted that the complainant disputed the research, yet no evidence was produced that suggested the research was invalid. She noted that the Editorial Guidelines accepted that “...Different words cause different degrees of offence in different communities” and that the religious words used had caused a great deal of offence to the complainant. However, that did not mean that they fell outside “generally accepted standards” and, as the BBC had explained at Stage 1 and Stage 2, they formed part of everyday language for many people, who did not find them offensive in the way the complainant did.

The Adviser noted the Ofcom research showed that use of “Jesus Christ” to express surprise was now considered generally acceptable – notwithstanding that it had the potential to cause great offence to some people. In the case of *PM*, the interviewee was describing how he had managed to turn his life around after years of depression and of not being able to leave his house. The interviewee was clearly emotional and said “Christ” or “Jesus Christ” to emphasise particularly striking moments he was recalling – he did not use the words in a way that was either abusive or intended to denigrate Christianity.

She considered the impact and value of the item depended heavily on hearing the interviewee’s story in his own words – and that the Editorial Guidelines on bleeping reflected that. The Adviser considered Trustees would be likely to conclude that the inclusion of “Christ” or “Jesus Christ” in these circumstances was editorially justified, despite the offence it might cause to some. Therefore she considered the appeal did not have a reasonable prospect of success and should not proceed to 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 fact that the phrase in question was used as an expression of surprise is not mitigation but is in fact the essence of his complaint.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Complaints 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 acknowledged the complainant's concern about blasphemous language in the broadcast which he found disrespectful to his religious beliefs.

The Committee noted that the Executive had apologised if any offence had been caused but explained that it would have been difficult to edit out the words in question; no offence was intended and in the opinion of the Executive the inclusion of the words was editorially justified.

The Committee noted that content should meet "generally accepted standards" for Harm and Offence in terms of the general expectations of the audience. The Committee did not believe it would be likely to conclude that the phrase "Jesus Christ" fell outside generally accepted standards, and also noted the context of the words spoken by a man describing the suffering he had experienced for many years as a result of depression and panic attacks.

The Committee agreed with the view of the Trust's Adviser who had noted in her response that the Editorial Guidelines did not require that programmes should never cause offence, but that there should be editorial justification if material was broadcast which had the potential to cause offence. The Committee was of the view that it would be likely to conclude there was sufficient editorial justification in this context. The Committee agreed with the comments of the Adviser that

"The interviewee was clearly emotional and said 'Christ' or 'Jesus Christ' to emphasise particularly striking moments he was recalling – he did not use the words in a way that was either abusive or intended to denigrate Christianity."

The Committee also believed it would be likely to conclude that the complainant had not presented evidence to support his disagreement with the results of the Ofcom research about language which indicated that the use of the words "Jesus Christ" to express surprise was now considered generally acceptable, even though it did have the potential to cause great offence to some people.

The Committee did not consider that this appeal had any reasonable prospect of success.

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

Coverage of the Israel/Gaza conflict, BBC News Online and BBC Television, November 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Compliance and Accountability, BBC News not to uphold her complaint. It related to BBC News' coverage of the conflict between Israel and Gaza during early November 2012.

She alleged that in the lead-up to Israel's Operation Pillar of Defence in November 2012, the BBC reporting on television and online was:

"...hugely biased in favour of the Israelis, it appeared to deliberately mislead the public by not reporting certain aspects of the increasing violence, and by making out that everything was the fault of the Palestinians...

"...the ramp-up of Israeli violence towards the Palestinians went unreported by the BBC and then was later made out to be as a result of Palestinian rockets fired into Israel. The BBC Trust must again look at the escalating violence between Israel and Gaza in the weeks preceding al-Jabari's death and then give an honest appraisal of its television coverage, which I believe to be in the main unfair and biased and giving too much weight to the Israeli viewpoint."

The complainant cited a number of articles which had been published on BBC Online in support of her appeal.

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The issues raised in the appeal potentially engaged the guidelines on Accuracy and Impartiality relating to controversial subjects.

The Adviser considered the "active" phase of the issue, during which a range of significant views was required to be reflected would be from 14 November (the date of the assassination of Ahmed Jabari) until 21 November when the ceasefire came into force.

The Adviser noted that the original complaint was that the prominent coverage given to the deaths of three Israelis in a rocket attack from Gaza on 15 November was not balanced with similar treatment of events in the preceding days in which Palestinians had been the victims. She noted also the second complaint, lodged on 17 November, querying the editorial justification for an online article detailing why Israel was concerned about Hamas's arsenal of rockets.

The Adviser noted that the earlier incidents supplied by the complainant, which she said had received little or no coverage, all preceded Israel's assassination of the Hamas

Military Commander on 14 November. It was only following this event, and Israel's subsequent initiation of a major air and sea bombardment of Gaza, that the conflict came to dominate the headlines internationally. It was therefore, in the Adviser's view, entirely understandable that the earlier events highlighted by the complainant did not make the television news running orders and any decision to omit or include such content would have been a legitimate exercise of editorial judgement: the depth and breadth of the BBC's output on any of its platforms on any one day is determined by a range of factors, including what else is happening on the day and what in the opinion of programme makers would be of interest to a domestic audience. There would therefore be no requirement or audience expectation for coverage of events which might nevertheless feature prominently in the region itself. The Adviser observed that the BBC website has considerably more scope to include additional material as it is not space limited in the same way as, for example, television news.

The Adviser noted the detailed responses at Stages 1 and 2, supplying links to a range of items published on BBC Online throughout the period. She noted too the complainant's assertion that the examples either post-dated her complaint and were therefore irrelevant, or failed to answer her allegation for another reason.

The Adviser made the following observations in respect of those points:

With reference to the assertion in the complainant's appeal that the BBC had not mentioned Gaza was under attack from the sea, she noted that this was not the case. Whilst the Adviser noted that the links supplied in the Stage 2 response were all to BBC Online articles which post-dated the date of the complaint, the complainant could equally have been supplied with other examples which did not, such as this BBC Online article published on 15 November (<http://www.bbc.co.uk/news/world-middle-east-20346545>) which stated:

"Israel's aerial and naval bombardment of the Hamas-run Gaza Strip is its most intense assault on the Palestinian territory since it launched a full-scale invasion four years ago, also in response to rocket fire."

And an item on *BBC Newsnight* on 14 November in which the reporter said:

"Naval strikes have also been launched tonight"

The Adviser also observed that there was no requirement that programme makers include specific information and that in her opinion what was important was that the scale of Israel's offensive was reported with due accuracy. She noted that across the output on radio, television and online the nature and scale of the operation and the casualties (on both sides) were accurately and consistently reported throughout the week-long Israeli offensive.

With reference to the assertion that the report of three Israelis killed by Hamas rockets was given undue prominence in relation to the lack of coverage of the previous two weeks of Israeli provocation, the Adviser noted the examples supplied at Stage 2, including this online report: <http://www.bbc.co.uk/news/world-middle-east-20258541>; and a number of additional articles in the previous few weeks on the BBC website which registered the increasing tension in the region, which had reflected most of those events which the complainant alleged the BBC had failed to cover.

The Adviser did not agree with the complainant that the 11 November article on the BBC website noting Israel's explanation as to why it had killed the six Palestinians meant that

the BBC had given credence to Israel's viewpoint. As noted at Stage 2, it is incumbent on the BBC when there are competing narratives, or facts are disputed, to signal this to audiences. In this instance the Israeli viewpoint was attributed as such and not reported as fact. As noted earlier, the absence of the story from television news bulletins would have been a legitimate exercise of editorial judgement and not an issue that can be tested against the requirements of the editorial guidelines.

Regarding the complainant's allegation that the BBC had failed to mention that an Israeli tank had entered Gaza and that the Palestinians were defending themselves; the Adviser noted an earlier article, published on the BBC website on 9 November which noted the Israeli incursion <http://www.bbc.co.uk/news/world-middle-east-20258541> within a story which was reporting the death of a Palestinian boy, hit by rounds from an Israeli helicopter.

The Adviser noted the complainant's assertion that the additional context on the website which she was referred to in the responses at Stages 1 and 2 was irrelevant as it was not on BBC (TV) News and was not on the website at the time of her complaint. The Adviser noted again the greater scope on BBC Online to cover stories from the region, compared with the time restrictions for television news. She noted that the potential audience for the BBC website was greater than that for UK domestic news bulletins and potentially might include significant readers from the region itself. These were all legitimate editorial considerations in her view. She noted too that television news viewers were frequently alerted to the additional context provided on the BBC website with both verbal references and on screen notifications. With regard to whether any of the additional context was available at the time the complaint was lodged, the Adviser noted that all items on the BBC website include cross-references to other similar items from the region. During the active phase of the offensive the Adviser noted that the related links were copious and very closely related to the main story.

Next the Adviser noted the complainant's assertion that the BBC fails to challenge Israelis even when the facts are unverified or when an incident has just happened. The Adviser noted that the complainant gave no specific examples and she noted also that the allegation had not been made previously in the course of the complaint. As the complaints procedure required that the relevant part of the BBC Executive (in this case BBC News) should have the opportunity to respond to an allegation prior to it being considered by the Trust, she did not consider it appropriate for this point of the appeal to proceed to be put before Trustees.

The Adviser did, however, make a general observation, that the extent to which a remark by an interviewee which included a potentially controversial or disputed view required to be challenged would depend on the context. In some circumstances, the nature of the remark might be so clearly partial and the identity and credentials of the speaker sufficiently well signposted that the viewer would be able to judge for themselves what weight to accord to their views. On other occasions, particularly in extended interviews, the interviewer would use their editorial judgement on which responses might require to be explicitly challenged.

The Adviser then noted the second part of the complaint, highlighting the article by the BBC's Diplomatic and Defence Correspondent entitled "Gaza rocket arsenal problem for Israel".

The Adviser considered the response from the Head of Editorial Compliance and Accountability, BBC News, which drew attention to the first paragraph of the report:

"The upsurge of fighting between Israel and Hamas has highlighted, once again, the total disparity of force between the two sides.

"Israeli aircraft and naval units can operate against targets in the Gaza Strip pretty much at will.

"If there were to be a major ground incursion by Israel – something that probably both sides would want to avoid – the military balance again would be overwhelmingly in Israel's favour."

The Head of Editorial Compliance and Accountability, BBC News, had also previously sought input from the Defence and Diplomatic Correspondent, who explained that it was already widely understood that Israel was a well-developed military force. He said:

"The story this time is how the Palestinians in Gaza have the capacity to target population centres in Israel. Hence, I was asked to write a piece looking at the Hamas/Islamic Jihad arsenal; what rockets they have and where do they get them. This was editorially valid in the circumstances."

The Adviser considered that given Israel's stated justification for its offensive was the threat posed by Hamas rockets, the BBC was entirely editorially justified, early in its coverage of that offensive, to explore the validity of those concerns.

The Adviser considered the complainant's broader point summarised in the concluding paragraph of her appeal:

"The ramp-up of Israeli violence towards the Palestinians went unreported by the BBC and then was later made out to be as a result of Palestinian rockets fired into Israel. The BBC Trust must again look at the escalating violence between Israel and Gaza in the weeks preceding al-Jabari's death and then give an honest appraisal of its television coverage, which I believe to be in the main unfair and biased and giving too much weight to the Israeli viewpoint."

In the Adviser's opinion it would be neither reasonable nor meaningful to analyse the output of any BBC News platform retrospectively by judging it in the light of subsequent events, which is what she understood to be the implication of the complainant's assertion. The consideration for this complaint was whether the coverage of the conflict was duly accurate and duly impartial. In that respect, the Adviser did not consider either the complainant's general allegation of bias nor any of the specific points raised by her in support of that general allegation demonstrated the BBC had failed to observe the requirements for due accuracy or due impartiality.

Accordingly the Senior Editorial Complaints Adviser considered the complaint did not have 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 her appeal. The complainant suggested the BBC only portrays subjects regarding Israel-Palestine from an Israeli viewpoint.

The complainant disagreed with the Adviser's view that it was only following the assassination of al-Jabari that the conflict came to dominate the headlines internationally. She said it had been very well reported on RT, Aljazeera and a French news channel.

The complainant did not accept that it was a legitimate exercise of editorial judgement to decide that certain events would not be of interest to a domestic audience and that the BBC had been deliberately keeping the British population ignorant of the true facts.

The complainant disagreed with the Adviser that the “active phase” of the issue began only on 14 November 2012 (following the assassination of al-Jabari).

She continued to assert that the BBC’s coverage had given undue coverage to the Israeli viewpoint at the expense of dismissing the Palestinian perspective.

The complainant summarised her objection to the rejection of her appeal:

“The consideration for the complaint in my opinion, had nothing to do with whether the coverage of the conflict was duly accurate and duly impartial, as I was complaining about the non-reporting of events in a fair and unbiased manner prior to the period that the Adviser has chosen for her timeline. I gave several examples in my previous letters of what I consider the BBC’s bias towards an Israeli viewpoint.

“In the weeks leading up to 14 November, the BBC News barely mentioned Israel’s incursions into Gaza and its increasing violence and rhetoric towards the Palestinians. According to the BBC the Israelis were and are totally justified in their actions just because they are Israelis and because they say so, whereas the Palestinians have no justification for their actions at all. The BBC’s reporting is unbalanced and favours Israel. The BBC Trustees should be allowed to investigate this.”

The Committee’s decision

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

The Committee noted that the complainant did not accept the reasoning given by the Trust’s Senior Editorial Complaints Adviser not to proceed with the appeal.

The Committee noted the additional arguments put forward by the complainant in her challenge.

The Committee noted the complainant’s allegation of a “deep-seated bias” in the coverage, but did not consider that the complainant had provided the evidence which would justify an investigation into the coverage on this occasion.

It noted too that no coverage is presented in a news vacuum and, as detailed in the Adviser’s decision, any decision on what to omit or include is always subject to a range of considerations. Ultimately it is a matter of editorial judgement. The reference in the Adviser’s decision to the “active phase” was in relation to the guideline requirements for coverage of controversial subjects (as quoted in the Adviser’s decision). The Committee considered it had been reasonable to benchmark the coverage from 14 November and that the Adviser had given adequate reasons for doing so. The Committee noted the complainant’s assertions regarding the nature of the coverage during the “active phase” – that it dismissed the Palestinian perspective – but agreed that the Adviser had provided examples of where the BBC had covered the Palestinian perspective.

The Committee agreed that it would be likely to conclude that this was a factually accurate and duly impartial report.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

Fake Britain, BBC One, 10 June 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 (ECU) not to uphold her complaint about being filmed for a BBC programme without her knowledge or consent. She said that she and her partner were filmed while they were bringing their pet dogs through Dover; she said she was informed that the filming was for a training video but subsequently discovered it was for a report on *Fake Britain* that related to puppy-smuggling. She was unhappy about footage of herself and her partner being used without their consent.

In its Stage 1 response the BBC explained that the overall subject matter of the item was the use of fraudulent pet passports to smuggle puppies into the UK and the aim was to illustrate how the legitimate Pet Travel Scheme works and how the Animal Health and Veterinary Laboratories Agency (AHVLA) check pets arriving in the UK for the correct documentation. The BBC said that the Port of Dover Authority and the AHVLA had given permission for filming in the checking area to which the travelling public has access and that the filming was carried out openly in the public area with large numbers of the public passing through and being checked. In these circumstances, the BBC did not consider it reasonable or indeed possible to obtain specific permission from everyone who may appear on camera.

When the BBC became aware of the complaint, it delayed the transmission of the scheduled repeat and blurred the identities of the complainant and her partner for future broadcasts.

The complainant raised the following points to support her complaint to the Trust:

1. The complainant stated that her privacy has been breached:
 - a. The complainant believed the BBC should have asked permission to film her.
 - b. The complainant stated that she asked why she was being filmed and was told by the AHVLA officer that the film was for a training video. She stated that as the crew were nearby they would have overheard this conversation and chose not to correct this misleading impression.
 - c. The BBC film crew was not wearing clothing branded with identifiable BBC insignia.
 - d. The complainant's car registration number was also visible in the broadcast programme, and the complainant believed this breached Data Protection laws.
 - e. The complainant stated that the filming took place in a private area rather than a public place, because no one without legal authority would have had the right to enter this area without permission.
2. The complainant is a police officer who supports puppy rescue charities in England and Spain. By appearing in a documentary about puppy smuggling, the complainant believes her reputation has been damaged.

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the 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. An Independent Editorial Adviser and the Adviser both watched the programme in question as well as the original recordings of the incident in question.

The Adviser noted the requirements of the BBC's guidelines on Fairness, the introduction to which states:

"BBC content should be based on respect, openness and straight dealing".

The Adviser noted that fairness is normally achieved by ensuring that people provide "informed consent" before they participate. This meant that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in a programme. The more significant their contribution, the more detail should be provided to the contributor.

The Adviser noted the sequence in which the complainant appeared.

The sequence opened with presenter Matt Allwright stating:

"We are a nation of dog lovers. In the UK there are 8 million of these: they're not all French bulldogs obviously but a popular breed (such as this is right now) will cost you over a thousand pounds. And the fakers know it. And that's why they're illegally importing puppies into the UK with fake pet passports. So the question is, do you know where your puppy came from?"

Over general images of cars and lorries entering the Port of Dover, the presenter continued:

"The Port of Dover is the busiest ferry port in the world with over 2 million lorries and nearly 3 million cars passing through each year. Many of the vehicles from Europe are carrying dogs."

Viewers then saw footage of cars and lorries being stopped by staff in high-visibility jackets. The voiceover continued:

"To get a European dog into Britain without it being quarantined to check for potentially lethal diseases like rabies, the animals have to satisfy the rules of the pet travel scheme."

One of the staff was captioned "Animal Health & Veterinary Laboratories Agency". He said:

"We're doing spot checks basically on vehicles that are coming in from Europe."

At this point the complainant and her partner were shown on screen at the rear of their vehicle, with the rear door open and the staff member checking their dogs' passports. He continued:

"All pets travelling in Europe should have pet's passports."

The footage then changed to that of other vehicles being checked by AHVLA inspectors. The presenter's voiceover stated:

"European dogs should be micro-chipped before being brought into Britain. They're scanned and compared against their pet passport, which also carry proof of their rabies vaccination. These European dogs can now legally enter Britain but scratch beneath the surface and there is a problem. The fakers know that pedigree pups come at a premium in Britain and in the last year there's been a 300% increase in illegally imported pets being seized at ports across the country."

The Adviser noted that the broadcast sequence in question had a total duration of five seconds and that the complainant and her partner were not heard speaking on air at any point. She noted that the voiceover made it clear that these were random checks on some of the millions of cars entering Britain, and that there was no suggestion that the complainant was undertaking any illegal activity.

The Adviser concluded that this was not a significant contribution to the programme.

The Adviser noted that BBC output had ethical, regulatory and legal obligations as regards respecting the privacy of individuals. The Human Rights Act 1998 gave protection to the privacy of individuals, but balanced that with a broadcaster's right to freedom of expression. In regulation, the Ofcom Broadcasting Code states "Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted."²⁴

The BBC's guidelines on privacy explain that programme makers must balance an individual's legitimate expectation of privacy with the BBC's right to broadcast information in the public interest. The guidelines state:

"An individual's legitimate expectation of privacy is qualified by location and the nature of the information and behaviour, and the extent to which the information is already in the public domain. People in the public eye may, in some circumstances, have a lower legitimate expectation of privacy.

"Location: People in public places or in semi-public places cannot expect the same degree of privacy as in their own homes or other sensitive locations. (A semi-public place is somewhere which, though private property, gives the public general access, such as an airport, station or shopping mall.)

"However, location must be considered in conjunction with the activity. There may be circumstances where people can reasonably expect privacy even in a public or semi-public space, particularly when the activity or information being revealed is inherently private. For example, there may be a greater expectation of privacy when someone is in a public or semi-public place but receiving medical treatment."

The Adviser noted that the Port of Dover Authority and the AHVLA had both given consent for filming. She noted that the area where the filming took place was one into which the public has access, despite it being private property and she considered it a semi-public place. Watching the original recordings, she noted that there was a stream of cars and lorries entering and leaving the inspection area. She did not consider that the activity being revealed was inherently private and concluded that an individual's legitimate expectation of privacy would be limited in this situation.

The Adviser studied the full recording of the incident in question, which is 4'45" in duration.

²⁴ Rule 8.1, Ofcom Broadcasting Code

The footage begins as a car pulls up beside the AHVLA officer. The door opens and a male driver steps out.

AHVLA officer: Hello there sir. AHVLA...

Driver: ...to check the dogs?

AHVLA officer: Just to check the dogs. Do you have the passports please?

Driver: Yes. [the complainant holds them up in the air as she makes her way to the rear of the vehicle]. Do you want me to do the...

AHVLA officer: Yes if I can have the passports first. And we have a camera behind us at the moment.

Driver: Yes I've noticed

AHVLA officer: He's only filming me do my work so don't worry

Driver: Alright, I'm not wanted. [the complainant laughs.]

The AHVLA officer is then recorded examining the passports of the three dogs in the complainant's car, checking their microchips and, finding everything to be in order, he waves them on their way.

The Adviser noted that the complainant was correct in stating that the conversation was clearly audible to the film crew. She could hear no reference to a training film. She noted that the complainant and her partner did not ask what the filming was for. In fact the subject was raised by the AHVLA officer, at which point the driver said "Yes, I've noticed" and made a joke at which the complainant laughed. The Adviser considered that there was no evidence to suggest that the complainant and her partner expressed any reluctance to be filmed that would be evident to the film crew. She noted that whilst the AHVLA officer stated "he's only filming me do my work", it would be hard to imagine that the film would not capture images of people interacting with the officer, as the nature of his job involved dealing with the public.

The Adviser noted the complainant's comments that her car registration number was visible on screen. She noted the complainant's opinion that this was in breach of the Data Protection Act. She noted too that this point had not been addressed by the Executive and that the Complaints Framework made clear that the Executive had to respond in the first instance. It remained open to the complainant to pursue this point with the Executive. The Adviser noted the appropriate office to contact was the BBC's Information, Policy and Compliance Team and provided contact details to the complainant.

However, for background information, the Adviser noted that the Data Protection Act included an exemption for material that was gathered for "journalistic, artistic or literary purposes", where filming was in the public interest.

The Adviser also noted that when the complainant had first contacted the BBC to express her concern, the production team had responded by delaying the transmission of a repeat and by blurring the identities of the complainant and her partner for future transmissions.

The Adviser noted the complainant's comments that the film crew was not wearing clothing branded with identifiable BBC insignia. She noted that there was no requirement for BBC staff to wear branded clothing whilst filming. The Guidelines, however, made it clear that filming should be done openly unless prior approval has been obtained for secret recording and "that this is particularly important when our audio-visual equipment is not very obvious as in the case of small video cameras, mobile phone cameras or fixed webcams". The Adviser noted that the camera crew was recording openly, the driver acknowledged he had seen the camera and the AHVLA officer had drawn his attention to it.

The Adviser also noted the following provision in guideline 7.4.3:

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

The Adviser noted that the programme was exploring the issue of faked pet passports, cases of which appeared to be rising. The programme explained that this practice ran the risk of importing rabies to Britain, which could be fatal for humans; one interviewee explained that she had bought a puppy which turned out to have been imported from Lithuania under false pretences. She expressed concern that she had unknowingly risked exposing her son, who had cystic fibrosis, to infection. The programme also explained that some puppies are "under age" and are placed at significant risk by travelling long distances from Eastern Europe. The Adviser concluded that the film was broadcasting material of clear public interest and that there was no evidence to suggest that filming was not justifiable or proportionate when weighed against the complainant's expectation of privacy.

The Adviser noted the complainant's strength of feeling in this matter but considered Trustees would be likely to conclude the programme met the requirements of the Editorial Guidelines in terms of privacy and the complainant had had a reasonable response to her complaints. She therefore determined that the appeal did not have a reasonable prospect of success and 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 her appeal. She said that she still believed that the BBC had breached privacy and data protection rules.

She said that they were not told at any point why they were really being filmed – that it was for a prime time BBC programme which would identify her and her partner, their dogs, and their car registration number. She said that they were not allowed to leave while they were being filmed – they were in a private area away from the rest of the public.

She said there were plenty of opportunities to be told the reasons for the filming, by the crew and by the member of staff from the AHVLA. She said it had been obvious that they had not been told, because they believed the man was from Customs, because their passage was prevented and they were placed in a private area of the docks.

The complainant said she had contacted Customs and was told that they had not stopped

the couple.

The complainant said she wanted to know why they were not told the real reason for the filming.

She said they were not stopped in a public place, and if they had been they would not have stopped and would have continued their journey.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Complaints Adviser (the Adviser) and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the full recording of the incident in question.

The Committee acknowledged the complainant's concern that the BBC may have breached data protection laws and noted that the Executive had not been given the opportunity to respond to the point of complaint concerning the visible car registration plate. The Committee agreed with the Adviser that it was open to the complainant to pursue this point with the Executive and that the Adviser had specified the appropriate contact in the Information, Policy and Compliance Team.

The Committee acknowledged the complainant's concern that she had not been told why she and her partner were being filmed. The Committee considered that it might have been helpful if there had been a sign of some kind to explain that filming for the BBC was taking place. However, the Committee noted that at the time of the filming the complainant had not asked what the filming was for and that neither she nor her partner had expressed any reluctance to be filmed. The Committee did not believe that any evidence had been presented to suggest that the reasons for the filming were being kept secret. The Trustees agreed that the AHVLA officer had explained that there was a camera filming him doing his work. In the transcript of the incident as recorded, the Trustees noted that the driver of the car in which the complainant was travelling had replied, "Alright, I'm not wanted", and the complainant had laughed.

The Committee was of the view that the complainant and her partner had understood that they were being filmed and had not shown any concern at that time. The Committee also noted that it was explained in the programme voiceover commentary that the checks were random. The AHVLA officer had examined the three pet passports, checked the pets' microchips, and found everything in order. The Committee agreed with the Adviser who had stated in her decision:

"It would be hard to imagine that the film would not capture images of people interacting with [the AHVLA officer], as the nature of his job involved dealing with the public."

The Committee did not consider that evidence had been presented to suggest that the complainant had been filmed in a private area. It had been established that cars were being randomly stopped and pulled out of the main thoroughfare in order to conduct checks. The fact that the car was pulled over to an area away from the main stream of cars did not mean one could assume it was a private area.

The Committee noted the comments made by the Adviser about the public interest justification for the filming:

"[The] programme was exploring the issue of faked pet passports, cases of which appeared to be rising. The programme explained that this practice ran the risk of importing rabies to Britain, which could be fatal for humans; one interviewee explained that she had bought a puppy which turned out to have been imported from Lithuania under false pretences. She expressed concern that she had unknowingly risked exposing her son, who had cystic fibrosis, to infection. The programme also explained that some puppies are 'under age' and are placed at significant risk by travelling long distances from Eastern Europe. The Adviser concluded that the film was broadcasting material of clear public interest and that there was no evidence to suggest that filming was not justifiable or proportionate when weighed against the complainant's expectation of privacy."

Trustees considered that the public interest in preventing animal abuse and criminality, and highlighting the steps that are being taken to counteract the same, was a strong one.

The Committee further noted that there was no suggestion that either the complainant or her partner had been involved in any illegal activities; the programme clearly showed that they had been subjected to a random spot check. Furthermore, the incident as broadcast took up only five seconds of screen time. The Committee agreed with the Adviser that the complainant's appearance was not a significant contribution to the programme. More generally, they also considered that including footage of dogs being legitimately brought into the country with the correct documentation served the public interest of demonstrating how the legitimate Pet Travel Scheme operates and the fact that the AHVLA is aware of the use in some quarters of fraudulent pet passports to aid puppy-smuggling. The Committee did not agree that the complainant's argument that her reputation was likely to have been damaged by the inclusion of her footage had a reasonable prospect of success.

The Committee also noted that when the complainant had first contacted the BBC to express her concern, the production team had responded by delaying the transmission of a repeat and by blurring the identities of the complainant and her partner for future transmissions.

Overall the Committee concluded that if it took this appeal it would be likely to conclude that: the area in which the filming took place was semi-public; the fact that filming was taking place was clear; the complainant knew she was being filmed though had not realised it was for broadcast; the activity itself was not intrinsically private in its nature; the material broadcast was extremely brief; the content was not significant and did not imply in any way that the complainant had been stopped for any other reason than for a random check; and the production team had responded to her concerns appropriately by undertaking to ensure that the complainant would not be identifiable in future broadcasts of the episode.

Taking all these facts together, the Committee was of the view that if it considered this case it would be likely to conclude that the filming and broadcast of the complainant's spot check was in the public interest and that this justified the filming and broadcast both in terms of any infringement of the complainant's privacy and in terms of fairness of treatment.

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

Summary of ECU finding: Health Check: Dialysis in Gaza, BBC Radio 4/BBC World Service, 4 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 objecting to the wording of an Editorial Complaints Unit (ECU) finding in relation to an item about kidney dialysis in Gaza.

The ECU, in response to a complaint from a listener, had originally found that an item broadcast on BBC World Service and transmitted also on Radio 4 in October 2012 had given the misleading impression that "medical supplies and equipment were subject to the blockade (of Gaza)". The relevant sentence in the published finding read as follows:

"In most respects the item was not misleading. However, the sentence 'The blockade of Gaza for example has led to shortages of medicines and medical equipment' gave the impression that the Israeli blockade covered medical supplies, which is not the case."

The complainant in this appeal wrote to the BBC in July 2013. She said the sentence in the *Health Check* report (as quoted in the ECU finding above) had been "absolutely true and accurate". The complainant said the ECU had been wrong to uphold the original complaint that the reporter had given the impression that the Israeli blockade covered medical supplies:

"The focus was not on what the blockade per se 'covered' either now or in the past. The ECU's ruling is disqualified by the fact that it failed to define the concept."

The ECU acknowledged that "as originally published, the wording of the summary was too broad". The complainant was advised that the finding had been revised and the ECU finding now read:

"In most respects the item was not misleading. However, it gave the impression that the Israeli blockade covered drugs and disposables, which was not the case in the period under discussion."

In its response to the complainant the ECU noted information received from the Middle East Bureau of the World Health Organisation to the effect that:

"...while the blockade has had an adverse effect on the health sector in a number of ways, the blockade doesn't currently encompass drugs and disposables, and current shortages of these items are not the direct result of the blockade."

The complainant wrote to the BBC Trust on 2 September 2013 rejecting the ECU's revised wording and asking for a review of the ECU's decision. She stated:

"As I have said repeatedly in my various complaints about this matter, it was not misleading. [The] report merely said that the blockade had led to shortages. Neither the reporter nor any of the participants in her report said anything to

suggest that the blockade 'currently encompasses' drugs and disposables. Nor did anyone try to suggest that the 'current shortages' of these items are the direct result of the blockade. The report was not about 'current shortages' or about what the blockade 'currently encompasses'. The sentence complained of merely said that, looking from the vantage point of when the report was compiled, the blockade had led to shortages of these things."

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the 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 propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Adviser noted that the complaint related to the summary of a finding from the Editorial Complaints Unit, rather than output produced for radio or television transmission or for a report for BBC Online. However, she noted that the BBC's Complaints Framework, Procedure No.1, Editorial Complaints and Appeals, included the following statement:

What is an editorial complaint?

You can complain to the BBC if you consider that any BBC content has failed to follow the BBC's Editorial Guidelines. This is called an "editorial complaint". "BBC content" means something that has been broadcast on a BBC radio or television service or published on a BBC website or in a BBC owned magazine, for which the BBC is responsible.

The Adviser noted that the Editorial Guidelines contained further information regarding the complaints process. The Guidelines on Accountability include the statement:

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

The Adviser considered the item that had been the subject of the original complaint. This had been a six-minute long location feature broadcast on *Health Check*. The item had been recorded in Gaza City.

The Adviser noted the introduction to the item:

"People with kidney failure need dialysis two or three times a week if they are to survive. So in regions where there are conflicts continuing treatment can be difficult. The blockade of Gaza for example has led to shortages of medicines and medical equipment. Hospitals there have the right machinery to carry out dialysis but daily power cuts and lack of filters for the equipment is making it hard for doctors to give people the treatment they need. Angela Robson reports from Gaza city...."

The Adviser noted the report included the story of six-year-old Mara who had dialysis three times a week.

"Her father, Abdul Hassan, says that the blockade of Gaza is having a devastating impact on her health:

'Gaza is closed. I'm thinking of how we can transplant a kidney. We'd have to go abroad. Israel is not open for us. This department is good. It's decent. It's respectable. We're looked after.

'But then sometime the filters every child has, either for example filters like 4,5 or 6. Sometimes one of them is not available and they would need only that one. We've experienced that sometimes the medication is not available. If we want to do anything to get her out of the situation, which is a kidney transplant, we'd have to go abroad and it's so difficult.'"

The Adviser noted that the introduction stated unequivocally that the blockade had "led to" shortages of medicines and medical equipment. Abdul Hassan was then quoted by the reporter as saying that "the blockade of Gaza is having a devastating impact on (his daughter's) health". He then talked about filters and medication sometimes not being available.

In the absence of any other explanation for the shortage of medicines and disposables such as filters, in the Adviser's view the audience would have been likely to form the opinion that Israel's blockade of Gaza was entirely responsible for the problems highlighted in the item.

The ECU had received a complaint about the feature which it upheld in part. It published a summary of its finding, which was as follows:

Health Check, World Service, 4 October 2012

Complaint

A listener complained that an item on the situation of people with kidney failure in Gaza gave the misleading impression that medical supplies and equipment were subject to the Israeli blockade, and that the item was misleading in other respects.

Outcome

In most respects the item was not misleading. However, the sentence "The blockade of Gaza for example has led to shortages of medicines and medical equipment" gave the impression that the Israeli blockade covered medical supplies, which is not the case.

Partly upheld

The complainant contacted the ECU concerned both about the finding and the summary.

After further consideration, the ECU amended its finding and the full text of the revised ECU finding was published on the BBC website at <http://www.bbc.co.uk/complaints/complaints/ecu/heltcheck>:

Complaint

A listener complained that an item on the situation of people with kidney failure in Gaza gave the misleading impression that medical supplies and equipment were subject to the Israeli blockade, and that the item was misleading in other respects.

Outcome

In most respects the item was not misleading. However, it gave the impression that the Israeli blockade covered drugs and disposables, which was not the case in the period under discussion.

Partly upheld

Further action

In future, when commissioning reports from freelance reporters abroad, **Healthcheck** will ensure they take advice from the local BBC bureau before finalising the item.

The Adviser noted that the ECU had written to the complainant on 2 September 2013 to explain the thinking behind this change in the summary:

"This reflects information we have received from the Middle East Bureau of the WHO, to the effect that, while the blockade has had an adverse effect on the health sector in a number of ways, the blockade doesn't currently encompass drugs and disposables, and current shortages of these items are not the direct result of the blockade."

The Adviser noted that there was well-sourced evidence that the situation was more complex than had been suggested by the *Health Check* report. While the World Health Organisation stated to the ECU that the blockade had had an adverse impact on the health sector including restrictions on the movement of health professionals and concerns over the safety and functionality of medical equipment, the WHO did not believe that the negative impact arising from the blockade extended to medicines and medical supplies:

"...the current shortages of drugs and disposables are not a **direct** result of the blockade – Israel does not restrict imports of drugs to Gaza – but rather the result of the financial problems facing the Palestinian Authority."

The Adviser noted also the contents of a 2012 WHO report which highlighted the shortage of drugs and disposables critical in the treatment of kidney patients. While the WHO report listed a number of causes, the blockade was not amongst them:

"The causes of shortages are complex and include a combination of budgetary problems faced by the MoH in Ramallah, disconnection and distrust between West Bank and Gaza MoH information lines as a result of internal political issues, personnel changes of Central Drug Store staff in Gaza, and bureaucratic and transportation lags in the procurement and supply chain."²⁵

The Adviser noted also this UN report:

"The political division between the administrations of the West Bank and Gaza Strip has affected health services across the oPt (Occupied Palestinian Territories). The occupation and Palestinian political disunity are, in fact, proving a lethal combination: the State of Israel's practice of withholding taxes and customs duties, coupled with the withdrawal of international aid after the 2006 elections, has created a severe financial crisis and left the PA unable to pay the salaries of 165,000 civil servants. This has led to intermittent strikes, including by health personnel, and resulted in worsening service provision, shortages of essential medication and equipment, and an overall health system crisis."²⁶

The Adviser concluded that the ECU had properly assessed the available evidence on the causes of the problems highlighted in the treatment of renal patients in Gaza and that its revised finding now defined with greater precision where the item would have misled the

²⁵ <http://www.emro.who.int/palestine-press-releases/2012/access-essential-medicines-gaza.html>

²⁶ p87 http://hdr.undp.org/en/reports/national/arabstates/palestine/NHDR_Palestine_En_2009-10.pdf

audience. The Adviser considered Trustees would be likely to conclude that this met the concerns outlined by the complainant in her allegation challenging the original finding. The Adviser further considered that Trustees would be likely to conclude that the ECU had provided adequate reasoning – as required by the Editorial Guidelines – to explain its decision. Accordingly, the Adviser decided that the allegation would not have a reasonable prospect of success and should not therefore proceed to appeal.

Request for review by Trustees

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

The complainant said the revised finding suggested that the item as a whole gave the impression that the Israeli blockade covered drugs and disposables. She did not agree that was the impression that a listener would take from the report and that it did not constitute adequate reasoning to justify the ECU's decision to amend the finding in the way it did.

The complainant said:

"Far from contradicting [the] report, the information from the Middle East Bureau of WHO confirms it that in the period under discussion the blockade had 'an adverse effect on the health sector in a number of ways'. That is all that the report was saying, nothing more or less."

The Committee's decision

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

The Committee noted that the complainant did not accept the reasoning given by the Trust's Senior Editorial Strategy Adviser not to proceed with the appeal.

The Committee noted the additional arguments put forward by the complainant in her challenge.

The Committee noted that whilst the wording in the finding was made with reference to a specific sentence in the commentary, the reasoning given by the ECU for reaching its finding was based on the item as a whole. The Committee noted that the ECU had provided reasoning for amending the finding in the way it had and that it was based on sound evidence, sourced to the World Health Organisation.

The Committee did not agree that the finding implied any view on the extent to which the blockade had an adverse effect on the health sector; the precision in the wording in the amended finding ensured that it related only to whether drugs and disposables are restricted by the blockade.

The Committee concluded it would likely find that the ECU had given adequate reasoning for reaching its decision and the amended finding would therefore likely have met the requirements of the Accountability guideline. For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

Wonders of Life, BBC Two, 27 January, 3 February, 10 February 2013

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about the first three programmes in the five-part series *Wonders of Life*. The complainant said that they contained inaccuracies that had the potential to mislead viewers.

The complainant said that the BBC had overstated the evidence supporting evolutionary theory with a number of claims that were "speculative, and in some cases deliberately false". The complainant believed that the programme-makers had taken the beliefs of scientists on trust when evidence did not support those beliefs. He stated:

"I accept the BBC's right to present majority scientific beliefs – but since they are no more than 'beliefs' the BBC has a responsibility to present the scientific FINDINGS accurately."

The complainant raised six issues to support his complaint:

- Scientific experiments have failed to produce simple DNA in laboratory conditions. To suggest that this can happen in the natural world where chemistry cannot be controlled is deceitful and would have misled viewers into thinking there was a degree of certainty in scientific claims on this point.
- In describing the second law of thermodynamics, programme one did not refer to the requirement of an intelligent intervention to maintain order.
- The series provided an inaccurate figure for similarity between the genomes of apes and humans.
- The series failed to acknowledge the absence of fossil evidence for transitional forms of life and to imply its existence through the use of cartoon animation would have misled the viewer.
- The series inaccurately equated Darwin's theory of evolution with the precision and testability of Einstein's theories of relativity.
- The reference to original life as a speck and the over-simplification of organs such as the eye would have misled viewers into believing that we know more than we do about a "natural" (rather than designed) explanation for their origin.

The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings and religious beliefs.

The relevant correspondence was also reviewed by the Trust Unit and an independent editorial adviser watched the programmes in question. The Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser noted the requirements of the BBC's guidelines on Accuracy and Impartiality.

The Adviser noted that the series was described on the BBC website as follows:

"Professor Brian Cox explores the globe to reveal how a few fundamental laws of science gave birth to the most complex and unique feature of the universe – life."

The Adviser also noted that in interviews before the series the presenter had described the series as being a "physicist's take on life".

The first programme in the series posed the opening question "What is it that makes something alive?" The presenter visited a village in the Philippines where the local residents believe that the spirits of the dead walk among the living. He stated:

"Now, no matter how unscientific it sounds, this idea that there's some kind of soul or spirit or animating force that makes us what we are and persists after our death is – is common. Virtually every culture, every religion has that deeply held belief."

He went on to say:

"When you think about it, that's not so easy to dismiss. If we are to state that science can explain everything about us, then it's incumbent on science to answer the question what is it that animates living things? What is the difference between a piece of rock that's carved into a gravestone and me?"

The commentary said:

"For many, some form of spirituality is needed, though, to explain what it means to be alive, and how life began.

"It's only recently that science has begun to answer these deepest questions."

The Adviser considered that the series had carefully set out the nature of the content, which was to explore the latest scientific understanding of what constitutes life. The likely audience expectation was set by signposting from the very start that, whilst some need spirituality to explain life itself, this was a series about the scientific laws of nature. The Adviser noted and agreed with the statement of the ECU's Complaints Director on this point:

"I think it is reasonable to assume that viewers would be aware this was a factual programme firmly based in natural history and science. I therefore think it follows that the audience would expect to hear explanations for the 'wonders of life' which broadly reflect the consensus of scientific thinking and the views of experts in the scientific community. I also think that viewers probably expect the explanations which are given to be somewhat simplified in order to aid the understanding of a general audience with little or no detailed knowledge of the complex issues being presented."

The Adviser also noted that from the very start of the series, the programme used

expressions that indicated that science did not have conclusive answers on every point raised. Examples included:

"science has begun to answer these deepest questions"

"it's thought that the first life on our planet may have exploited the energy released in those natural proton waterfalls"

"so this could be where your distant ancestors come from"

"we think this because living things still get their energy using proton gradients today"

The Adviser considered that this wording acknowledged that the programme was exploring the latest scientific thinking and that science did not have definitive answers on every point raised.

Regarding the first point the complainant listed in his appeal, the Adviser noted his specific concern that scientific experiments had failed to produce simple DNA in laboratory conditions and that it was therefore deceitful to suggest that this could happen in the natural world. The relevant section in the programme asked why life on Earth endured, if the "natural" process of life was a move towards disorder (according to the second law of thermodynamics). The script of the first programme stated:

"The reason it persists is because each generation of animal and plant passes the information to recreate itself on to the next generation. And that's possible because of a molecule found in every cell of every living thing."

The presenter carried out a DNA test using his own saliva and concluded:

"There, can you see? Those strands of white. And so in that cloudy, almost innocuous looking solid are all the instructions needed to build a human being. So that is what makes life unique."

The Adviser considered that the programme did not attempt to describe how DNA came to exist, but instead simply described DNA as a blueprint for each species.

The third programme in the series dealt with the subject in more detail:

"Every living thing is just a temporary home for carbon atoms that existed long before there was life on earth and will exist long after Africa and Earth are gone. But the pattern of life, the information needed to build a zebra or a tree or a human being or a lion persists. It's passed on from generation to generation in a molecule, a helical molecule with a backbone of carbon, called DNA.

"There was a time when Earth appeared empty. Yet despite appearances, 3.8 billion years ago life was already under way in the form of tiny living specks that probably all shared the same biochemistry. We know that every living thing on the planet today, so every piece of food you eat, every animal you've seen, everyone you've ever known or will know, in fact every living thing that will ever exist on this planet was descended from that one speck. We call it the last universal common ancestor, or LUCA. So just as the universe had its origin in a big bang, all life on this planet had its origin in that one moment.

"Less than a billion years after its formation, there was already life on Earth. It's possible that some of it is biochemistry utterly different from the life we see today. If so, it has long been extinct. It's also possible that the first life may not have been cellular, just living chemistry in the porous rocks of some ancient ocean. We're not sure. But what's certain is that one day a population of organisms showed up with biochemistry that we would recognise. This was LUCA. The first expression of a form of life that would in time throw up a group of humans who left their mark in this part of Africa.

"Now, we don't know what LUCA looked like. We don't know precisely where it lived or how it lived. But we do know this: if you start to trace my ancestral line back to my parents, to their parents, to their parents, to their parents, all the way back through geological timescales over hundreds of thousands and millions and billions of years there will be an unbroken line from me all the way back to LUCA. We know that because every living thing on the planet today shares the same biochemistry. We all have DNA. It's made of the same bases, A, C, T and G. They code for the same amino acids. Those amino acids build the same proteins which do very similar jobs whether you're a plant, a bacterium or a bipedal hominid like me."

The Adviser noted that this passage was also the subject of another of the complainant's points: the reference to original life as a "speck", which the complainant stated would have misled viewers into believing that we know more than we do about a "natural" explanation for the origin of life.

She noted that the programme referred to the existence of gaps in current scientific thinking with its repeated use of the expression "we don't know". She also noted that the programme reflected the current consensus of scientific thinking in stating that all living organisms shared the same biochemistry. She could therefore find no evidence to support an assumption that audiences would have been misled.

The Adviser noted the complainant's comments about the section of programme one which dealt with the Second Law of Thermodynamics. She noted that this programme described how human beings converted chemical energy to heat:

"And it's by converting so much energy from one form to another that life is able to hang onto a tiny amount of order for itself. Just enough to resist the inevitable decay of the universe.

"So it's no accident that living things are hot and export heat to their surroundings. Because it's an essential part of being alive. Living things borrow order from the wider universe, and then they export it again as disorder. But it's not precisely in balance. They have to export more disorder than the amount of order they import. That is the concept of the Second Law of Thermodynamics. And living things have to obey the Second Law because they're physical structures, they obey the laws of physics."

She noted the complainant's comments that "the second law of thermodynamics is not some magical Yin and Yang process which by creating disorder in one part of the universe magically creates order in another. The production and maintenance of 'order' requires agency (intelligence?) and intervention which exports disorder."

The Adviser noted, and agreed with, the response from the ECU on this point, which had stated that the presenter:

"subsequently developed this line of thinking further by referring to the second law of thermodynamics which, again in very simple terms, says that energy of all types will seek to disperse or spread out if it is not prevented from doing so (a concept which leads some scientists to say everything tends from order to disorder). He gave a number of examples to illustrate this and concluded:

'So we've developed a quite detailed understanding of the underlying machinery that powers these dragonflies, and indeed all life on Earth. And whilst we don't have all the answers, it is certainly safe to say that there's no mysticism required. You don't need some kind of magical flame to animate these little machines. They operate according to the laws of physics, and I think they're no less magical for that.'

"As I have indicated previously, this was a series clearly presented from a scientific perspective and so I am satisfied that it was reasonable to refer to and rely on recognised scientific laws and theories in an attempt to offer a scientific explanation for the origin of life."

The Adviser considered that given the programme's brief, it was appropriate that the programme reflected a broad consensus of scientific thinking relating to the laws of thermodynamics. She concluded that there was no requirement to make reference to intelligent design when considering these principles.

The Adviser noted the complainant's claim that the series provided an inaccurate figure for similarity between the genomes of apes and humans. In this section of the programme, the presenter stated:

"If I draw a tree of life for the primates, then we share a common ancestor with the chimps, Bonobos. About four to six million years ago. And if you compare our genetic sequences you find that our genes are 99 per cent the same. You go back to the split with gorillas, about 6 to 8 million years ago and again, if you compare our genes you find that they are 98.4 per cent the same. Back in time again, common ancestor with our friends over there, the orang-utans, then our genes are 97.4 per cent the same. And you could carry on all the way back in time. You could look for our common ancestor with a chicken, and you'd find that our codes are about 60 per cent the same. And in fact, if you look for any animal like him, a little fly, or a bacteria, something that seems superficially completely unrelated to us, then you'll still find sequences in the genetic code which are identical to sequences in my cells. So this tells us that all life on Earth is related, it's all connected through our genetic code."

She noted the finding of the ECU's Complaints Director on this point:

"...The programme-makers have told me that the information presented was based on a paper published in *Nature* magazine and an interview with one of the authors, Devin Locke. They have accepted that parts of the genome were ignored because the focus was on what were considered to be the most important coding regions, as opposed to areas which contain repeat sequences, or segmental duplications.

"However, further correspondence with Dr Locke which I have seen makes it clear that had the authors of the paper compared all of the sequences, they believe they would have arrived at a very similar figure and the method they used is

entirely consistent with other comparisons.

"Furthermore, I also think it is important to bear in mind that the over-arching point which Professor Cox was making was that 'this tells us that all life on Earth is related, it's all connected through our genetic code'."

The Adviser supported the ECU's conclusion that there was no evidence to suggest that the audience would have been misled by these figures – and that the central point that was being made was that all life on Earth is related and those connections can be seen through the genetic code.

The Adviser noted the complainant's comments that the use of cartoon animation misled viewers into concluding there was certainty about how an organism developed. She noted and supported the ECU's conclusion that "a general audience would understand that where an animation has been created to show how an organism or function may have developed (such as the manner in which the development of the ear was demonstrated), there is an accepted and acknowledged degree of uncertainty as to what actually occurred."

The Adviser considered the complainant's assertion that the series inaccurately equated Darwin's theory of evolution with the precision and testability of Einstein's theories of relativity and that the viewer would have been misled into thinking that Darwin's conclusions were part of a rigorously tested and confirmed theory, which the complainant says they are not. The Adviser noted the section of the third programme to which the complaint relates:

"As precise as Einstein's theories of relativity and as profound as thermodynamics, Darwin has given us another universal law. Evolution by natural selection."

The Adviser considered that this statement was an attempt to put Darwin's discoveries into context, the programme having already considered other universal laws of physics and bearing in mind the presenter had stated the series was a "physicist's take" on the science in question. She also noted once again that the context of the series was to explore the latest scientific understanding of the origins of life and that there was an overwhelming scientific consensus on the principles of evolution as set out by Darwin.

The Adviser considered the complainant's point that the programme over-simplified its demonstration of how it claimed the eye evolved; and that this simple demonstration misled the audience into thinking we know more than we do about a natural explanation of its development.

The Adviser noted that programme two was almost entirely about the senses and their development. The programme started by using as an example the mantis shrimp which the commentary said had "some of the most sophisticated eyes in the natural world".

The programme then looked at several species and examined how their hearing and vision had evolved to suit their environment. The presenter then stated:

"The eye is a tremendously complex piece of machinery built from lots of interdependent parts, and it seems very difficult to imagine how that could have evolved in a series of small steps. But actually we understand that process very well indeed. I can show you by building an eye.

"The first step in building an eye would be to take some kind of light-sensitive

pigment, some rhodopsin, for example, and build it onto a membrane. So imagine this is such a membrane with the pigment cells attached. Then immediately you have something that can detect the difference between dark and light. The advantage of this arrangement is that it's very sensitive to light. There's no paraphernalia in front of the retina to block light. But the disadvantage, as you can see, is that there's no image formed at all. It just allows you to tell the difference between light and dark. But you can improve that a lot by adding an aperture, a small hole in front of the retina. So this is a movable aperture, just like the type of thing you've got in your camera. Now, see. The image gets sharper. But the problem is that in order to make it sharper, you have to narrow down the aperture, and that means that you get less and less light. So this eye becomes less and less sensitive. So there's one more improvement that nature made, which is to replace the pinhole, the simple aperture, with a lens."

The Adviser considered that this demonstration made a potentially complex subject accessible for a general audience but did not distort the audience's likely understanding of the subject.

The Adviser noted the complainant's strength of feeling on this subject; however, she considered Trustees would be likely to conclude the programmes met the Guideline requirements for impartiality and accuracy. She therefore considered the appeal did not have a reasonable prospect of success and did not propose that it should proceed to the Trust for consideration.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that his argument was "about the deliberately misleading presentation of belief as fact, and assertion as knowledge. It has been about deliberate sophistry to present atheist propaganda – not scientific understanding."

The complainant put forward points in support of his appeal:

- Microbiology has revealed that "life" is far more complex than biologists every imagined only a few years ago.
- The second law of thermodynamics indicates that without external agency a system will become more disorganised and dysfunctional. Simply explaining that living bodies use the agency of in-built machines to combat this process by harnessing energy overlooks the greater problem of how the process of decay can be combated in the origin of life by natural causes.
- To claim that "we're not sure" whether life was originally cellular and simply just chemical implies a "possibility" greater than any evidence provides. The evidence for such a possibility is non-existent.
- Similarity is used frequently (but without proof) as an argument for descent. When the man in the street is told that we are 99% the same as apes, he will not appreciate that the "scientist" is referring only to selected parts of the genome, rearranged where required to make a match. To depend uncritically on an article in *Nature* was poor journalism undertaken for the convenience of conveying an untruth.

The complainant said that simplification for the purpose of explanation was acceptable,

but not if it was done to mask the absence of evidence, or to make the proposed theory appear more plausible.

The Committee's decision

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

The Committee noted that in interviews prior to transmission of the series, the presenter had described it as being a "physicist's take on life", and that the context of the series was an exploration of the latest scientific understanding of the origins of life.

The Committee acknowledged the complainant's points regarding the presentation of "belief" as "fact", but was of the view that the Adviser had covered these points comprehensively in her decision letter, and also noted that it was not necessary for programme-makers to include religious arguments in programmes which explored issues from a scientific point of view in order to achieve due accuracy or due impartiality.

The Committee supported the conclusion of both the ECU and the Trust's Adviser that there was no evidence to suggest that the audience would have been misled by the programme's effort to make a potentially complex subject accessible for a general audience.

The Committee noted the strength of the complainant's feelings on this subject but did not believe it would be likely to conclude that the scientific claims made in the programmes breached the Guideline requirements for due Accuracy and due Impartiality.

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

BBC News, reporting of Norway's relationship with the EU

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint about the way the BBC reported Norway's relationship with the EU, with the coverage biased in favour of EU membership.

The complainant referred to four online articles and said that there "existed a pattern of pro-EU bias in four BBC reports on 'Norway and the EU', all four of which have been written by the BBC around the opinion of pro-EU Norwegians."

The four articles are:

1. Norway's EU deal 'not right for UK'
<http://www.bbc.co.uk/news/world-europe-22188028>
2. Viewpoints: How experts see UK role in EU
<http://www.bbc.co.uk/news/world-europe-20412306>
3. Norwegian minister Espen Eide urges UK caution on quitting EU
<http://www.bbc.co.uk/news/uk-20830201>
4. Non-EU Norway 'almost as integrated in union as UK'
<http://www.bbc.co.uk/news/world-europe-16594370>

The first was about the coverage of a speech given by Norway's then opposition leader Erna Solberg, who expressed the view that the deal Norway had made with the UK was "not right" for the UK.

The second reported the views of a number of different figures from across Europe about Britain's relationship with the EU, including the views of Ulf Sverdrup, Head of the Norwegian Institute of International Affairs. He considered that the relationship with the EU was so significant that, whether a nation was inside it or outside, it exerted a considerable influence. This article had also been the subject of an earlier appeal related to bias. On that occasion, the Trust Unit considered the complaint should not be heard as a full appeal, and Trustees had agreed with that decision.

The third article carried a headline that referred to the view of the Norwegian Foreign Minister, Espen Eide, who believed the UK should be cautious about leaving the EU. The article noted that he was pro-EU, but that the majority of Norwegians were opposed to the idea of Norway joining it. The article also carried the opinions of Conservative Eurosceptic MEP Daniel Hannan, who was quoted as saying he was:

"...not aware of any British Eurosceptics who are arguing that we should precisely replicate the Norwegian model".

He added:

“What we’re after is something a bit more like what the Swiss have, but actually I think we could get better terms than either Norway or Switzerland.”

The fourth article was about a report commissioned by the Norwegian government into the country’s relationship with the European Economic Area, which concluded that Norway continued to have very close ties with the EU, even though it was not a member.

Prof Fredrik Sejersted, the chairman of the committee which had carried out the report was quoted as saying: “We are almost as deeply integrated as the UK.” Prof Sejersted noted the democratic deficit that existed because Norway was not a member of the EU – so that it could not influence EU legislation, but largely adopted it – but also noted that Norway had enjoyed considerable economic success that was related to its political situation.

The article noted that Norwegians had twice rejected EU membership in referendums and that a recent poll suggested 76% of Norwegians wanted their country to remain outside the EU.

In his appeal the complainant said that these articles did not reflect public opinion in Norway and referred to an opinion poll indicating that less than 20% of the country’s population was in favour of joining the EU. He stated that the BBC had apparently not written any articles about the 80% of the country’s population opposed to joining the EU. He noted that the chances of finding and featuring the views of four interviewees, “by coincidence alone”, all in favour of the EU, at a point when this represented the views of less than a fifth of the population was vanishingly small.

The complainant stated that the coverage he considered biased “creates an unjustified impression in the minds of BBC readers ... that the overwhelming majority of Norwegians are against EEA membership and only a few British eurosceptics disagree with them”.

Earlier, in his Stage 2 correspondence, the complainant had said that the example that Norway was setting for the UK, specifically its model of membership of the ETA and EFTA, was the primary topic covered in these articles and that: “if the BBC were truly impartial in its coverage of ‘Norway and the EU’ then one might expect multiple articles that take as their starting points the views of Norwegian politicians both supportive of the UK emulating Norway’s example and opposing it.”

The Trust Unit’s decision

The Trust’s Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.

The relevant correspondence was reviewed by the Trust Unit and an independent editorial adviser also read the articles cited in the correspondence as did the Senior Editorial Complaints Adviser. The Adviser decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted that all BBC output was expected to comply with the values and standards set out in the Editorial Guidelines which, for completeness, could be found here: <http://www.bbc.co.uk/editorialguidelines/>.

The Adviser noted that the complainant had drawn particular attention to the four principal Norwegian figures featured in these reports, namely: Erna Solberg, then the opposition leader in Norway, now the Prime Minister; Ulf Sverdrup, Head of the Norwegian Institute of International Affairs; the Norwegian Foreign Minister Espen Eide and the chairman of a panel set up by the Norwegian government to consider Norway's relationship with the European Economic Area, Prof Fredrik Sejersted.

In his appeal, the complainant stated that at Stage 2, the Head of Editorial Compliance and Accountability: "...claimed that the opinions of these 4 Norwegians are newsworthy in themselves and that this is justification for the BBC writing stories about their pro-EU opinions. However the BBC has never written any other articles that mention any of these four figures at all, which would suggest that they are not so newsworthy after all."

The Adviser noted that Erna Solberg had featured on BBC output in relation to stories that were not related to EU membership – most recently during coverage of the Norwegian elections – which led to her becoming Prime Minister.

She considered that, with regard to the choice of Ulf Sverdrup as an interviewee, in an article that carried the headline: "Viewpoints: How experts see UK role in EU", the head of a body set up to consider international affairs from a Norwegian perspective was perfectly justifiable. She noted that the online article which referred to the views of foreign minister Espen Eide was linked to an interview he had given to BBC Radio 4 as part of a longer exploration of Norway's relationship with the EU. The adviser noted that the article quoted some of the other contributors to the programme too – including David Cameron, a Eurosceptic MEP Daniel Hannan and a former ambassador to the US.

She noted that Professor Sejersted was the chairman of the committee that had produced the report which was the subject of the fourth article – and, in reporting a summary of its finding, considered it was clearly justifiable to report his views.

The Adviser noted that as the complainant had been advised at Stage 2 that because two of the articles which were the subject of the complaint were (at that time) already being considered by Trustees, the stage 2 response about general bias would not refer to these articles, but only to articles three and four, listed above.

The Adviser noted the requirement under the Editorial Guidelines that: we may need to make it clear to the audience when contributors are associated with a particular viewpoint.

With regard to the first article, the Adviser noted that Erna Solberg was described as "pro-European". She noted the article stated:

"Opposition to EU membership has grown in Norway since 2011 – the 'no' camp has been consistently above 70% in opinion polls."

She noted too that Erna Solberg was primarily drawing attention to the democratic deficit that existed in Norway – and expressed her view that the degree of financial cost involved with no political representation would not be acceptable to British voters were they to replicate that model. The Adviser noted that Ms Solberg had not advocated either the UK's continuing membership or withdrawal from the EU.

She considered Trustees would be likely to conclude there was editorial justification for reporting Ms Solberg's speech and that she was clearly described as being pro-European.

Regarding the second article, the Adviser noted that this article had been brought before Trustees previously.

The Adviser considered Trustees would be unlikely to conclude that the head of an organisation whose role was to consider Norway's international relations was not a justifiable editorial choice in this context. Although the complainant queried whether the interviewee was a significant figure – as measured by whether there were other articles which featured his views – she noted this was not a requirement set out in the Guidelines.

Regarding the decision to refer to Prof Fredrik Sejersted, the Adviser noted that the Head Editorial Compliance and of Accountability, BBC News, had sought further input from the European reporter for BBC News Online. He had said:

"...it would be at best an exaggeration and at worst a distortion to describe Prof Fredrik Sejersted as 'pro-EU'. He chaired an independent committee and his verdict is mixed on Norway's ties with the EU: he recognises the economic benefits, but he laments the 'great democratic deficit' that the relationship involves, saying: 'There are few areas of Norwegian democracy today where so many know so little about so much as is the case with Norwegian European policy.'"

The Adviser noted that the findings of the panel which Prof Sejersted had chaired had been referred to in the report. This panel had noted the "democratic deficit" in which Norway contributed money to the EU but did not influence EU decision. But it also noted the economic benefits to Norway of its political arrangements and had stated:

"On the economic side, the report believes outcomes have been good – with rising national income, higher employment and higher incomes, not least because of Norway's oil and gas resources."

The Adviser considered that, on the face of this article alone, it was not possible to know whether Prof Sejersted supported membership of the EU. The Adviser considered that what was clear was that Prof Sejersted felt there was a benefit to there being a stable economic and political structure for Norway to engage with.

The Adviser considered that, given his role in chairing the panel, Trustees would not doubt it was editorially justifiable to include his comments in the article.

With regard to the article featuring Espen Eide, this was a report based on a Radio 4 *The World This Weekend* programme on 23 December 2012, featuring an interview with Mr Eide as part of an extensive exploration of Norway's relationship with the EU. The Adviser noted that the article quoted some of the other contributors to the programme but led with Mr Eide's comments, given his status as the Foreign Minister of Norway.

The Adviser noted the response of the Head of Editorial Compliance and Accountability, BBC News, who had stated:

"It is the case that it begins with pro-EU Norwegian Foreign Minister Espen Eide, but that's because as a news organization Eide's view was the editorial driver of the story. But the article also points out near the top that Norwegians rejected EU membership in referendums, and includes this comment from Eurosceptic MEP Daniel Hannan: 'What we're after is something a bit more like what the Swiss have, but actually I think we could get better terms than either Norway or

Switzerland.’ Thus, with access to the various perspectives outlined, readers can form their own judgements.”

The Adviser noted that the article stated:

“Mr Eide is pro-EU, though Norwegian voters have twice rejected the chance to join the EU in referendums in 1972 and 1994.”

She considered Trustees would be likely to conclude that Mr Eide’s position had been clearly signposted and that the article had made clear there was a range of views on this subject.

The Adviser noted the complainant’s point that all four of the individuals quoted were “pro-EU” and therefore not representative of public opinion in Norway. The Adviser noted the response from the Head of Editorial Compliance and Accountability, BBC News, which included the opinion of BBC Online’s Europe reporter that describing Prof Sejersted as “pro-EU” was “at best an exaggeration and at worst a distortion”.

The Adviser noted that two of the four individuals featured – Eide and Solberg – had made clear their position as “pro-EU”; however, the Adviser also noted that the political situation in Norway was somewhat similar to the UK, in that the two largest parties’ official position, despite internal dissenters, is that they are in favour of membership of the EU. Consequently, the likelihood is that when senior politicians from these parties holding office are sought for interview they are significantly more likely to be “pro-EU”.

The Adviser noted that this has led to a significant gap between the opinions of political leaders with regard to EU membership and that of the public, as noted by the complainant. The Adviser, however, noted that the existence of this gap was made clear in the three articles that focussed primarily on the Norwegian relationship with the EU, with reference to public opinion via two referendum results rejecting EU membership, and current poll results indicating strong public opposition to EU membership.

The Adviser considered the choice of the four politicians and experts appearing in the articles in question in the light of Impartiality guideline 4.2.5:

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

The Adviser considered that the Trustees would conclude that the choice of the four politicians and experts featured in the articles would be based on “good editorial reasons” and that the position on EU membership of those chosen to be interviewed would not be required to be proportional to public opinion, provided that the existence of that strand of opinion was adequately signposted, as it had been. Therefore, she considered that this point of appeal did not have a reasonable prospect of success and should not be put before Trustees.

The Adviser noted the point raised by the complainant in his further email to the Head of Editorial Compliance and Accountability, BBC News, on 5 August 2013, namely that in none of the articles on Norway’s relationship with the EU, had there been a “pro EEA” voice, specifically: “there is not a single BBC article on Norway and the EU that takes as its starting point the views of a Norwegian politician (for example Helle Hagenau) supportive of the UK becoming a member of the EEA.”

The Adviser noted the response of the Head of Editorial Compliance and Accountability, BBC News, on 28 August 2013:

“...if a leading mainstream Norwegian politician were to stand up on a public platform and urge the UK to leave the EU and follow the Norwegian model then this and the reaction to it would undoubtedly be given serious editorial consideration.”

The Adviser noted that the Head of Editorial Compliance and Accountability for BBC News had said that Helle Hagenau was not a politician but a Danish leader of the “No to the EU” campaign in Norway and that she had featured in a BBC *Newsnight* debate on the EU on 12 December 2012. The Adviser noted that the official position of “Nei Til EU” is critical of the EEA, as indicated on their website:

http://www.neitileu.no/articles_in_foreign_languages/the_european_economic_area_a_real_heartbreaker

The Adviser also noted that they were actively seeking alternatives to this model:

http://www.neitileu.no/articles_in_foreign_languages/the_eea_alternatives

The Adviser noted that Hagenau’s own position was in line with the organisation, namely to seek to withdraw from the EEA, even though in the short term she could envisage some tactical advantages to the UK adopting the same model, as the accession of the UK would increase bargaining power with the EU:

<http://www.eureferendum.com/blogview.aspx?blogno=84223>

The Adviser noted that the Head of Editorial Compliance and Accountability for BBC News had said in an email on 27 August 2013 that she had consulted a Norwegian journalist and regular contributor to BBC News, who said that some Norwegian party members think the EEA deal could serve as a model for the UK, but that is a minority view not shared by any of the parliamentary leaders.

The Adviser noted that the Head of Editorial Compliance and Accountability for BBC News had said in an email on 28 August 2013 that

“I understand that in Norway there is not much support for the current EEA deal and that most Norwegians with a stake in this issue believe Norway should negotiate a better deal with the EU – without actually joining the EU. Voting against EU membership does not necessarily mean support for the EEA deal.”

The Adviser conducted some research into the views of Norwegian politicians and party members and identified one advocate of the EEA/EFTA model and of the UK joining it. Anne Tvinnereim is State Secretary for the Ministry of Local Government and Regional Development and a member of the Centre Party. She would like to see the UK join EFTA, not because she is content with the current EEA/EFTA model, but in a similar fashion to Helle Hagenau, rather as a means to help re-negotiate the agreement, the chances of which would improve if the UK joined.

<http://eureferendum.com/blogview.aspx?blogno=84212>

The Adviser noted from the positions taken by politicians and campaigners described above that a position of opposing EU membership did not mean enthusiastic endorsement

of Norway's existing EEA/EFTA model, and that a substantial portion of those opposing EU membership wish to see the EEA/EFTA model replaced or at the least very substantially re-negotiated.

The Adviser noted that Eurosceptic opinion in the UK is also split on the advantages of the Norwegian model, with Daniel Hannan saying "almost no British Eurosceptic wants to copy Norway".

<http://blogs.telegraph.co.uk/news/danielhannan/100194407/outside-the-eu-we-should-aim-to-copy-switzerland-not-norway/>

The Adviser noted that one of the strongest advocates of the Norwegian model is the cross-party Bruges Group, but their support was qualified and existed mainly for tactical reasons because "it would get most votes in a referendum", even though "it may not be the best (option)".

<http://www.brugesgroup.com/EFTAorTheEU.pdf> (page 11)

The Adviser concluded that there were therefore few positive advocates of the EEA/EFTA model among politicians and analysts in Norway, where the model is seen either as in need of significant reform, if not dismantling, by the anti-EU elements; or as a staging post for Norway's future EU membership by the pro-EU elements. In other words, it is a compromise situation and widely regarded as such.

The Adviser was of the view that the Trustees would not therefore consider the advocacy of Norway's EFTA/EEA model as an option for the UK constituted a significant perspective among Norwegian politicians and experts and that the reporting in the articles cited would therefore be considered to have met the requirements of Guideline 4.4.2.

For the above reasons, the Adviser considered that the complainant's allegations on these points of appeal would have no reasonable prospect of success and that they should not proceed to appeal.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that it could not be the case that the BBC was impartial in its coverage of Norway and the EU when every one of its articles on the topic gave undue prominence to just one side of the debate, especially as the pro-EU side of the debate in Norway was a very small minority, as evidenced by all opinion polling in Norway.

The Committee's decision

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

The Committee noted the complainant's concern about the BBC's impartiality in relation to news coverage of Norway and the EU, specifically with regard to the articles mentioned in the complaint.

The Committee noted that it had previously considered the second article referred to by the complainant, and had concluded that

"...the BBC had made a legitimate editorial choice in choosing to reflect the opinion of politicians and analysts in mainland Europe, and that the absence of an opinion specifically advocating UK withdrawal from the EU did not mean that 'anti-EU' voices had been excluded."

The Committee had also found that:

"...the selection criteria of the interviewees was not flawed and due impartiality had been achieved in a way that was adequate and appropriate to the output taking into account the subject and nature of the content and likely audience expectation."

In terms of the current complaint, the Committee believed it was likely to conclude that the choice of all four politicians and experts featured in the articles was based on "good editorial reasons" as required by the Guidelines, and that the position on EU membership of those interviewed was not required to be proportional to public opinion, provided that the existence of that strand of opinion had been adequately signposted. The Committee believed it was likely to conclude that the strand of opinion had been adequately signposted in the articles and that there was no reasonable prospect of success for an appeal on the grounds of a lack of due impartiality.

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

Doctors, BBC One, 21 May 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 (ECU) not to uphold his complaint of offence in a scene in *Doctors* in which a woman sat on a washing machine.

The complainant appealed to the Trust on 27 August 2013, saying that he was unhappy with the response received at Stage 2 and he wished the Trust to review it. The complainant said that the scene had shown the female character "sitting on a washing machine having a sexual orgasm"; he argued that the scene was "aggressively sexual in its inference" and unsuitable for the daytime slot in which it was shown.

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and saw the programme in question. She acknowledged the strength of the complainant's feelings and the discomfort and confusion that could be caused when children inadvertently saw material of a sexual nature. The relevant correspondence was also reviewed by an independent editorial adviser who also viewed the relevant section of the programme in question.

The Adviser decided that the complainant's appeal did not have a reasonable prospect of success. In reaching this decision she assessed the complaint against the BBC Editorial Guidelines covering Harm and Offence.

The Adviser noted that the BBC, in its Stage 2 response, had quoted from the guidelines above in setting out why it believed the disputed scene was acceptable and had referred to the nature of the content, the editorial justification for it, the programme's audience and its general expectations.

She noted the Complaints Director had written on 19 August and had stated:

"In the case of a long-running drama such as *Doctors*, I think it is reasonable to assume that regular viewers will know that it frequently tackles adult themes which are not designed to appeal to children. I think parents and carers watching with children are likely to be aware of this and would make their viewing decisions accordingly. I would also point out that this episode was broadcast at a time of day when the vast majority of children would be at school and so the number of children watching was likely to be relatively small.

"Taking this into account, I cannot agree that the scene in which Dr Carmichael was caught sitting on a washing machine can be considered to go beyond what might be regarded as generally acceptable for a programme of this kind. There was nothing overtly graphic about what was shown. I imagine that adult viewers would have been aware of what was happening but I also think it is reasonable to assume that any very young viewers who were watching would have had no concept or understanding that there might be a sexual element to this scene."

The Adviser noted that the Guidelines required that potentially contentious material should be both editorially justified and should meet generally accepted standards as defined in the Guidelines.

She noted the response from the Senior Producer on this point, who had stated:

"The storyline built to this scene of comedic frustration as Daniel and Zara were having trouble with their marriage and their therapist told them to refrain from sex for a couple of weeks."

The Adviser considered Trustees would be likely to agree that there was editorial justification for the scene. The Adviser noted the complainant's view that the programme had depicted "a full blown female orgasm" and that it had been "aggressively sexual" in its content. However, she considered the scene was – as the Senior Producer had stated – one of "comedic frustration". She noted that Dr Carmichael was interrupted when she was sitting on the washing machine and subsequently took out her frustration by kicking the machine. She did not consider the scene was "aggressively sexual" in either content or tone. She noted and agreed with the response of the Complaints Director on these points.

The Adviser considered that while adult viewers would have understood what was happening, it was unlikely young children would have made sense of it.

The Adviser noted that *Doctors* was a very well-established series and was currently in its 13th year. She noted that it had a reputation for including adult storylines – in fact the same episode included a young man's suicide – and previously it had featured storylines of rape and paedophilia. She noted too that the love lives of the two characters in this particular scene had been a recurrent theme of the series.

She noted the Complaints Director had stated that this episode of *Doctors* had been broadcast during term-time and was unlikely to have had a large audience of children. She also noted that, according to the BBC's Audience Services department, *Doctors* had one of the oldest audiences of all daytime output – with nearly 80% of viewers aged 45 and over, while children (4-15) making up 2.2% of the average audience – around 35,000 viewers.

She noted that the Guidelines required that programme makers should bear in mind the expectations of the audience and also its size and composition when assessing the likely offence that might be caused by any particular broadcast.

She also noted that the guidelines drew a distinction between all programmes broadcast before the watershed and those "when children are particularly likely to be in our audience", which she believed lent support to the BBC's general argument that a programme aimed at an adult audience in daytime would have different editorial expectations to ones with a significant number of young viewers.

In this context she considered Trustees would be likely to conclude the programme met the Generally Accepted Standards as set out in the Editorial Guidelines and would not have exceeded the expectations of its audience. Therefore, she did not consider the complaint had a reasonable prospect of success and 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 Adviser would never be able to substantiate her views that younger children would not watch the lunchtime drama or recognise that the character appeared to be experiencing an orgasm.

The Committee's decision

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

The Committee noted the complainant's concern that the scene was unsuitable for the time of day it was broadcast and that it 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 sexual content in a programme transmitted during the day when children could be watching.

The Committee noted the editorial justification for the scene which had been put forward by the programme-makers and the Complaints Director and endorsed by the Adviser.

The Committee also noted that, according to the BBC's own audience research, *Doctors*, a daytime drama well-known by its regular audience for its inclusion of adult themes, has an older audience, although on average some 35,000 viewers are children.

The Committee also noted that the programme was broadcast during term-time when a smaller number of children would be likely to be watching. These were factors taken into account when assessing the likely offence which might be caused by a particular broadcast.

The Committee appreciated the concern felt by the complainant but believed that what was clear to older viewers would not have been clear to children. Further this was a comic scene and the sexual element was mitigated by the humour. The Committee was of the view that it would be likely to conclude that the programme met the Generally Accepted Standards as set out in the Editorial Guidelines and would not have exceeded the expectations of its daytime audience.

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

BBC News, terminology used in news reports

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint about BBC news reporting, which he felt was "pro-immigrant and pro Muslim".

He referred, first, to a story which he said was reported by the BBC as being about three "Lincoln men" being jailed for the theft of lead, when the men had, in fact, been three Latvian immigrants.

The second story he referred to in his appeal was, he said, "the Oxford sex case", in which the defendants had been referred to as "Asians", when, in fact, there were seven defendants from Pakistan and two from North Africa. This, he said, was an insult to Thai, Chinese, Malays and all other Asians.

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the 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. The relevant correspondence was also reviewed by an independent editorial adviser, who also read and viewed the items referred to by the complainant.

In reviewing the complaint, the Adviser took into account all the relevant Editorial Guidelines (<http://www.bbc.co.uk/guidelines/editorialguidelines>) and, in particular, those concerning Accuracy, Impartiality, and Harm and Offence.

In relation to the first case mentioned by the complainant in his appeal, concerning the theft of church roof lead (<http://www.bbc.co.uk/news/uk-england-lincolnshire-20711853>), the Adviser looked at other media coverage of the trial at the time the men were convicted, and she could not find any reference to the men being Latvian immigrants. She did note that some sources described them as Lithuanian, based in Lincoln, but there seemed to be nothing quoted directly from the court as them being anything other than resident in Lincoln.

In reports of this nature, the Adviser considered that it would generally be good practice for BBC reporters to stick to the facts as presented in court. She noted that the complainant had indicated in his appeal that he was, himself, a Justice of the Peace, so she was sure he would appreciate this point.

Clearly, where an individual's nationality was relevant to the case, and was highlighted as such in court, it would be a different matter, in the Adviser's view. The editorial guideline on Portrayal made this clear. But, as far as she could see from her research on other cases of lead theft from churches, this did not seem to be a peculiarly Lithuanian (or Latvian) or, indeed, "immigrant" crime.

The Adviser thought that, for these reasons, the Trustees would be unlikely to find that the BBC's report on the lead theft had breached any of the guidelines.

The second case in the complainant's appeal referred to use of the term "Asian", when defendants in the sex grooming case in Oxford had, said the complainant, been from Pakistan and North Africa. He said this was an insult to Asians. He also said that the BBC was failing to acknowledge the role of Islam in these cases and that Islam was responsible for "misogynist and homophobia attitudes".

The Adviser considered that the Head of Editorial Compliance and Accountability, BBC News, had given a full account of references in the Oxford case which had demonstrated that the BBC had reported the men's origins on some relevant occasions. She also noted the references at Stage 2 to coverage of the Rochdale sex rings, the fact that it had been a feature of the case that there had been no agreement on the part of the authorities as to the role played by race and religion, and the BBC's exploration of these issues.

The Adviser thought the complainant might be interested in the discussion the Trustees had had earlier this year about use of the term "Asian" in such cases. This was in response to a complaint, a report of which could be found on pages 33-41 of the February 2013 report of the Editorial Standards Committee (http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2013/feb.pdf)

The complaint was not upheld in that case but the Adviser had noted the following conclusions by the Committee:

"The Committee noted that the BBC Executive had said it recognised that this was an area which required careful thought. The Committee agreed and wished to make clear its view that in this area precise language is important. While it had not upheld this complaint, the Committee agreed that the complainant had raised important issues regarding the language used to describe people born in the UK but whose ethnic origins lay outside the UK which it intended to explore with the Executive in preparation for the next revision of the Editorial Guidelines."

The Adviser hoped the complainant would be reassured that this was an area the Trustees had given some thought to and would be discussing further with the BBC Executive.

In summary, for all the reasons stated above, the Adviser considered there was no reasonable prospect of the Trustees finding the reports complained about had been in breach of the Accuracy and/or Impartiality or any other Guidelines, and the appeal would not, therefore, be put before the Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He raised a current example which concerned him.

The Committee's decision

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

The Committee acknowledged the complainant's perception of bias in BBC news reporting, and also noted the example he gave, in his request for a review of the Adviser's decision, of an interview on the *Today* programme. The Committee noted that a

complaint should be made to the BBC Executive in the first instance and this was therefore not a matter that could be considered by the Trust.

The Committee was not of the view that evidence had been presented which would be likely to lead it to conclude that BBC News reporting was in breach of Guidelines with regard to the original appeal, which cited the Lincoln and Oxford criminal cases.

The Committee noted that the Adviser had drawn the complainant's attention to its discussion earlier in 2013 about the use of the term "Asian".

The Committee did not believe the complainant's appeal had any reasonable prospect of success but joined with the Adviser in hoping the complainant would be reassured that this was an area the Trustees had given some thought to and would be discussing further with the BBC Executive.

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

The Route Masters: Running London's Roads, BBC Two, 2 July 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 (ECU) not to uphold his complaint about the portrayal of London bus drivers in this programme.

The complainant first contacted the BBC about this programme on 3 July 2013. His complaint was that the programme had portrayed bus drivers as "essentially light-hearted jolly chaps and lassies" and had glossed over genuine issues of concern to drivers. He also complained the programme had inaccurately referred to the pay of bus drivers and stated:

"Bus drivers are not salaried staff, some start on £9.30/hr, so the only way to achieve your quoted starting £26,000 is to work shifts of 50-60hrs/week; in fact my P60 has been reduced by £200-300 each year, for the last 5 years."

The complainant received Stage 1 responses on 10 and 17 July. He remained dissatisfied and on 25 July received a further response from the Executive Producer, who stated:

"As far as the commentary line 'a starting salary of around £26,000' goes, I fear having investigated further that this is probably an overstatement, not reflecting overtime, or the basic rate on starting the job. I'd like to apologise that this error has crept in to the film. We aim for the highest standards of accuracy at all times. This line will be amended for any future broadcast of the programme."

The complainant remained dissatisfied and considered there ought to be an on-air apology. He escalated his complaint to Stage 2. He received a response from the ECU's Complaints Director on 27 August which stated:

"As you will know, calculating a 'starting salary' for a London bus driver is not simple. My understanding is that the nine major operators in the city pay different basic rates, with some offering enhanced pay rates at different times, and others offering lower hourly rates offset by paid meal-relief, or pay only for 'driving time'. Considering those differences, the distinctions between different shift patterns, and the difficulty of establishing what an average driver's approach to overtime might be, extrapolating a figure that truly represents what a driver might expect to earn in their first year is problematic. The problem is further compounded by the fact that rates of pay for bus drivers are regarded by the operators as commercially sensitive."

"Arriva Buses have told me that a starting salary for a new driver (without overtime) at the point the film was produced was £508 per week, giving an annual figure of around £26,000. Go-Ahead did not give an exact figure but said that the figure quoted was 'not an unreasonable amount and would be achievable in the first year of service, dependent on location and a moderate amount of overtime'. Unite, the union, gave an average salary for new drivers of £23,000, but declined

to say whether this was exclusive of overtime or any other enhanced pay mechanisms. TFL confirmed that their best estimate across operators was a starting salary of £26,000, but were unable to give more detail on how the figure was calculated.

"In the circumstances and given this evidence 'around £26,000 a year' does not seem to me to be an inaccurate estimate of the amount a new driver might reasonably be expected to earn."

The complainant (who indicated that he was, himself, a London bus driver and had appeared in the film) appealed to the BBC Trust on 1 September 2013, attaching the correspondence he had had with the BBC and explaining why he was dissatisfied with the Stage 2 decision by the Editorial Complaints Unit (ECU) not to uphold his complaint.

In his appeal to the Trust, the complainant again asserted that the information given on drivers' pay was inaccurate because drivers are not "salaried staff", as stated, and the only way to achieve the quoted starting pay of £26,000 a year would be to work overtime – a factor not referred to in the programme. The complainant acknowledged the difficulties in calculating drivers' pay, but submitted that the programme should therefore have omitted the figures entirely, rather than attempting an "over inflated guess". He noted that the programme series made no reference to the starting salaries of other groups featured and argued that this was not impartial.

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and an independent editorial adviser, and the film in question was also viewed. She acknowledged the strength of the complainant's feelings and that this was an area that was the subject of much discussion between drivers, their union and the bus companies.

In reviewing the complaint, the Adviser took into account all the relevant Editorial Guidelines (<http://www.bbc.co.uk/guidelines/editorialguidelines>) and, in particular, those concerning Accuracy, and Impartiality.

The Adviser reviewed the evidence on wage levels that had been collected by the ECU at Stage 2, and the ECU's response on the matter of an alleged breach of the impartiality guidelines.

First, the Adviser noted what had been said in the programme about pay. The film's narrator said the following:

"As pressured as it may be, with a starting salary of around £26,000 a year, people are queuing up to become drivers."

She also noted the context of the statement, which was about 13 minutes into the film, immediately before a section on the training of bus drivers and, in particular, the story of a mature recruit whose own father had been a bus driver.

Up until this point, the programme had been largely focused on the pressures of the job – the early starts, huge increases in passengers and traffic in recent years, the abuse by and complaints from the public, and the continual tracking and supervision of drivers, resulting in a considerable loss of autonomy, compared with drivers of previous generations.

In the Adviser's view, it did not seem unreasonable to her for the question of pay to come up in this context, when all the pressures had just been graphically shown but, despite these pressures, there were about 30 applicants a week coming to the test centre featured in the programme.

The complainant had said that the figure of £26,000, described in the film as the starting salary, was inaccurate and misleading because it could only be achieved with large amounts of overtime. (The BBC had previously explained that "salary" had been used in a colloquial, rather than technical sense.) In his appeal letter the complainant said that if "overtime isn't mentioned, then the public will assume £26,000 is what they [bus drivers] will receive on starting, for a standard 40-hour week".

The Adviser noted the comments by the Executive Producer, at Stage 1, and the ECU at stage 2.

The Adviser noted, further, that the ECU at Stage 2 had concluded that calculating starting pay for a London bus driver was not simple, because of the commercial sensitivity of the information and because the various operators paid different basic rates, with different rules about payment for breaks, for example, and had different shift patterns. Notwithstanding these difficulties, it was the Adviser's view that the ECU Complaints Director appeared to have researched the issue with an appropriate level of thoroughness.

Overall, the ECU Complaints Director had concluded that "around £26,000 a year" did not seem to him to be an inaccurate estimate of the amount a new driver might reasonably be expected to earn. The Adviser's view was that the Editorial Standards Committee would be likely to reach a similar conclusion, even though the Executive Producer of the film had apologised for an error at an earlier stage. The Adviser noted that the complaints process had been devised in such a way that a complaint was given further detailed consideration at each stage – and this, on occasion, meant that a response given at an earlier stage could be superseded by a later one.

In particular, the Adviser noted that the line in the film had not said the pay was without overtime, and viewers might reasonably have assumed that there would, indeed, be an element of unsocial hours and overtime in a London bus driver's job, especially in the context of the film up until that point.

On impartiality, as has already been set out above, the Adviser noted and agreed with the ECU's response, that mentioning bus drivers' pay was editorially justified in the context and she did not consider Trustees would be likely to find a breach of the guidelines on impartiality on the basis that the pay rates for other public transport workers had not been mentioned.

Therefore, for all the reasons stated above, the Adviser considered there was no reasonable prospect of the Trustees finding the film had been in breach of the Guidelines on either Accuracy or Impartiality and she did not propose to put the appeal 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 believed the BBC had allowed itself to be "duped into a recruiting campaign by TFL" and considered that the complaint had been wrongly treated as a

“minor error” by complaint advisers. He said this was illustrated by the suggestion in the complaint response that viewers might reasonably assume the programme’s stated starting salary of £26,000 for bus drivers to include overtime. The complainant also repeated his concern that it displayed a lack of impartiality for the series only to mention the salaries of bus drivers. He suggested that the figures supplied by TFL had not been checked sufficiently by programme makers.

The complainant attached a letter which he had sent to the Mayor of London last year about the harassment and bullying suffered by bus drivers in London.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints 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 acknowledged the complainant’s concerns about the information given in the programme in relation to starting salaries for London bus drivers, which he felt had led to a lack of impartiality in the making of the programme.

The Committee noted that the Executive at Stage 1 had already acknowledged that the figures may have been slightly misleading, and that the Executive Producer of the series had promised to correct this for future transmissions.

The Committee further noted that, following the complainant’s escalation of the complaint to Stage 2, the ECU had conducted further research and found that the figures were not necessarily inaccurate after all. The ECU Complaints Director concluded that “around £26,000 a year” did not seem to him to be an inaccurate estimate of the amount a new driver might reasonably be expected to earn. The Committee believed it would be likely to reach a similar conclusion, even though the Executive Producer of the film had apologised for an error at an earlier stage. The Committee agreed with the Adviser’s statement that the complaints process had been devised in such a way that a complaint was given further detailed consideration at each stage – and this, on occasion, meant that a response given at an earlier stage could be superseded by a later one.

The Committee acknowledged the complainant’s concern that the programme only focused on the salaries of bus drivers and did not mention the salaries earned by other employees, but agreed that it was unlikely to find a breach of the guidelines on impartiality because pay rates for other public transport workers had not been mentioned. The Committee noted and agreed with the Adviser’s assessment of the context in which information about bus drivers’ pay was given in the programme in question and that this inclusion was therefore a justifiable editorial decision.

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

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

Today, BBC Radio 4, 7 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 his complaint about a two-way interview between a presenter of the *Today* programme and the BBC's World Affairs Editor. The interview was considering how foreign governments would regard the re-election of US President Obama and what foreign policy challenges the president faced.

The complainant considered the report had inaccurately referred to President Carter's foreign policy record in the Middle East and he also believed the World Affairs Editor had been wrong to indicate that the Israeli Prime Minister Benjamin Netanyahu had supported the Republican candidate Mitt Romney in the presidential campaign.

On the first part of his complaint, the complainant said there had been no prospect of President Carter being able to, "...bring both sides together in the Palestinian/Israeli divide and seem to create a peace settlement" as the World Affairs Editor had stated, because Camp David had not included the Palestinians and the Palestinian Liberation Organisation (PLO) rejected the accord and called Sadat a traitor for agreeing it. Also, the complainant said, that agreement isolated Anwar Sadat and Egypt from both the Palestinians and the other Arab states.

On the second part of his complaint, the complainant acknowledged that there had been much media speculation about Netanyahu's attitude towards the Presidential candidates, but argued that this remained only speculation and that there was no evidence that Netanyahu had done anything to influence how Americans voted.

In response to the Executive's observation that Netanyahu had been photographed with Mitt Romney, who was standing against Mr Obama in the US election, the complainant said that Netanyahu had previously been photographed with Obama:

"...and he [Netanyahu] did not want to appear partisan in the election campaign. The fact that he was photographed with Romney does not mean that he was taking Romney's side in the election."

He added that Israeli politicians do not take part in American elections but conceded:

"It may well be true though that Netanyahu and Obama do not personally get on that well together."

He said it was untrue that Obama had taken a "more hostile line towards Israel" [than that which had been taken by President Carter], referring to comments made by the then Israeli Defence Minister Ehud Barak, who had reportedly said in an interview for CNN that President Obama was doing more for Israel's security "than anything that I can remember in the past".

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the 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 Adviser noted that the complainant's appeal to the Trust had related to the Editorial Guidelines on Accuracy but that the response from the ECU had also drawn his attention to the Guidelines on Impartiality relating to professional judgments from staff in News and Current Affairs. The full Editorial Guidelines can be found at:

<http://www.bbc.co.uk/editorialguidelines/>

On the first point, regarding President Carter's contribution to the peace process, the Adviser noted the response at Stage 2 from the ECU, which stated:

"As you will know, the guidelines refer to 'due' accuracy – that is, accuracy which is adequate and appropriate in the context of the broadcast. This was a very brief passing reference to President Carter's achievements in a report which did not otherwise concern him, and seemed to me to have been included as background on the relative lack of opportunities available to American statesmen seeking progress in the region, by comparison to what might have been possible many years ago..."

The response acknowledged that the Palestinians were not involved in those negotiations but stated:

"...As you know, the negotiations were between Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin, the former ostensibly representing the Arab world. It seems to me that the divide which existed at the time over the Palestinian question was not simply between Israel and the Palestinians, but between Israel and its Arab neighbours – in particular Egypt and Jordan. It could of course be argued that subsequent developments showed that President Sadat lacked the authority to speak for the Arab world (and for Jordan in particular) but regardless of that fact it was nevertheless significant that President Carter had proved able to bring one of the most powerful Arab nations – both militarily and in terms of a history of influence over the region – to the discussions.

"...Those discussions led to a peace treaty between Egypt and Israel, but also to an agreement on a framework for negotiations on the West Bank and Gaza which referred to 'full autonomy' for the Palestinians, and a withdrawal of Israeli troops."

The Adviser also noted that the World Affairs Editor had limited President Carter's achievements saying that his endeavours had made him able to: "seem to create a peace settlement". The Adviser considered that Trustees would be likely to conclude that the Executive had given a reasonable response to this point and it was duly accurate in the context of an item assessing the current foreign policy issues facing the newly re-elected American president.

On the second point, the Adviser noted that the complainant had been sent links to a wide number of media reports from America, Britain and Israel which had also concluded Benjamin Netanyahu had supported Mitt Romney's campaign. She considered Trustees would be likely to conclude that this was a professional judgement, even if direct attribution to the politicians concerned could not be made. She noted too that the Stage 2 response had stated:

"As you will know, the sort of political discourse under discussion is characterised by subtlety and a somewhat oblique approach to communications. A foreign Prime Minister would be unlikely therefore to make an outright statement of preference in the US elections, given the possible consequences. They might, however, intimate a preference in such a way as to give commentators, and indeed voters, an understanding of their preference or their beliefs on the strengths of the policies of respective candidates. It seems to me that this is what happened here."

The Adviser considered that this was an item in which the World Affairs Editor looked behind the headlines and offered his quite tentatively-toned thoughts – which were tempered by words such as "seem" and "I judge" and "I should think" – and made it clear when there were no direct words to cite. The Adviser considered that Trustees would be likely to conclude the World Affairs Editor had made it clear he was giving his best estimation of Benjamin Netanyahu's views and the *Today* audience would have understood it as that. She considered there was no reasonable prospect that the Trustees would uphold this two-way discussion as demonstrating a breach of the guidelines on due accuracy and 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 an appeal.

On the first point, he said that "Arafat had never had talks with Israel and had stated that he never would" and as such the World Affairs Editor's reference to President Carter was incorrect.

On the second point, he said that it was reasonable to speculate that "Netanyahu would prefer another candidate from the centre-right to win the [US] presidential election" rather than President Obama but that there was no solid evidence to support this view and that the World Affairs Editor's language was exaggerated.

He also repeated his assertion that it was incorrect for the World Affairs Editor to say that "Obama has taken ... a more hostile line towards Israel" and again cited comments reportedly made by the then Israeli Defence Minister Ehud Barak during a CNN interview.

The complainant also objected to the Adviser's description in correspondence of the World Affairs Editor as an "expert correspondent" in the context of the Israeli/Palestinian conflict.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Adviser and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the *Today* broadcast of 7 November 2012, which was the subject of the appeal.

On the first point, the Committee noted the complainant's concerns in relation to the World Affairs Editor's reference to President Carter, as set out above. The Committee noted that the ECU had outlined the requirement for "due" accuracy as that which is "adequate and appropriate in the context of the broadcast", and that the ECU had said the reference to President Carter was a passing one in a report which did not otherwise concern him.

The Committee noted the ECU's points: that the Egyptian President, Sadat, had been "ostensibly representing the Arab world" during the Camp David negotiations; that "the divide which existed at the time over the Palestinian question was not simply between Israel and the Palestinians, but between Israel and its Arab neighbours" and; that although it could be argued that Sadat lacked the authority to speak for the Arab world, "it was nevertheless significant that President Carter had proved able to bring one of the most powerful Arab nations ... to the discussions".

The Committee also noted the Adviser's point, that the World Affairs Editor had limited his description of President Carter's achievements in the region.

The Committee agreed with the Adviser that it would be likely to conclude that the Executive had given a reasonable response to this point and it was duly accurate in the context of an item assessing the current foreign policy issues facing the newly re-elected American president.

Therefore, the Committee did not consider that the first point of appeal had a reasonable prospect of success.

On the second point, the Committee noted the complainant's concerns about the World Affairs Editor's comment that:

"Obama has taken a rather different line towards Israel – a more hostile line towards Israel – and he still won the election in spite of everything the Israeli Prime Minister could do to discourage Americans from voting for him."

The Committee agreed that this point raised a matter of substance and thus agreed to take this point on appeal.

The Committee also noted that the complainant objected to the fact that the Trust Unit's Adviser had referred to the World Affairs Editor as an "expert correspondent" in her correspondence. It noted that the World Affairs Editor has a long history of reporting on world affairs, including the situation in the Middle East and that he is BBC News's "Editor" for this particular area of output. As such, the Committee considered the Adviser's description of the World Affairs Editor was appropriate.

The Committee therefore decided that one element of appeal did qualify to proceed for consideration and that one did not.

Decision of BBC Audience Services not to respond further to complaint about Top Gear, BBC Two, 4 August 2013

Background

The complainant first contacted the BBC on 6 August 2013 about the 4 August edition of *Top Gear* which ran an extended feature about the “best of British” vehicle manufacturing. The complainant had contacted the programme directly because he was unhappy that Vauxhall, “the oldest and largest Commercial vehicle maker in this country was omitted” from the report. He considered this was unlikely to be an oversight. On 8 August, not having heard back from the programme, he contacted the Director-General’s office with his complaint. He received a response from BBC Audience Services on 17 August which stated:

“We understand you were unhappy with the programme, as Vauxhall were not among the manufacturers included in the programme.

“Thank you for bringing your concerns to us. We can inform you that the Executive Producer of ‘Top Gear’ has already written to Vauxhall to explain that we shot enough material for two hours and that once the editing process began, regrettably there were some companies that were left out.

“On the positive side, we do feature the new Astra every week as the new Reasonably Priced Car.”

The complainant was dissatisfied and renewed his complaint on 23 August. In particular he was concerned that a map showing car manufacturing plants had not included either Luton or Ellesmere Port which, the complainant observed, were “two of the largest car plants in the country”. He wondered whether the two sites had originally been on the map, only to be removed at some stage. He considered the response he had been sent was patronising and failed to answer his query, and was concerned that the programme was guilty of bias.

BBC Audience Services responded on 5 September, notifying the complainant that they had nothing to add to their earlier correspondence and that, as they did not consider the complaint raised an issue that would amount to a breach of the Editorial Guidelines, they would not correspond further on this issue. They advised the complainant he could appeal against this decision to the Trust.

Appeal

The complainant appealed to the BBC Trust on 9 September and stated:

“My concern is that Top Gear were telling the world (It is shown all over the world) how the British car industry was now producing more cars than ever in its history, mentioning Honda, Toyota, Nissan BMW (Mini) Ford, (They do not make cars or vans in this country) Morgan and some specialised exotic makes who make a handful of cars a year. The 2nd largest manufacturer in this country (largest van manufacturer in Europe) with new investments in Luton and a £250,000,000 investment in Ellesmere Port for the new Astra, was completely BLANKED OUT. No mention whatsoever.

"I want to know why Vauxhall was edited out. Your complaints dept said it was edited out along with other manufacturers, who were they please?"

The complainant also raised issues of complaints handling, noting that he had not received a response from the programme to his email and answer-phone message. He did not accept the reason he had been given. The complainant sought information for what lay behind the decision.

Decision of the Senior Editorial Complaints Adviser

The Trust Unit's Senior Editorial Complaints Adviser (the Adviser) read the correspondence between the complainant and the BBC and watched the relevant section of *Top Gear*. She acknowledged the strength of the complainant's feelings about this matter.

The Adviser noted that the complainant had appealed on the substance of his complaint. However, she noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

She noted that the BBC had advised him that the programme's Executive Producer had written to Vauxhall to explain that for reasons of time, the company had not been included in the report. The Adviser had not seen any evidence that there was any other factor that lay behind this decision, other than a lack of time.

The 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 (article 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. Decisions relating to what examples to refer to in a feature were part of the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that the complainant had raised concerns that the output was neither impartial nor accurate. She noted that, in practice, the Editorial Guidelines meant that the requirements for due accuracy and impartiality varied depending on the nature of the output. So that, for example, a factual documentary would have a greater requirement for accuracy when referring to a particular subject than if the same subject were referred to in a comedy panel show. The Adviser considered that this general expectation was broadly understood by the audience as a whole.

The Adviser noted the Guideline requirement for due accuracy and impartiality, which included "taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation." She considered the report had been clearly signposted and the audience of this very well-established programme would have expected the report to be factual but, in the spirit of the programme, entertaining and not necessarily encyclopaedic. She considered the Trustees would be likely to conclude the programme met the Guideline requirements for due accuracy and due impartiality.

She considered that, where there was not an issue of a breach of the Editorial Guidelines, decisions over what information to include in a feature report were editorial and creative decisions that rested with the BBC and would not generally be considered by the Trust.

The Adviser noted that the response sent to the complainant by BBC Audience Services had been brief; however, it had informed the complainant that Vauxhall had not been included for reasons of time. She considered Trustees would be likely to conclude the BBC had made a reasonable attempt to respond to the complainant's concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

The Adviser also noted the complainant had raised issues about complaints handling. She accepted that it must be frustrating to leave messages for the programme team directly and not receive responses from them and sympathised with the complainant. However, the Adviser noted that the BBC received around a million complaints and contacts each year and has set up a system that was intended to ensure they were responded to properly. The Complaints Framework advised complainants to direct their concerns to Audience Services by phone, letter or email and stated: "If you do not direct your complaint to one of the above, the BBC cannot guarantee that your complaint will be replied to."

The Adviser understood that this system had been introduced to try to ensure complaints were tracked and answered properly and was also intended to reduce pressure on programme teams. She noted too that, for television programmes in particular, once a series was over, the production team might work on other output and therefore any correspondence sent directly to the programme ran the danger of being unanswered.

While the Adviser noted the response sent from Audience Services had been brief, she did not consider that it was either "pathetic" or "patronising" as the complainant had indicated. She thought that in drawing the complainant's attention to the fact that the programme's current "reasonably priced car" was an Astra had been a way of indicating that there was no bias against Vauxhall which had been a concern felt by the complainant.

Therefore, although the Adviser regretted that the complainant had not been satisfied with the way his complaint had been dealt with, she did not consider this aspect of the appeal had a reasonable prospect of success and 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 provided some historical background to Vauxhall Motors and said that the exclusion of Vauxhall from this *Top Gear* feature was a major error. The complainant disagreed with the Adviser's view that this was not a matter of substance, and he said that a public apology should have been given, with someone held accountable.

The Committee's decision

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

The Committee acknowledged the complainant's strength of feeling and understood his reasons for querying the decision not to include Vauxhall in this item. The Committee noted the BBC's responses and agreed that there was nothing to suggest that the omission of Vauxhall Motors was anything other than a legitimate editorial decision taken by the programme makers. The Committee did not agree that the Editorial Guidelines on Accuracy or Impartiality were likely to have been engaged by this omission, taking into account the well-established nature of the programme.

The Committee agreed that the BBC's responses to the complainant had been appropriate given that the complaint did not raise an issue of a breach of the Editorial Guidelines, and it would be likely to conclude that it was reasonable for the BBC to have decided not to engage in any further correspondence on the same point.

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