

Editorial Standards Findings

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

October 2013 issued December 2013

Remit of the Editorial Standards Committee	1
Summaries of findings	3
Appeal Findings	6
Fake Britain, BBC One, 4 June 2012	6
"Why do some UK Jews settle in Israeli occupied land?", BBC online, 4 February 2013	22
Rejected Appeals	30
Decision not to play "Ding Dong The Witch is Dead" on The Official Chart Show with Jameela Jamil, BBC Radio 1, 14 April 2013	30
Six Nations Rugby, BBC One, 9 February 2013 and 23 February 2013	35
Allegation of bias and undue prominence	40
<i>HARDtalk</i> , BBC News Channel, 1 March 2013	43
"Iraq 10 years on: In numbers", BBC News website, 20 March 2013	51
<i>Today</i> , BBC Radio 4, 9 May 2013	57
BBC News website, Israel and Palestinian Territories country profile pages	64
<i>Newsnight</i> , BBC Two, 12 December 2012 and 23 January 2013	73
Michael Grade and the World's Oldest Joke, BBC Four, 6 March 2013	81
"Norway's EU deal 'not right for UK'", BBC Online, 18 April 2013	86
BBC Online recipes containing foie gras	90
Decision of BBC Audience Services not to respond further to complaint about negative coverage of India	94
Great Bear Stakeout, 24 April 2013, BBC One and iPlayer	96
Summary	96
The Editorial Standards Committee Finding in full	98
Report by the BBC Executive, September 2013	102

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

Fake Britain, BBC One, 4 June 2012

This is a first party complaint on behalf of Equisafety Ltd. The complainant said that an item on high visibility (hi-vis) clothing was inaccurate, misleading, partial and unfair to Equisafety. There were six individual points of complaint considered on appeal.

The Committee concluded:

- that an allegation that a product is fake is an extremely serious one and it is incumbent on programme makers to consider very carefully how audiences are likely to regard any product depicted.
- that the description of an Equisafety waistcoat (the 'POLITE' waistcoat) in the programme as "fake hi-vis safety gear", and the statement that the jacket "failed to meet EU legal standards" were not duly accurate.
- that, with regard to the testing of an Equisafety waistcoat by BTTG, the cumulative effect of the commentary would have been to mislead viewers into believing that the margin of failure was significantly greater than was actually the case.
- that the suggestion in the programme that the Equisafety waistcoat fell short of EU standards due to modifications was not duly accurate.
- that, being aware that Wirral Trading Standards were satisfied with Equisafety's certification which showed they were compliant with safety standards, and also being in possession of the garment's User Information sheet, the programme makers were under an obligation to double-check with the international testing house SATRA whether the garment met applicable safety standards.
- that in not contacting SATRA or Equisafety to make enquiries about whether the waistcoat met safety standards, the item was not properly sourced and/or cross-checked.
- that it appeared that people in the equestrian hi-vis market, including purchasers of Equisafety products, had recognised the 'POLITE' waistcoat and, despite the addition of a masking effect ("blobbing"), this waistcoat was identifiable.
- that, given the 'POLITE' waistcoat's identifiability, the cumulative effect of the breaches of the Accuracy guidelines outlined above had resulted in unfairness to Equisafety.
- that Equisafety should have been given the opportunity to comment on the serious allegations that had been made against it, and there was no editorial justification for proceeding without this.
- that the programme makers should have taken further steps to ascertain the precise nature of a contributor's association with a competitor of Equisafety.

- that, given that viewers would have accorded considerable weight to the contributor's contribution, and that the programme makers had not taken sufficient steps to ascertain the precise nature of her association with a competitor, the item was not duly impartial in this regard.
- that, considered singly, comments made by a contributor did not amount to individual breaches of the Accuracy Guidelines but, considered cumulatively, their effect was to give the impression that the contributor was a disinterested member of the public. This was inaccurate and misleading.
- that the editing and commentary of the BTTG test and a contributor's interview had not implied that the jacket purchased by the contributor was an Equisafety jacket.
- that it had not seen any evidence which led to the conclusion that a TUV (a testing house) certificate referred to by a contributor was not authentic, or that the contributor had not contacted TUV in connection with the certificate.
- that, considered as a whole, the item was inaccurate, misleading and unfair towards Equisafety.
- that the item as a whole was not biased in focusing on one particular manufacturer, as other hi-vis clothing companies' products were featured in the programme.

The complaint was upheld with regard to Accuracy and Fairness, and in part with regard to Impartiality.

For the finding in full see pages 6 to 21.

"Why do some UK Jews settle in Israeli occupied land?", BBC online, 4 February 2013

This is a consolidated appeal from two complainants concerning a feature article on the BBC News website about two British men who had emigrated with their families to the West Bank. The issue considered on appeal was the allegation that the article was not duly accurate and impartial because it did not reflect the impact of the settlements on Palestinians.

The Committee concluded:

- that the item under appeal legitimately reflected a perspective on the Israeli/Palestinian issue which is less commonly heard, and that this is permitted by the Guidelines, provided the audience is informed of the editorial purpose of the content and is aware of the existence of other views and that those views are not misrepresented.
- that it was clearly signposted to the audience that the article was focussing on a specific aspect; the headline and opening of the article made clear that the subject was the experience of UK Jews who had decided to live in the Israeli-occupied

West Bank.

- that there was sufficient additional context to leave the audience in no doubt that the settlers' presence in the West Bank was a matter of international legal dispute and was considered an obstacle to a peace agreement in the region.
- that the opinions expressed were clearly the settlers' own and consequently the audience were able to reach an informed view on what weight to place on their contributions.
- that the clear attribution and signposting, the inclusion within the article of the broader context and the prominent links to related content reflecting other perspectives ensured that the article met the guideline requirements for due accuracy and due impartiality.

The complaint was not upheld.

For the finding in full see pages 22 to 29.

Appeal Findings

Fake Britain, BBC One, 4 June 2012

1. Background

Fake Britain is a daytime consumer series for a general audience, and is broadcast on BBC One and BBC HD. It reveals the extent of fake goods in the UK and investigates the activities of conmen. The programme is made for the BBC by an independent production company. The 4 June 2012 edition⁴ of *Fake Britain* contained an item on hi-vis clothing.

Equisafety Ltd ('Equisafety') sells high-visibility ('hi-vis') garments and safety equipment, including the 'POLITE' hi-vis equestrian clothing range. Equisafety's Managing Director complained that the item in question was inaccurate, misleading, partial and unfair to Equisafety.

2. The complaint

Stage 1

In the complainant's initial telephone contact with BBC Audience Services on 26 June 2012, and in subsequent correspondence with the BBC Executive and the Trust Unit (which remitted the complaint back to the Executive for a final Stage 1 response), the complainant raised a number of detailed points of complaint.

The complainant was not satisfied with the BBC's responses, and escalated her complaint to Stage 2.

Stage 2

The Acting Head of Editorial Complaints, ECU, sent the complainant the ECU's decision on 18 April 2013. The ECU identified 10 points of complaint (in italics below), on which it made the following findings:

- (a) *The programme showed a test being carried out by BTTG⁵ on a 'POLITE' hi-vis jacket which was clearly and easily recognisable despite the 'blobbing' designed to make it unidentifiable. The jacket was said to have failed the safety tests. This was unfair to Equisafety.*

The ECU noted that BTTG specialised in independent testing and certification of Personal Protective Equipment, and was UKAS⁶ accredited. BTTG was recommended to the programme makers by the British Safety Industry Federation. One of the jackets tested was made by Equisafety and carried a CE mark and EN1150 standard, and so should have met the minimum standard for the area and placement of reflective material on non-professional garments. The tests carried

⁴ The edition in question was repeated on 12 July 2012.

⁵ The British Textile Technology Group, an independent UKAS-accredited testing and certification laboratory for the apparel, technical textiles, nonwovens, floor covering and construction industries.

⁶ UKAS is the United Kingdom Accreditation Service, the sole national accreditation body recognised by government to assess, against internationally agreed standards, organisations that provide certification, testing, inspection and calibration services.

out by BTTG found that the jacket did not have the required area of luminous material.

The ECU agreed that, if the jacket had been clearly identified as one that was made by Equisafety, then it may have been appropriate to give Equisafety an opportunity to respond to the suggestion that it was selling jackets that did not meet the EN1150 standard despite claims to the contrary. However, the brands of the jackets being tested were never mentioned. Furthermore, Equisafety's jacket was 'blobbed', to ensure that it was not readily identifiable. The ECU appreciated that the complainant thought that viewers would have known that it was one of Equisafety's products, particularly because of the "distinctive blue chequers". However, as the complainant had acknowledged, the 'POLITE' range was not the only one on the market that bore a resemblance to jackets used by the police, and so the ECU could not conclude that it would have been apparent to most viewers that it was made by Equisafety.

The ECU did not therefore uphold this point of complaint.

- (b) *The BTTG tester said the jacket had been modified and so did not have a sufficiently large area of luminous material. The programme went on to say the jacket "failed legal EU safety requirements", but all 'POLITE' jackets had passed the necessary tests. This was misleading and unfair to Equisafety because the programme clearly implied that its products did not meet the required safety standards. The programme makers had been told by Wirral Trading Standards that Equisafety products did meet the relevant standards.*

Having concluded that viewers would not have identified the jacket being tested as Equisafety's product, the ECU concluded that there was no unfairness to Equisafety in this regard. For the same reason, the ECU did not consider that the programme was misleading. The ECU determined that the most that viewers would have concluded from this sequence was that some jackets on sale did not meet the required standard and, in some cases, that this was because modifications were made after a garment had been tested and approved.

The ECU did not therefore uphold this point of complaint.

- (c) *The programme included a lengthy contribution from a contributor who was introduced as "a keen horse rider. She recently invested in a hi-vis jacket ..." [the Contributor]. The programme did not explain that the Contributor had close links with one of Equisafety's competitors [the Competitor], and had modelled clothing for the Competitor's website. The Contributor had a long history of complaining about Equisafety's products, and so was not an impartial contributor. This was unfair to Equisafety.*

The ECU noted that the BBC's Editorial Guidelines on Accuracy made it clear that BBC output should be based on sound evidence and be presented in clear and precise language. The ECU also noted that Guideline 3.4.12 said:

We should normally identify on-air and online sources of information and significant contributors, and provide their credentials, so that our audiences can judge their status.

The ECU noted that the Contributor had featured at length and expressed a number of views that were directly related to Equisafety. It seemed to the ECU that the Contributor was highly critical of Equisafety's products and was effectively

accusing Equisafety of selling garments that purported to be approved and endorsed by the police when no such endorsement had been given.

In the ECU's view, the question was whether the Contributor was introduced or described in a way that ensured that viewers were able to judge the contribution appropriately. The ECU did not believe this was the case. It noted that viewers were told that the Contributor was "a keen horse rider" who became concerned about the safety standard of a jacket they had bought, which led them "to look at other hi-vis clothing", including that sold by Equisafety. On that basis, the ECU considered that most members of the audience would have assumed that the Contributor was an independent member of the public with legitimate concerns about some of the products on the market. While the ECU had no reason to believe that the Contributor's concerns were not legitimate, it thought that the Contributor's association with one of the leading brands (and one of Equisafety's competitors) called into question the Contributor's independence. In the ECU's view, the programme makers should have identified the Contributor's potential conflict of interest and made this clear to the audience. It seemed to the ECU that viewers might have judged the Contributor's contribution somewhat differently if they had known that the Contributor had links with one of the companies making such products and had arguably been campaigning against products made by other manufacturers and suppliers, and in particular Equisafety.

The ECU concluded that the programme was materially misleading in this regard and therefore upheld this point of complaint.

- (d) *The Contributor's contribution was edited in a way to give the impression that they were talking about Equisafety when discussing the jacket they said they had bought.*

The ECU noted that at the start of the sequence there was a reference to the Contributor purchasing a jacket and detailing her concerns about the certification of that jacket. The narrator then went on to say "But the jackets themselves are not the only fakes in the high-vis market as [the Contributor] discovered when she decided to look at other high-vis clothing and came across the Polite range of garments and accessories made by Equisafety". The ECU thought it was clear from the way in which the sequence was worded that, following the Contributor's experience with the jacket she had bought, the Contributor had gone on "to look at **other** hi-vis clothing" [ECU's emphasis]. The ECU pointed out that this reference to Equisafety was the first time Equisafety had been mentioned in the programme, and it therefore did not agree that viewers would have been led to believe, or would have assumed, that the Contributor was referring to Equisafety when describing the jacket the Contributor had bought initially.

The ECU did not therefore uphold this point of complaint.

- (e) *The programme gave an inaccurate and misleading explanation of the concerns the Contributor raised about the jacket she had bought. This was unfair to Equisafety. The programme also gave an inaccurate and misleading impression of the actions taken by the Contributor in relation to purchasing and checking the safety certification of the jacket she said she had purchased.*

Referring to its response to the previous Point, the ECU did not believe viewers would have been given the impression that the jacket originally bought by the Contributor was made by Equisafety. The ECU therefore did not agree that the

Contributor's comments about the jacket or the inquiries she had made could be regarded as unfair to Equisafety.

The ECU did not therefore uphold this point of complaint.

- (f)–(i) *[The ECU did not uphold these points of complaint, and the complainant did not appeal against this aspect of the ECU's decision.]*
- (j) *The programme did not give Equisafety an appropriate right of reply to the allegation that it was still selling products which said they were endorsed or approved by the police.*

In the ECU's opinion, viewers would have been left with the impression that Equisafety was selling jackets with a 'police endorsement' tag despite the Advertising Standards Authority ('ASA') ruling "that the police endorsement was fake". Although it was made clear that the ASA ruling did not apply to swing tags, the ECU believed the Contributor's contribution would have led the audience to assume that Equisafety was knowingly continuing to claim that its products were "Fully approved" or "Officially passed" by the police when that was not the case.

Noting that the Contributor had gone on to suggest that Equisafety was still selling garments which carried a police endorsement on the swing tags, the ECU took the view that the programme was making a serious allegation against Equisafety, to which the complainant should have been offered an opportunity to respond.

Noting that the complainant was not offered the right of reply provided for in Guideline 6.4.25, the ECU upheld this point of complaint.

Appeal to the Trust

The complainant appealed to the Trust on 9 May 2013. With regard to point (a) of the ECU's decision, the complainant stated that, despite the 'blobbing', the design of the 'POLITE' waistcoat was obvious. Within minutes of the broadcast, the complainant was receiving emails regarding the waistcoat being shown on *Fake Britain*, and Equisafety's Facebook page was being inundated with questions regarding the product's authenticity. While acknowledging that some viewers would not have known the design, the complainant argued that this segment was aimed at horse riders who would have been watching. As the waistcoat was so identifiable, and as it was indicated that the product was 'fake', in that it did not meet standards, Equisafety should have been given the courtesy of being asked to comment.

With regard to point (b) of the ECU's decision, the complainant stated that the 'POLITE' waistcoat (although 'blobbed') was easily identifiable by horse riders watching the programme, and it was therefore very obvious which product the tester was classing as 'fake'. If the programme researchers had contacted Equisafety, or if they had taken notice of Wirral Trading Standards, they would have been shown the certificates issued by one of the largest international testing houses (namely, SATRA), which stated that the waistcoat was tested after logos, signage and chequered strips were in place and that the product had passed the applicable test. At the time the programme was aired, the 'POLITE' range was the only range on the market with these distinctive features, but due to its popularity it has been copied by "many other companies". The word 'POLITE' was trademarked and all other products briefly shown were not of the same design at all.

With regard to points (d) and (e) of the ECU's decision, the complainant raised various points to state that the Contributor had been hostile to Equisafety over the past few years

and this is what motivated the Contributor to contribute to the programme. The complainant reiterated that the Contributor was a close personal friend of the Competitor's owner and could be found working on the Competitor's stand at events and modelling for them on photo shoots.

The complainant said that, at the beginning of the programme [*sic*],⁷ the commentary made viewers aware that a 'POLITE' waistcoat was being tested, started talking about the Contributor buying a fake hi-vis jacket, then finished by talking again about the 'POLITE' range. According to the complainant, this "clever piece of editing" was done to lead viewers to believe that the programme was about the 'POLITE' range only. The complainant acknowledged that the Contributor did not state what brand of jacket she had bought, but in the complainant's view the insinuation was clear. As the Contributor only ever wore the Competitor's products, the complainant doubted whether she would purchase another company's product on any other occasion. According to the complainant, the Contributor was also very aware of the 'POLITE' range before the programme was aired, so to state that she had "come across the 'POLITE' range of garments and accessories made by Equisafety" was completely untrue. The complainant stated that the Contributor had been aware of the 'POLITE' range since 2010, and queried why she had suddenly "come across it".

The complainant stated that, owing to her association with the Competitor, the Contributor was extremely knowledgeable and proficient in the legalities of relevant tests and certificates, and regularly gave safety talks at a county British Horse Society in her capacity as Safety Awareness Officer. Consequently, the complainant was "astounded" that the Contributor had presented on camera a certificate issued by testing house TUV and had insinuated that it was one of Equisafety's. The complainant had contacted TUV, who stated that they had neither heard of the Contributor nor sent her a certificate, which led the complainant to believe the certificate had been downloaded via the Internet.

The complainant's appeal raised the following points:

Point A: Equisafety's 'POLITE' waistcoat was said to have "failed legal EU safety requirements", whereas it had been certified by international testing house SATRA, and Wirral Trading Standards had told the Producer/Director that it was satisfied that Equisafety's products met the applicable standards.

Point B: The tester stated that Equisafety's 'POLITE' waistcoat did not have a sufficiently large area of yellow material because it had been modified after certification, whereas the waistcoat was tested and certified with all logos, signage and chequered strips in place.

Point C: The BBC should have given Equisafety an opportunity to comment on the allegation that the waistcoat failed to meet safety requirements. Had the BBC done so, or had the BBC taken notice of the Trading Standards Officer they contacted, they would have been shown the SATRA certificates.

Point D: As the 'POLITE' waistcoat was identifiable, the allegation that it was fake and did not meet safety standards was unfair to Equisafety. Equisafety should have been given the opportunity to comment on these allegations.

Point E: The Contributor has a history of being hostile to Equisafety and this was what had motivated her to contribute to the item.

⁷ It was assumed that the complainant was in fact referring to the beginning of the item, not the programme.

Point F: A number of comments were made by and about the Contributor which were inaccurate and misleading.

Point G: The Contributor made references to a hi-vis jacket and corresponding TUV certificate which were inaccurate and misleading.

Point H: The way in which the item was edited misleadingly implied that Equisafety's products are fake and do not meet safety standards.

3. Applicable Editorial Standards

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The sections on Accuracy, Impartiality, and Fairness, Contributors and Consent were relevant to this appeal.

4. The Committee's decision

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

Points A and B

The Committee considered Points A and B against the editorial tests in Accuracy Guidelines 3.1, 3.2.1, 3.2.3 and 3.4.11.

The Committee took the view that the BBC was bound at all times by the Accuracy Guidelines, regardless of whether a given product was identifiable or not. Therefore, any statement that a garment "failed legal EU safety requirements" must, irrespective of the garment's identifiability, be duly accurate. Similarly, any suggestion that the garment did not have a sufficiently large area of yellow material because it had been modified after certification, must also be duly accurate. Given the potential seriousness of any allegation that a company was selling a hi-vis product that was purported, but failed, to meet legal requirements, the Committee believed the requirements of due accuracy in this context were high.

The Committee considered the subject and nature of the programme and how viewers would have regarded products depicted in the programme. The Committee noted that the programme's webpage⁸ describes *Fake Britain* as a:

[s]eries which reveals the extent of fake goods in the UK, and investigates the conmen who are trying to get their hands on your money.

In the Committee's opinion, the title '*Fake Britain*' suggested that any product depicted in the programme was by implication fake, unless indicated otherwise. The Committee felt that an allegation that a product was fake was an extremely serious one. The Committee therefore concluded that it was incumbent on the programme makers to consider very carefully how audiences were likely to regard any product depicted in the programme.

⁸ <http://www.bbc.co.uk/programmes/b011f8m5>

The Committee noted that the programme refers to the following in relation to the (unnamed) 'POLITE' waistcoat:

Commentary: To meet the required visibility standards, the garment MUST have a certain area of luminous material and this one falls short. And Chris thinks he knows why.

Chris (BTTG Garment Tester): There are things put on them which obviously obscure the fluorescent fabric. This is the sort of problem that we see quite often with garments that are tested and certified and then they're slightly modified, they're altered. It's, I suppose, a question of not considering the consequences of those small changes.

Commentary: Of the two jackets we tested, both failed legal EU safety requirements, but for different reasons ...

The Committee also noted that the commentary stated:

But it's not just the industry experts that are concerned about fake hi-vis safety gear on sale to the public ...

In the Committee's view, viewers would have construed the phrase "fake hi-vis safety gear" as referring to the two garments tested by BTTG in the sequence that immediately preceded the line of commentary, one of which was the (unnamed) 'POLITE' waistcoat.

The Committee considered whether the item's description of the (unnamed) 'POLITE' waistcoat as "fake hi-vis safety gear", the statement that the garment "failed legal EU safety requirements", and the reference to the garment not having a sufficiently large area of yellow material due to possible modifications, were duly accurate.

The Committee noted that there was evidence to suggest that the waistcoat met EU legal standards.

- It noted that on 5 June 2009, SATRA issued an EC type examination certificate for Equisafety's 'Air' waistcoat, of which the 'POLITE' waistcoat was a later variant. The Committee noted that the 'Air' waistcoat bore reflective strips and no lettering, whereas the 'POLITE' variant bore chequered reflective strips and lettering.
- The Committee noted that the complainant had stated that Equisafety's 'POLITE' waistcoat first came onto the market in 2010. The Committee also noted that the Contributor had brought the 'POLITE' waistcoat to the attention of the Association of Chief Police Officers on 14 August 2010, from which the Committee inferred that the 'POLITE' waistcoat was on the market at or before that date.
- The Committee noted that Equisafety submitted the 'POLITE' waistcoat to SATRA for testing in November 2011, and that SATRA issued a Technical Report on 30 November 2011. Page 3 of SATRA's Technical Report, dated 30 November 2011, showed photographs of the front and back of the 'POLITE' waistcoat with logos, signage and chequered strips in place, from which the Committee inferred that the garments tested by SATRA and BTTG were both 'POLITE' waistcoats. With regard to the regulatory effect of SATRA's Technical Report, the Committee noted that, according to SATRA's Managing Director:

“Test reports are an important part of the technical file, but cannot be considered as satisfying the [PPE] Directive on their own. The legitimacy to apply the CE mark comes from an EC type examination certificate after the EC type examination process has been successfully completed ... Only once the EC type examination process has been passed, can the product be deemed to have satisfied all the requirements of the PPE Directive.”

- The Committee noted that, on 7 March 2012, SATRA added the 'POLITE' waistcoat to its previously issued EC type examination certificate for the 'Air' waistcoat. The Committee noted that the date of certification of the 'POLITE' waistcoat post-dated the purchase and testing of the garment that appeared in the item, and pre-dated the broadcast.

The Committee noted that the Editorial Adviser's report and supplementary note referred to other safety certification relating to the 'POLITE' waistcoat.

The Committee noted that SATRA and BTTG are accredited by UKAS⁹ to test and certify certain products and are 'Notified Bodies' (Notified Bodies are appointed by EU Member State governments and notified to the European Commission on the basis of their ability to carry out the examinations and tests required for CE marking of Personal Protective Equipment).

With regard to the apparent conflict between SATRA's certification of the 'POLITE' waistcoat and BTTG's findings, the Committee noted that, according to the BTTG tester:

“For EN 1150 design assessment, there is no agreed test method. Therefore, there is scope for difference between Test Houses.”

The Committee noted that the commentary stated that “other areas leave **a lot to be desired**” [emphasis added], whereas the BTTG tester had subsequently explained:

“The failure was by 0.01 m², or 100 cm², which is of the order of 2-3% of the required total. It is the equivalent of approximately 1 cm extra length on the Vest. It could be described as a failure by **a slight margin**. [emphasis added]”

The Committee noted that it is responsible for determining appeals on BBC Editorial Standards, but it was not within its remit to determine whether legal standards had been met and at what point those standards were deemed to be met. The issue to be determined was whether the statements in the programme were duly accurate.

The Committee took into account that there was evidence that the waistcoat was purchased and tested by the programme makers prior to SATRA adding the 'POLITE' waistcoat to the previously issued EC type examination certificate for the Air waistcoat. However, the Committee took the view that, given that there was evidence to suggest that the waistcoat had been certified to pass safety standards by SATRA at the point of broadcast, that there was no agreed test method, and that the 'POLITE' waistcoat had failed BTTG's test by only a slight margin, the description of the 'POLITE' waistcoat in the programme as “fake hi-vis safety gear”, and the statement that the jacket “failed to meet EU legal standards” were not duly accurate. In reaching this decision the Committee noted that it was not its role to resolve the apparent conflict between the SATRA and BTTG test. Rather, its role was to determine whether the unequivocal statements in the item, that the waistcoat failed to meet safety standards, were duly accurate. For the reasons set out in this finding, the Committee concluded that they were not.

⁹ see footnote 3 above

The Committee also took the view that the cumulative effect of the commentary – and in particular the statement that other areas left “a lot to be desired” – would have been to mislead viewers into believing that the margin of failure was significantly greater than was actually the case.

In relation to the reference to possible modifications leading the waistcoat to fall short of safety standards, the Committee noted that, in the ‘rushes’ (unedited footage) of his interview, the BTTG tester had repeatedly qualified his comments concerning possible post-certification modifications:

“What often happens is that a manufacturer will submit a garment for certification, and it’ll be a plain garment, and it will meet the requirements, will get a certificate, but often you’ll see manufacturers then changing the garment, adding badges, adding things onto it, which then take away from the area of the material and will then actually make that garment no longer compliant with the standard. That’s **possibly** what’s happened in this case. ...

So, **possibly** what has happened is that, when they first submitted the garment for testing, it may not have had the badge on the back. ...

Then **possibly** what has happened is that the manufacturers decided to put the badge on the back ...

It’s **possible** that when the garment was first checked it was a plain waistcoat, and **possibly** what’s happened is that the manufacturers, after certification, after testing, they’ve then decided to put the badge on the back ...

It’s **possible** that, when the garment was submitted, it was a plain garment with no badges on, no writing on, that **maybe** that was added after the garment was tested and certified ... [emphases added]”

The Committee compared the BTTG tester’s comments with the corresponding section of the item:

Commentary: To meet the required visibility standards, the garment MUST have a certain area of luminous material and this one falls short. And Chris thinks he knows why.

Chris: There are things put on them which obviously obscure the fluorescent fabric. This is the sort of problem that we see quite often with garments that are tested and certified and then they’re slightly modified, they’re altered. It’s, I suppose, a question of not considering the consequences of those small changes.

In the Committee’s view, the item as broadcast suggested that the addition of wording or other design changes on the waistcoat led this waistcoat to “fall short” of safety standards. Given the room for difference between testing houses, given the naturally speculative nature of the tester’s comments in the rushes, and given the waistcoat was certified as having passed the EU safety standard at the time of broadcast with the wording in place, the suggestion that this waistcoat fell short of the EU standards due to modifications was not duly accurate.

Finding: Upheld

Point C

The Committee considered Point C against the editorial tests in Accuracy Guidelines 3.1 and 3.2.2.

The Committee noted that the ECU had not considered the issue of whether the information regarding the 'POLITE' waistcoat's alleged non-compliance with safety standards was properly sourced and/or cross-checked.

The Committee noted that the penultimate paragraph of Editorial Guideline 3.1 states:

Where appropriate to the output, we should:

- gather material using first hand sources wherever possible
- check and cross check facts
- validate the authenticity of documentary evidence and digital material
- corroborate claims and allegations made by contributors wherever possible.

The Committee noted that Editorial Guideline 3.2.2 states:

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

The Committee noted that the programme makers had acknowledged that, at a meeting on 7 February 2012 (at or about the time of filming), Wirral Trading Standards had told the programme's Producer that they did not believe there was a problem with Equisafety products, and that the test certificates they had seen (supplied by Equisafety) showed they were compliant with safety standards (although Wirral Trading Standards had acknowledged that there was a conflict between those results and test results supplied by the Retroreflective Equipment Manufacturers Association (REMA)).

The Committee also noted that the 'POLITE' waistcoat's User Information sheet, which was enclosed with the garment tested by BTTG, stated that an EC type examination had been carried out by SATRA.

The Committee noted that the programme makers had explained that they did not contact Equisafety to make further enquiries regarding the 'POLITE' waistcoat because they did not identify Equisafety in the programme. The Committee repeated its earlier conclusion that, regardless of whether the garment in question was identifiable or not, the BBC must comply with the Accuracy Guidelines. In the Committee's view, being aware that Wirral Trading Standards were satisfied with Equisafety's certification, and also being in possession of the garment's User Information sheet, the programme makers were under an obligation to double-check with SATRA whether the garment met applicable safety standards. Alternatively the programme makers could have contacted Equisafety to make enquiries regarding the safety certification. Noting that the programme makers had not contacted SATRA or Equisafety, but had relied solely on BTTG's test results, the Committee concluded that the item was not properly sourced and/or cross-checked.

Finding: Upheld

Point D

The Committee considered Point D against the editorial tests in Fairness Guidelines 6.1, 6.2.3 and 6.4.25.

Before addressing Point D, the Committee considered whether the 'POLITE' waistcoat was identifiable.

The Committee noted that, despite having given the complainant and programme makers a fair opportunity to provide evidence on this point, at the time of considering the appeal the Committee had not seen any evidence that any garment resembling Equisafety's 'POLITE' waistcoat was on the market at the date of broadcast¹⁰. It also noted that a chequered waistcoat by the Competitor was not on sale at the date of the broadcast.

In any case, the Committee noted that, starting from the date of broadcast, numerous comments about the 'POLITE' waistcoat's appearance on *Fake Britain* had been made on Equisafety's Facebook page. In the Committee's view, it appeared from some of those comments that people in the equestrian hi-vis market, including purchasers of Equisafety products, had recognised the 'POLITE' waistcoat.

The Committee therefore concluded that, despite the blurring, the 'POLITE' waistcoat was identifiable.

The Committee then considered Point D against the editorial tests in the Guidelines on Fairness, Contributors and Consent. The Committee noted that Editorial Guideline 6.1 states:

The BBC strives to be fair to all – fair to those our output is about, fair to contributors, and fair to our audiences.

In the Committee's view, given the 'POLITE' waistcoat's identifiability, the cumulative effect of the breaches of the Accuracy guidelines under Points A–C above had resulted in unfairness to Equisafety.

The Committee agreed that there was a significant public interest in investigating the standards of high visibility garments on sale to the public. The Committee noted, however, that, where the BBC's output makes allegations of wrongdoing, iniquity or incompetence, or lays out a strong and damaging critique of an individual or organisation (as was the case in this instance), Editorial Guidelines 6.2.3 and 6.4.25 state that the individual or organisation should normally be given a right of reply, unless there is an editorial justification to proceed without it.

¹⁰ Following circulation of the finding to the complainant and programme makers, the programme makers alleged that it was unfair for the Committee to conclude that no other garment was on the market at the time without requesting any evidence of this. They sought to provide evidence of another person selling similar waistcoats at the time of broadcast of *Fake Britain*. The Committee considered that the programme makers had been provided a fair opportunity to provide comments and evidence prior to the consideration of the appeal. The Committee agreed that the additional information was provided by the programme makers out of time. In any case, it appeared from the Facebook comments that some people had identified the POLITE waistcoat.

In the Committee's view, Equisafety should have been given the opportunity to comment on the serious allegations that had been made against it, and there was no editorial justification for proceeding without this.

Finding: Upheld

Point E

The Committee considered Point E against the editorial tests in Accuracy Guideline 3.4.7 and Impartiality Guideline 4.1. In the Committee's view, the questions for consideration were whether the programme makers had made appropriate checks to establish the Contributor's credentials (as Guideline 3.4.7 required), and whether the programme was duly impartial in this regard (as Guideline 4.1 required).

In the Committee's view, the complainant's allegation that the Contributor had made a number of previous complaints about Equisafety did not necessarily imply that the Contributor's concerns were not legitimate, or were not sincerely held.

The Committee noted, and agreed with, the ECU's finding that viewers might have judged the Contributor's contribution somewhat differently if they had known that she was associated with the Competitor.

With regard to the checks that were made to establish the Contributor's credentials (in particular, the nature of her association with the Competitor), the Committee noted that, according to the programme makers:

- The programme makers had contacted the Contributor, having been referred to her by REMA, to whom they were referred by the CEO of the British Safety Industry Federation.
- The Contributor represented herself as a keen horse rider with an interest in safety.
- The Contributor mentioned that she had previously complained about Equisafety to the ASA, Wirral Trading Standards, Aldi and other manufacturers.
- The programme makers' interest in the Contributor was because of a referral by REMA and her complaint to the ASA.
- The Contributor showed a keen interest in the general public safety aspects of the story and had suggested that the programme focus on "the fakes in circulation from all manner of manufacturers".
- It was clear to the Producer that the Contributor had a lot of knowledge of safety standards. When asked about why she had this knowledge, she explained that she had started looking into it after buying a jacket she was unhappy with.
- The programme makers had checked with the Contributor whether she had any connection to the hi-vis industry. The Contributor told them that she had done some modelling for her friend's company and occasionally helped out at trade shows, but categorically told the programme makers that she did not work for that company.
- The programme makers accepted that this was the case. Given that: the Contributor's complaint to the ASA was upheld; the hi-vis equipment (including an Equisafety

jacket) failed the test that was filmed; and the Contributor had mentioned other companies in addition to Equisafety, the programme makers believed (and still believe) her to be a valid contributor.

- During a meeting with the programme's Producer on 7 February 2012, Wirral Trading Standards had mentioned the Contributor's complaint against Equisafety. This was why the programme makers had contacted Wirral Trading Standards, having been alerted by REMA. Wirral Trading Standards did not mention any links between the Contributor and the Competitor.

The Committee also noted from the rushes of the Contributor's interview that, when invited to compare Equisafety's User Information with that of the Competitor, the Contributor at first hesitated, then agreed, saying:

"I don't think [the Competitor's Managing Director] would mind ... No, I don't think she'd mind."

It seemed to the Committee that the Contributor's contribution to the item was an important and substantial one, and that viewers would have accorded considerable weight to her comments. Given the significance of the Contributor's contribution, and given that viewers might have judged her contribution differently had they known that she was associated with the Competitor, the Committee concluded that the programme makers should have taken further steps to ascertain the precise nature of the Contributor's association with the Competitor.

The Committee then considered whether the item was duly impartial. Having previously concluded that viewers would have accorded considerable weight to the Contributor's contribution, and that the programme makers had not taken sufficient steps to ascertain the precise nature of her association with the Competitor, the Committee concluded that the item was not duly impartial in this regard.

Finding: Upheld (regarding the failure to ascertain the precise nature of the Contributor's association with the Competitor)

Point F

The Committee considered Point F against the editorial tests in Accuracy Guidelines 3.1, 3.2.1–3.2.3 and 3.4.11.

The Committee noted that this point of appeal concerned the accuracy of the following statements in the commentary:

"She [the Contributor] recently invested in a hi-vis jacket, to help her ride around her local area in safety ...

But it's not just the industry experts that are concerned about fake hi-vis safety gear on sale to the public. [the Contributor] is a keen horse rider ...

After finding out hi-vis garments needed to be properly tested and certificated, she began to doubt whether the one she'd bought was up to scratch ...

But the jackets themselves are not the only fakes in the hi-vis market, as [the Contributor] discovered when she decided to look at other hi-vis clothing and came across the Polite range of garments and accessories made by Equisafety...”

In the Committee’s view, these comments implied that:

- the Contributor had purchased the jacket in question recently, whereas it appears she had purchased it in 2009
- the Contributor was a lay person, whereas she appeared to have detailed knowledge of the regulation and certification of hi-vis apparel
- apart from her personal concerns, the Contributor was disinterested in hi-vis apparel, whereas she was associated with a hi-vis company (although the precise nature of that association was not known).

In the Committee’s view, considered singly, the quoted comments were not so serious as to amount to individual breaches of the Accuracy Guidelines. However, considered cumulatively, their effect was to give the impression that the Contributor was a disinterested member of the public. This was inaccurate and misleading.

Finding: Upheld

Point G

The Committee considered Point G against the editorial tests in Accuracy Guidelines 3.1, 3.2.1–3.2.3 and 3.4.11.

The Committee noted the complainant’s points that:

- although it was not expressly stated what brand of jacket the Contributor had bought, it was implied that it was an Equisafety product
- contrary to what was implied, the Contributor had not contacted Equisafety
- the commentary made viewers aware that a ‘POLITE’ waistcoat was being tested, started talking about the Contributor buying a fake hi-vis jacket, then finished by talking again about the ‘POLITE’ range; this “clever piece of editing” was done to lead viewers to believe that the programme was about the ‘POLITE’ range only
- the presence of workwear in the background of the interview with the REMA spokesman, taken in conjunction with the presence of products by Equisafety and another hi-vis company in the foreground of the interview with the Contributor, implied that the Contributor was discussing Equisafety products
- contrary to what was stated, the Contributor had not contacted German testing house TUV
- while it was not stated that the TUV certificate referred to Equisafety, this was implied.

The Committee noted that the programme makers had not checked the authenticity of the TUV certificate.

Noting that the item did not mention the identity of the manufacturer of the jacket that the Contributor had purchased, the Committee considered whether the item had implied that it was an Equisafety jacket.

The Committee noted that, following the Contributor's discussion of the jacket in question, the commentary stated that she had:

“decided to look at **other** high-vis clothing and came across the Polite range of garments and accessories made by Equisafety. [emphasis added]”

Noting that this was the first time that Equisafety's name was mentioned in the item, the Committee took the view that viewers would have construed the word “other” as implying that the jacket previously discussed by the Contributor was not an Equisafety jacket.

Given the presence of another hi-vis company's product in the foreground of the interview with the Contributor, the Committee could not agree that the presence of Equisafety products in that interview implied that the Contributor was referring solely to Equisafety products.

The Committee did not therefore agree that the editing and commentary of the BTTG test and the Contributor's interview had implied that the jacket purchased by the Contributor was an Equisafety jacket.

With regard to the authenticity of the TUV certificate referred to by the Contributor and shown in the item, the Committee noted that the complainant had supplied it with what appeared to be a copy of the certificate, which the complainant stated had been downloaded from the Internet. However, in the Committee's view, the mere fact that the complainant had downloaded from the Internet a copy of the certificate, or one resembling it, did not prove that the Contributor had done so. The Committee noted that, in email correspondence with the complainant, TUV had been unable to confirm that the Contributor had not contacted it in connection with the certificate, stating “It is possible”.

The Committee's view was that it had not seen any evidence which led to a conclusion that the TUV certificate was not authentic, or that the Contributor had not contacted TUV in connection with the certificate.

Finding: Not upheld

Point H

The Committee considered Point H against the editorial tests in Accuracy Guidelines 3.1, 3.2.1, 3.2.3 and 3.4.11, Impartiality Guideline 4.1 and Fairness, Contributors and Consent Guideline 6.1.

The Committee noted the complainant's allegation that the item as a whole, and its editing in particular, was inaccurate, misleading, partial and/or unfair.

The Committee noted that Equisafety's were not the only identifiable products in the programme, and that, in the course of the complaint correspondence, the complainant had identified other hi-vis clothing companies' products from the item.

Having reflected upon its previous findings in this appeal, the Committee concluded that, considered as a whole, the item was inaccurate, misleading and unfair towards Equisafety. The Committee noted that the commentary regarding the ASA's investigation

was accurate: the ASA had found that the suggestion that the Police had endorsed the product was misleading. However, the Committee considered that the overall effect of the item was to give the misleading impression that the 'POLITE' waistcoat was fake in that it did not meet safety standards.

The Committee could not agree that the item as a whole was biased in focusing on one particular manufacturer, as other hi-vis clothing companies' products were featured in the programme.

Finding: Upheld in relation to accuracy and fairness; not upheld in relation to impartiality

The Committee decided that the BBC should broadcast a statement of the Committee's finding with the date, time, service and wording to be approved by the Committee.

Supplementary points

The complainant asked that a letter concerning the Contributor's complaints to the ASA about Equisafety be made available to the Committee. This letter was made available at the meeting.

At a late stage in the appeal process, the complainant requested that the Committee adjudicate upon an issue that had not been considered at Stage 2 or raised on appeal. The Committee confirmed that this issue had been brought to its attention, and agreed with the Trust Unit that it would not be appropriate, proportionate or cost-effective for the Committee to consider this issue.

“Why do some UK Jews settle in Israeli occupied land?”, BBC online, 4 February 2013

1. The background

This appeal concerned a feature article on the BBC News website about two British men who had emigrated with their families to the West Bank – <http://www.bbc.co.uk/news/uk-20727921>

The reporter asked them why they had made the decision to live in occupied territory and what life there was like for them.

2. The complaints

Both complainants in this consolidated appeal complained to the BBC about a number of points relating to the accuracy and impartiality of the article. The following summary does not cover all the issues raised by the complainants during the complaints process but covers the issue which was considered by the Trustees on appeal: that the article was not duly impartial because it did not reflect the impact of the settlements on Palestinians.

Summary of outcome of Stage 1

Both complainants received the same response at Stage 1 from Audience Services and the BBC News website.

The response included a series of hyperlinks to other BBC articles reflecting the Palestinian perspective on occupation:

“We believe the report was a legitimate piece focusing on one specific angle of a wider story that we cover in great detail elsewhere. It is clearly labelled as such. The broad context of the issues of the settlements is clearly covered. This was not intended to be a report giving views from the Palestinian side, and not every report must carry equal contributions from either side.

“These reports investigate a particular issue from a particular point of view. In order to go into the issue in detail, all sorts of other perspectives are not considered in these articles. Some of these specifically address the effects of the Israeli occupation on the Palestinians in the West Bank.”

Summary of outcome of Stage 2

Both complainants received Stage 2 responses from the Editorial Complaints Unit (ECU).

The ECU upheld one of the points raised by one of the complainants, which was that it was misleading for one of the settlers to have said that 90% of settlements were right on the border with the Green Line (the 1949 armistice line) without challenge from the BBC, because this did not accurately reflect the facts.

With the exception of this one issue, none of the remaining allegations were upheld by the ECU.

With regard to the allegation that the article was not duly impartial because it did not reflect the impact of the settlements on Palestinians, the ECU's Stage 2 responses to Complainant A included the following points:

- the guidelines do not proscribe reporting on one aspect of a situation:
"due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed"
- "An article of this kind may report on information pertaining to the experience of one side in this dispute, without necessarily 'balancing' that content with similar information about the other side in the same article."
- "it's not a requirement of balance that a piece dealing with the motives, attitudes and experiences of British Jews who have settled in the West Bank should also reflect the impact of the settlements on Palestinians, and a piece which set out to deal with the experience of Palestinians in areas affected by settlement would be under no requirement to reflect the views of settlers."

The ECU's Stage 2 responses to Complainant B on the same issue also included the following:

"You have (also) taken issue with references in the article to the sense of danger that might accompany living in a settlement, and have said that the article should have referred to attacks on Palestinians. It is certainly true that Palestinians have been attacked (and this topic has been covered elsewhere on the BBC) but it does not follow that settlers have not, or that they may have no reason to feel threatened. I have explained above why balance does not mean that all facts about one side must be matched by an equivalent statement about the other. In this case, nothing in the text suggested that Palestinians were not threatened by their neighbours, or had not been attacked by them, and I can't therefore agree that this was misleading. The article was about the experience of these two men, and neither due accuracy nor due impartiality would require that it included more information about their Palestinian neighbours."

Appeal to the Trust

The complainants appealed to the BBC Trust in June and July 2013. The issues raised on appeal are summarised below.

Complainant A raised the following issues in her appeal:

- In relation to the comment by the reporter in the article : "As a religious Zionist, [the settler] views his emigration to Israel as a spiritual return", the complainant said the word 'Israel' should have been in quotation marks, because the settler was referring to the West Bank only.
- The article lacked balance by not reflecting the impact of the settlements on Palestinians.

The Head of Editorial Standards for the Trust Unit decided that the allegation concerning the characterisation of Israel did not qualify to proceed to appeal as, in her view, it did not have a reasonable prospect of success and notified the complainant of her decision.

Complainant B summarised his concerns in the introduction to his appeal thus:

“My original complaint was that this item on the BBC website presented the cosy life of a Jewish family living in the Palestinian West Bank, without balancing that information with the bloodshed and misery caused by the very presence of such illegal settlers. It is akin to asking a burglar if he finds his target premises uncomfortable.”

Complainant B also raised the following issues in his appeal:

- that his complaint had been addressed “not from a BBC viewpoint, but as a mouthpiece for Israel”
- that the article was factually inaccurate in describing the location as Israel when it is Palestine
- the original complaint was made on February 4th and “this tardiness in dealing with issues is disgraceful”

The Head of Editorial Standards for the Trust Unit decided that, with the exception of the allegation that is being considered in this consolidated appeal as articulated in the complainant’s summary above, the remainder of the complainant’s points did not qualify to proceed to appeal as, in her view, they did not have a reasonable prospect of success.

The complainant was notified of the Head of Editorial Standards’ decision.

3. Applicable Editorial Guidelines

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

4. The Committee’s decision

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

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

The Committee considered the allegation that the article lacked balance in that it failed to reflect the existence of an alternative Palestinian viewpoint to that articulated by the Jewish settlers interviewed for the article.

The Committee noted the paragraphs from the article most relevant to the allegations being considered:

(Daniel Cohen, Settler):

“There’s a misconception of life in the settlements. People are not aware of how close we are to ‘civilisation’.”

"We don't see ourselves as any different to British Jews who have moved to Jerusalem. I see myself as a citizen and resident of Israel. I have not come here, gung-ho, to settle the land. I am living here because it is a place to live."

(Reporter)

Despite the fact that they are born out of disputed land, neither Samuel [another settler] nor Daniel feel threatened by life in the settlements.

Samuel says: "I don't carry a weapon and I don't feel unsafe, but certainly places in occupied territories can be unsafe. Some towns have had many infiltration incidents.

"We live in a gated community, but the terror threat is low. It is not heavily armed and there's no feeling that we need to be.

"We shop and eat among Palestinians. We live in a relatively affluent area for the West Bank. I wouldn't want to subject my children to living in a dangerous area."

Samuel did however say the fact that some rockets had reached the West Bank from Gaza during the conflict in November 2012 had done little to allay their safety fears.

Security concern

Daniel, who also does not carry a weapon, insists he feels safer in his gated community than in parts of England.

"In terms of security, it is here 24/7. We can't rest on our laurels and say we are fine, it is in the back of my mind sometimes that something horrible could happen, but that's the reality of living in Israel and elsewhere in the modern world."

The Committee noted how Complainant A argued the issue in her letter of appeal:

"With regard to balance, the ECU argued: 'It's not a requirement of balance that a piece dealing with the motives, attitudes and experiences of British Jews who have settled in the West Bank should also reflect the impact of the settlements on Palestinians.' In an ideal world that would be an acceptable standpoint, of course.

"However, the ECU went on to assert, curiously, that 'a piece which set out to deal with the experience of Palestinians in areas affected by settlement would be under no requirement to reflect the views of settlers'. This is quite simply disingenuous when one considers the BBC's coverage of Palestine/Israel. On those few occasions when a BBC report or article does deal with the experience of Palestinians, there is usually an extra little bit inserted at strategic points saying something like: 'this is not how the Israelis see it', or 'this is disputed by Israel'. All too often an Israeli spokesman is invited to give the opposite point of view, or to 'set things in context'. If that is not done because of the requirement of balance, why is it done? And more to the point, why not do it here?"

The Committee noted some additional points made by Complainant A at earlier stages, in relation to this issue:

- The reporter should have explained what the occupation means in terms of daily life for the Palestinians

- In such a long article there was ample scope for the reporter to give at least a little hint, for the sake of balance, of how much Palestinians suffer from the settlements and the settlers.

The Committee noted how Complainant B argued the issue in his letter of appeal:

"My principal reason for escalating this complaint is that – yet again – the BBC has addressed individual points not from a BBC viewpoint, but as a mouthpiece for Israel. This must be contrary to the Charter, and certainly contradicts the mantra I have been given several times, that 'impartiality is the cornerstone of BBC coverage'. Indeed, in response to my complaint, I was told that the item was 'not about giving views from the Palestinian side', and in relation to material about a bitter conflict (in fact a one-sided illegal occupation) this is outrageous.

"...I am also told I should divert to other articles, which is absurd, since my complaint is about this one only, and the BBC should not expect readers to consider what other articles might be available, when reading a particular one. Skilled writers can balance their presentations.

"In this case, the Charter is violated in terms of bias towards Israel, by depicting a cosy Jewish family living in an illegal settlement stolen by bloodshed and destruction – without explaining that Palestinians were killed and displaced by its establishment ...

"But the worst aspect is the response, which tries to convince me of the rectitude of the Israeli position, and that is far beyond the remit of a broadcaster..."

The Committee noted some additional points made by Complainant B at earlier stages in respect of this issue:

- "The only mention of danger in this article is that to the settler family. Not a word about Israeli patrols and checkpoints, or tanks on the streets... Neither is there any hint of the constant attacking of indigenous Palestinians by the incoming settlers"
- "existence under occupation is vastly different from the perspective of this highly-selected family"
- "the choice of subject matter shows a sympathique with illegal settlers in the illegally occupied territory... Even one 'balancing' line, that native Palestinians can only dream of living like this under occupation, would have gone some way to redress this paeon [sic] of praise for living cosily in someone else's land."

The Committee noted the response from the BBC News website to the issues raised in this appeal:

"The nature of the situation in the West Bank is such that most stories we do on the issue of settlements will carry information on the effect they have on the lives of Palestinians, and we have done many of these stories.

"This particular report was not specifically about the lives of settlers but about two British families who had moved and why they had made that decision. It would be hard to find a comparable case study on the Palestinian side.

“However, context was given in the links on the page, most of which highlighted the divisions caused by the settlements:

- Israel settlers ‘violate rights’
- Israeli settlement move risks diplomatic fallout
- Pressure mounts over Israel plans
- Israel defiant over settlements

“We believe this focus on a particular angle of settler life has to be set against the many reports we carry on the impact the settlements can have on Palestinians, as here:

<http://www.bbc.co.uk/news/world-middle-east-21274061>

<http://www.bbc.co.uk/news/world-middle-east-21285321>

<http://www.bbc.co.uk/news/world-middle-east-23656904>

<http://www.bbc.co.uk/news/world-middle-east-15744576>

<http://www.bbc.co.uk/news/world-middle-east-18693709>

<http://www.bbc.co.uk/news/world-middle-east-20985105>

<http://www.bbc.co.uk/news/world-middle-east-18247330>

<http://www.bbc.co.uk/news/world-middle-east-19911902>

The Committee noted the guideline requirements for “due accuracy” and “due impartiality” are explained in the Editorial Guidelines (the “Guidelines”) as follows:

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

The Committee noted that this appeal is primarily concerned with the Guideline on Impartiality.

The Committee noted that issues relating to the Israeli/Palestinian conflict are amongst the most sensitive topics in the BBC’s news and current affairs output. In choosing to cover a specific aspect of a controversial subject, in this case West Bank settlements, the Committee noted that programme makers are required to signpost that decision clearly, to acknowledge a range of views exists and the weight of those views and not to misrepresent them.

The Committee also noted that the guideline requirement for controversial subjects requires that consideration be given to the appropriate timeframe for reflecting other perspectives and whether or not they need to be included in connected and signposted output.

The Committee considered in particular these extracts from clauses 4.4.25 and 4.4.26 of the Editorial Guidelines headed “Impartiality in Series and Over Time” as relevant to determining the issues raised in this appeal:

4.4.25 In achieving due impartiality, a ‘series of programmes’ may be considered as a whole¹¹.

¹¹ Paragraph 44 (2), Broadcasting: An Agreement Between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, July 2006

The term 'series of programmes' applies to the following:

- *Content that deals with the same or related issues, within an appropriate period, and are clearly linked.*

This may include ...a set of interlinked web pages. Such ... web pages need to achieve due impartiality across the series, and online content should include links or signposts to the other online elements. ...

4.4.26 On long-running or continuous output (such as general daily magazine programmes, the News Channel, Online, etc.) due impartiality may be achieved over time by the consistent application of editorial judgement in relevant subject areas. For instance, it is not usually required for an appearance by a politician, or other contributor with partial views, to be balanced on each occasion by those taking a contrary view, although it may sometimes be necessary to offer a right of reply.

The Committee noted how in the headline and opening paragraph the article signposted that it was reflecting a specific aspect of an issue and a specific viewpoint:

"West Bank: Why do some UK Jews settle in Israeli occupied land?"

Every year hundreds of British Jews make the life-changing decision to emigrate to Israel. A small number of these decide to join settlements in the Israeli-occupied West Bank. What is life like for the West Bank Britons?"

The Committee noted how the article reflected the legal status of the settlements in the caption under the main image on the page:

"Jewish settlements in the Israeli-occupied West Bank are expanding despite being considered illegal under international law."

The Committee noted that the text of the article reinforced the information in the caption, and that the article also noted that settlements are a key point of contention between the two parties:

"Settlements are considered illegal under international law, though Israel disputes this.

"Peace talks between Israel and the Palestinians have broken down over the issue of settlements. Palestinians demand a full Israeli withdrawal from the West Bank and East Jerusalem, which they want for a future state.

"Israel had indicated it is prepared to withdraw from some of the settlements while retaining the larger settlement blocs in any final peace deal."

The Committee noted the article included relevant historical context:

"Israel occupied the West Bank and east Jerusalem in the 1967 Middle East War. To Israelis and religious Jews the West Bank is known by its biblical name of Judea and Samaria.

"Successive Israeli governments have built settlements there since 1968, for both strategic and ideological reasons."

The Committee noted the prominent series of links at the foot of the article directing the reader to other articles on the subject which tell the Palestinian story and reflect the Palestinian experience of living in the West Bank.

More on This Story

Related Stories

[Israel profile](#) 17 MARCH 2013, MIDDLE EAST

[Israel settlers 'violate rights'](#) 31 JANUARY 2013, MIDDLE EAST

[Israeli settlement move risks diplomatic fallout](#) 03 DECEMBER 2012, MIDDLE EAST

[Pressure mounts over Israel plans](#) 03 DECEMBER 2012, MIDDLE EAST

[Israel defiant over settlements](#) 03 DECEMBER 2012, MIDDLE EAST

The Committee considered that the item under appeal legitimately reflected a perspective on the issue which is less commonly heard. It noted that this is permitted by the Guidelines, provided the audience is informed of the editorial purpose of the content and is aware of the existence of other views and that those views are not misrepresented.

The Committee concluded it was clearly signposted to the audience that the article was focussing on a specific aspect; the headline and opening of the article made clear that the subject was the experience of UK Jews who had decided to live in the Israeli-occupied West Bank.

The Committee also concluded that there was sufficient additional context to leave the audience in no doubt that the settlers' presence in the West Bank was a matter of international legal dispute and was considered an obstacle to a peace agreement in the region.

However, the Committee also noted that this was one of the most contentious issues in the conflict and that the BBC produces clear guidance to journalists reporting on and from the region and encourages dialogue with its Jerusalem bureau and with other journalists specialising in the Middle East. The Committee found it surprising that the BBC did not include within the article the settlers' views on what effect their presence might have on the Palestinians living around them.

Nevertheless, the issue before the Committee was whether the item had complied with the Guidelines.

The Committee concluded that the opinions expressed were clearly the settlers' own and consequently the audience were able to reach an informed view on what weight to place on their contributions. The Committee decided that the clear attribution and signposting, the inclusion within the article of the broader context and the prominent links to related content reflecting other perspectives ensured that the article met the guideline requirements for due accuracy and due impartiality.

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.

Decision not to play “Ding Dong The Witch is Dead” on The Official Chart Show with Jameela Jamil, BBC Radio 1, 14 April 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 regarding the BBC’s decision not to play ‘Ding, Dong, the Witch is Dead’ in its entirety on *The Official Chart Show with Jameela Jamil* on 14 April 2013, despite it reaching the position of number 2 in the music charts that week. The BBC had explained its decision at the time by noting that the song had risen in the charts following the death of Margaret Thatcher on 8 April and concluding that, “exceptionally”, the song would not be played in full out of respect for Baroness Thatcher’s family. The complainant considered that the decision to play only an excerpt of the song – when other songs in the charts were played in full – was a breach of the requirement for impartiality as set out in the BBC’s Royal Charter and Agreement.

In his appeal, the complainant made the following points:

- The decision to play a truncated version of the song when the other songs in the charts were played in their entirety was a breach of the guidelines on Impartiality as that one track was singled out for different treatment.
- The purpose of *The Official Chart Show* was to play the top 40 singles; it was a programme of record and its integrity had been compromised by the decision not to play the ‘Ding, Dong’ song in full.
- The song was not political, did not contain a political message and did not refer to any individual, there was therefore no need to refer to any political campaign that related to Lady Thatcher.
- Given that the song did not refer to any individual then it could have been played in its entirety without causing any offence.
- Had the song been played in full, without an accompanying commentary, there would have been no merit to the argument that it might have been seen as promoting: “...any rejoicing in Lady Thatcher’s death” and therefore, no argument that its broadcast might cause offence.
- The decision not to play the song in its entirety raised issues both of impartiality and also of censorship.

In terms of the Stage 2 response, the complainant:

- disagreed with the approach taken by the Complaints Director, who had considered the treatment of 'Ding, Dong, the Witch is Dead' and how it had differed from the treatment of another Top 40 song, 'I'm in Love with Margaret Thatcher'. The complainant noted that this was the only song in the Top 40 that week that specifically referred to Lady Thatcher and that this song had been played in full.
- rejected the idea that, merely by being promoted by a specific, politically motivated lobby, the song 'Ding, Dong, the Witch is Dead', had become identified with a political message.

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that she did not consider that the appeal had a reasonable prospect of success and the appeal should not be put to the Editorial Standards Committee of the Trust.

The Adviser noted that the complaint was first made in relation to the Guidelines on Impartiality. She noted too that in his Stage 2 response the Complaints Director had discussed the complaint in terms both of Impartiality and Harm and Offence, and the Adviser considered that these were the relevant Guidelines.

The Adviser noted that in his response of 1 July 2013, the ECU Complaints Director had written:

"You believe that because there was no reference to Margaret Thatcher in 'Ding Dong, The Witch Is Dead' and that its subject, in the film *The Wizard of Oz*, was entirely fictional, 'no context regarding Lady Thatcher can be inferred from the song being played in a straightforward manner'."

"...The fact is, and the other complaints which have come to us on this subject all agree, that there was clearly an anti-Thatcher dimension to the campaign to drive 'Ding Dong, The Witch Is Dead' up the charts..."

The Adviser agreed with the Complaints Director's analysis that the song had become strongly associated with a political campaign. She noted that there had been considerable news coverage of an online campaign to promote sales of the song and it had been referred to as an "anti-Thatcher song" across national media in the days leading up to *The Official Chart Show with Jameela Jamil*. (The following are examples from different newspapers:

<http://www.independent.co.uk/arts-entertainment/music/news/antithatcher-song-ding-dong-the-witch-is-dead-misses-top-spot-in-radio-1-charts-8572547.html> ;

<http://www.theguardian.com/media/2013/apr/10/thatcher-death-ding-dong-witch> ; and

<http://www.telegraph.co.uk/news/politics/margaret-thatcher/9993713/Anti-Margaret-Thatcher-song-Ding-Dong-The-Witch-is-Dead-fails-to-reach-number-one.html>.)

Therefore, on the complainant's point that the song neither specifically referred to an individual nor was it related to a political campaign, the Adviser considered that Trustees would be likely to conclude that the song had become linked with a campaign, in the

wake of Lady Thatcher's death, to display opposition to Lady Thatcher. Therefore she did not consider this element of the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

The Adviser considered that the song did have the potential to cause offence if it were played because it had been widely publicised as being a way of giving voice to anti-Thatcher feelings. The Adviser noted the Complaints Director had addressed that point:

"... in that context, playing 'Ding Dong, The Witch Is Dead' might be seen as rejoicing in the death of a fellow human being, something which would, potentially, be highly offensive to sections of the BBC audience whatever their views on Margaret Thatcher. It could also have caused serious upset and distress to Mrs Thatcher's family, who, regardless of any views that some might hold about them individually, arguably still had a right to be protected from such hurt."

The Adviser agreed with that analysis. She considered that whatever had been the intention of the person who had written the song, it had been promoted as a way of expressing anti-Thatcher sentiment following her death and this had been widely known at the time of *The Official Chart Show*.

The Adviser noted that the complainant considered the decision not to play the song was not only in breach of the Guidelines relating to Impartiality, but also raised issues of censorship and brought into question the integrity of *The Official Chart Show*. She noted too that the Controller of Radio 1 had written a blog about the decision, a copy of which had been sent to the complainant at Stage 1. This had made clear that, in reaching a decision about how to treat the song, he had born in mind his concerns for Mrs Thatcher's "grieving family". He wrote:

"Nobody at Radio 1 wishes to cause offence but nor do I believe that we can ignore the song in the chart show, which is traditionally a formal record of the biggest selling singles of the week. That in turn means that all songs in the chart become an historic fact.

"I've therefore decided exceptionally that we should treat the rise of the song, based as it is on a political campaign to denigrate Lady Thatcher's memory, as a news story. So we will play a brief excerpt of it in a short news report during the show which explains to our audience why a 70-year-old song is at the top of the charts. Most of them are too young to remember Lady Thatcher and many will be baffled by the sound of the Munchkins from the Wizard of Oz.

"To ban the record from our airwaves completely would risk giving the campaign the oxygen of further publicity and might inflame an already delicate situation."

The Adviser considered that this blog had made clear the programme's significance as the "formal record of the biggest selling singles of the week" and had also described the programme makers' concerns not to cause offence to Baroness Thatcher's family in the week of her death. The Adviser noted that there had been no attempt to hide the song's success and its position at number two in the charts was clearly established – as was the motivation that lay behind its sudden popularity. She noted that, while the song was not played in its entirety, an excerpt of it had been played and the commentary which was read out around the excerpt made clear that the song had been the focus of strong political feeling. She considered that she had not seen evidence suggesting the integrity of the programme had been brought into question and considered that on this point too the appeal did not have a realistic prospect of success and should not be put before

Trustees.

The Adviser noted that the ECU Complaints Director had sought to explain how, in deciding what to broadcast, the programme makers had sought to balance the Guideline requirements for Impartiality with the requirements relating to Harm and Offence:

“There is no sense, I am afraid, in which the impartiality guideline can be held to automatically trump other important editorial considerations in dealing with an issue such as this. All relevant considerations must be taken into account and weighed in making a decision.”

While the Adviser accepted that the decision to treat one song in a different way from the others had been contentious, she considered Trustees would be likely to conclude there was a reasonable editorial justification behind the decision and it met the requirements both of the Impartiality Guidelines and those which related to Harm and Offence.

For the reasons set out, the Adviser considered Trustees would be likely to conclude that the complainant had been given a reasonable response to his complaint at Stage 2 and that his appeal did not have a realistic prospect of success and should not be put before Trustees.

Request for review by Trustees

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

- The Adviser had failed to address the full history of his complaint, which was that BBC Audience Services had initially decided to close down his and a number of other complaints at stage 1B of the complaints procedure; that the complainant had appealed against this decision to the BBC Trust; and that the Editorial Complaints Unit had agreed to accept the complainant’s complaint at Stage 2 before Trustees could determine the complainant’s appeal against the Executive’s decision not to respond further at stage 1B.
- “playing back the song in a straightforward manner would not amount to promotion of any political message with which it may have been identified”, because the song itself did not contain any content supporting that message and because “the show is a matter of record, so playback of a song only amounts to confirmation of its place on that record, not promotion”. The complainant felt that the Adviser “appears to consider merely the identification of the song with a political message as sufficient argument that straightforward playback would promote that message and cause harm or offence if the message was harmful or offensive”; the complainant maintained that this was not the case.
- There was “no evidence ... that playing this song in full could be reasonably seen to amount to rejoicing in the death of Margaret Thatcher”. The complainant contended that the Facebook group which supported the song was merely seeking to utilise the publicity surrounding the death of Mrs Thatcher as a “springboard to highlight the significant anti-Thatcher opinion in the British population, just as Thatcher supporters were utilising the publicity surrounding her death as a springboard to promote their own pro-Thatcher opinions”.
- In response to the Adviser’s assertion that there was no evidence that the integrity of *The Official Chart Show* programme had been brought into question, there had been

"multiple news stories which highlighted concerns among the public (typically published on Twitter) and anti-censorship campaigners about the integrity of the programme as a full record of Britain's listening tastes being compromised by truncating/censoring the song". The complainant supplied links to various online articles that he regarded as evidence of damage to the programme's integrity and reputation.

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 that the programme's integrity had been damaged by the decision to "truncate/censor" the song and his argument that the song could not reasonably have been expected to cause harm or offence because expressing opinion against a human being was something quite different from "rejoicing in the death of a fellow human being". The Committee also noted that the complainant's view that, even if the song had been identified with a political message, playing back the song in a straightforward manner would not amount to promotion of such a message.

The Committee agreed that the song had become linked with a campaign in the wake of Lady Thatcher's death to display opposition to her premiership and that it did have the capacity to cause offence because it had been widely publicised as being a way of giving voice to anti-Thatcher feelings. The Committee noted too that in making their decision about whether to play the song in *The Official Chart Show*, the programme makers had sought to balance the Guideline requirements for Impartiality with the requirements relating to Harm and Offence in the week following Lady Thatcher's death and had been mindful of causing distress to her grieving family.

The Committee was mindful that the circumstances *The Official Chart Show* found itself in on this occasion were difficult and that complaints were likely to be received whatever decision the BBC took with regard to playing 'Ding, Dong, the Witch is Dead' in these circumstances. The Committee considered that, aside from whether or not people had bought the song in order to express anti-Thatcher political sentiments, which listeners may or may not agree with, the song in question was clearly a celebration of a death. Although it was not linked to any real person when written, the Committee believed that the song had clearly and unarguably gained its association with Lady Thatcher in the run-up to the chart show in question.

The Committee agreed that it was therefore legitimate for the BBC to have given weight to the possibility of offence caused by the broadcast of a perceived celebration of the death of a specific and very recently deceased person. The Committee was satisfied that in setting out the political background to the high chart position of this song, the programme had sought to meet the requirements of due impartiality while mitigating the risk of gratuitous offence.

The Committee agreed that there would be no reasonable prospect of success for an appeal on the grounds that the programme had breached the Editorial Guidelines on Impartiality or Harm and Offence.

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

Six Nations Rugby, BBC One, 9 February 2013 and 23 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 BBC's coverage of two of the *RBS Six Nations Rugby* matches.

The complainant said that the BBC analyst and commentator, Jonathan Davies, had repeatedly used inaccurate statistics when discussing two rugby matches.

The complainant cited an example from the France v. Wales match on 9 February 2013 when he said Mr Davies had said that Wales deserved to win because they had "dominated most of the territory and possession". The complainant said that official post-match statistics showed that Wales had 50 per cent of the possession and 51.5 per cent of the territory and therefore the commentator's statement was inaccurate and misleading.

The complainant cited a further example, from the Italy v. Wales match on 23 February 2013, when he quoted Mr Davies as saying that Italy had not had possession whatsoever and that Wales had "really dominated". The complainant said that statistics shown on the screen just before this comment had shown Wales sharing 50 per cent of the possession and territory.

The complainant disagreed with the findings of the ECU that Mr Davies had not materially misled the audience. The complainant said he believed that any occasion when inaccurate statistics were cited to support an opinion was materially misleading.

He said that he had no issue with sports analysts broadcasting an opinion but he did believe they should be held to account if they cited inaccurate statistics or claimed as fact statements that were later shown to be untrue. The complainant argued that, in the Italy v. Wales match, Mr Davies was the main commentator and so the audience would reasonably expect Mr Davies to provide a factual-based commentary with less emphasis on opinion.

The Trust Unit's decision

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

The Adviser considered the appeal in relation to the Editorial Guidelines on Accuracy and Impartiality.

The Adviser began by noting that Jonathan Davies had been a well-known rugby union and rugby league player. She observed that he had been captain of the Welsh rugby union team and had represented Wales as a rugby international more than 30 times between 1985 and 1997. She noted that he had been seen as a key figure when Wales

had beaten the other home nations to claim rugby's Triple Crown in 1988.

The Adviser noted that both the France v. Wales and Italy v. Wales matches were part of the BBC's live coverage of the Six Nations Championship. She considered that the audience watching both matches were likely to have both an interest in rugby and a degree of knowledge about the game.

The Adviser then noted the comments made by the Editorial Complaints Unit (ECU) in its response to the complainant at Stage 2 about the role of pundits such as Mr Davies in live sports coverage. She noted that the ECU believed it was generally understood by the audience that pundits were expressing a personal opinion about what was happening on the pitch, based on their own experience and knowledge of the game, and that their role was to add colour, insight and analysis. She observed that, as a result, the ECU had felt there was no legitimate expectation that every comment made by a pundit had to be backed up by facts or statistics.

The Adviser also noted that the complainant had agreed with the ECU about the role of the pundit. However, she understood that he believed it was inaccurate for such commentators to make statements of opinion that could not be supported by statistics.

The Adviser then examined the comments made by Mr Davies and cited by the complainant. She began by looking at the match between France and Wales on 9 February 2013.

She noted that the first comment was made 76 minutes into the 80 minute match when Mr Davies said:

"It's a great win you know. They are on their way. I think they have shown great character today. Backs against the wall, great defensive effort. Both defences have been superb. One bit of magic from Dan Biggar, spots the space, puts the chip in, great finish George North. And really that has been the difference. I think they deserve, you know, to win, they've dominated most of the territory and possession. They couldn't turn the pressure into points until that one opportunity."

She noted at the end of the match he added:

"I think they deserved it because they dominated territory, you know, but it was just great character and a very, very important win."

The Adviser observed that Mr Davies had first acknowledged that Wales had had to defend strongly. By mentioning this, she felt he had sought to indicate that the match had been a competitive one.

She noted that he had then given his analysis that Wales had deserved to win because they had dominated most of the territory and possession. She observed that the post-match statistics had not supported this belief and that Mr Davies had not cited any statistics of his own to support his case. However, she also noted that he had made it clear that this was nothing more than his personal view by saying these were the reasons he thought Wales had deserved to win.

Given that the audience could be expected to have some knowledge of rugby and had been able to watch this live event at the same time as Mr Davies, the Adviser believed Trustees would be of the view that they had been given every opportunity to form their own opinion as to why Wales had defeated France and so agree or disagree with Mr

Davies' analysis. As a result, she did not think Trustees would agree that Mr Davies' comments had materially misled the audience.

The Adviser then looked at the comments made by Mr Davies during the match between Italy v Wales on 23 February 2013. She noted that at around 21 minutes into the match, the following commentary took place shortly after an on-screen graphic had shown the areas of the pitch where the action had taken place and the relative possession which was 50:50:

Jonathan Davies: I think Adam Jones said in the week that he needed a big game, he didn't feel that he played that well out in France. The front three, the front five, have really responded well, taken the game to the Italians.

Shane Williams: And that's exactly what you need, you know, you need to be leading from the front, literally. Hibbard has come in as well, seems to be doing really well in the scrum there. Gethin seems to be having one of his better games and, you know, absolutely dominating the scrum at the moment. And nine, ten, half-backs will be (unclear) with that.

Jonathan Davies: I think the Italians, I do feel now, they just haven't had possession whatsoever, haven't carried the ball, they've been starved of the ball, Wales have really dominated.

The Adviser noted that the two commentators had initially been discussing the Welsh scrum and how well it was doing against the Italians. She then observed that Mr Davies appeared to widen his analysis of the game by saying that he thought that Wales had "really dominated".

She again acknowledged that the statistics had not supported the fact that the Welsh had dominated territory and that Mr Davies had not cited any statistics to support his view. However, she observed that he had again made it clear that this was his personal view by saying that this was the reason he thought that Wales were doing so well in the match.

The Adviser noted that the audience had been able to watch this live event at the same time as Mr Davies and would have been able to see the statistics on possession in the match shortly before he made his comments. As a result, she again felt that Trustees would believe that those watching had been given every opportunity to form their own opinion as to why Wales was winning against Italy and so agree or disagree with Mr Davies' analysis. As a result, she did not think Trustees would agree that Mr Davies' comments had materially misled the audience.

The Adviser then considered whether Mr Davies had failed to be impartial. She noted that the BBC guidelines stated that:

"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."

She observed that Mr Davies was one of several former international rugby players used by the BBC during its live coverage of the Six Nations Championship. She noted that these pundits/commentators are chosen from across the home nations taking part in order to achieve proper representation.

In addition, she noted that the ECU and the complainant had agreed that the role of the sports pundit was to express a personal opinion about what was happening on the pitch, based on their own experience and knowledge of the game and that their role was to add colour, insight and analysis. She felt that Trustees would be of the view that the vast majority of the audience would have been aware of this and the fact that Mr Davies would have been selected as a pundit because of his high profile rugby career with Wales.

Given that the audience would have been aware of the role of sports pundits at such events and that Mr Davies had made it clear that he was expressing an opinion when making his comments, the Adviser believed that that Trustees would conclude that Mr Davies' comments had not breached guidelines on due impartiality.

The Adviser believed that, consequently, Trustees would not agree that there had been a failure to correct a mistake quickly, clearly and appropriately. It followed from this that she did not consider the appeal had a reasonable prospect of success and decided that it should not be put before Trustees.

Request for Review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant said that he had not argued that it was inaccurate for commentators to make statements of opinion that could not be supported by statistics. He said that, rather, it is inaccurate for commentators to make statements of opinion that are "**contradicted** by statistics readily available to the commentator, which by definition are therefore inaccurate and misleading and thus contrary to the Editorial Guidelines".

With regard to Mr Davies' use of the word "think", the complainant rejected the argument that a personal opinion was not bound to the same levels of accuracy as any other statement.

The complainant also disputed the Adviser's argument that only people with a degree of knowledge about rugby would be watching the matches. He also took issue with an argument which he characterised as a "Catch-22 situation", in that "any viewer who might be misled by inaccurate statistics was not likely to be watching, whilst any viewer knowledgeable enough to spot inaccuracies could not be misled by virtue of their knowledge".

The complainant believed that, as Mr Davies was an experienced commentator, there should have been a high level of expectation of accuracy from him and he should not have contradicted statistics available to him. The complainant considered it an invalid argument to say that the matter ultimately came down to personal opinion because official statistics showed that Davies's claims were incorrect.

The Committee's decision

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

The Committee noted the complainant's view that it was not an acceptable defence by the BBC to state that, simply because they had been spoken as Mr Davies' personal opinion, his comments were unlikely to be found in breach of the Editorial Guidelines on Accuracy and Impartiality.

The Committee also noted that the complainant considered that he had been asked to *accept* a "Catch-22" defence of his complaint, as set out above.

Whilst appreciating the strength of the complainant's views on this issue, the Committee agreed with the response of the Complaints Director, who stated in the ECU's finding that there was "no legitimate expectation that every comment made by a pundit had to be backed up by facts or statistics." The Committee noted that the personal opinions of sports pundits were a traditional feature of match analysis and it was satisfied that the Senior Editorial Strategy Adviser had applied the Editorial Guidelines correctly in her decision. The Committee agreed that viewers watching the matches would have been able to see the statistics shortly before Mr Davies made his comment and to form their own opinion as to whether they agreed with his analysis or not.

The Committee was mindful that the Editorial Guidelines require accuracy and impartiality that is "due", which means that it must be adequate and appropriate to the output, taking into account the subject and nature of the content. The Committee noted the relevant context, as set out in the replies given by the ECU Complaints Director and the Trust's Senior Editorial Strategy Adviser. The Committee agreed that the requirements of due accuracy and due impartiality in the coverage cited by the complainant were not such that it was likely to find that Mr Davies' comments had been in breach of the Guidelines.

The Committee did not believe it would be likely to conclude that Mr Davies's comments had materially misled viewers and considered that the appeal had no reasonable prospect of success.

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

Allegation of bias and undue prominence

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 appealed to the Trust on 17 July 2013, saying that he would like the Trust to consider his complaint over what he alleged to be a BBC presenter's promotion of lesbian, gay, bisexual and transsexual issues.

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that she did not consider that the appeal had a reasonable prospect of success and she did not propose to proceed in putting the appeal to the Editorial Standards Committee.

The Adviser noted that, although the complainant's appeal to the Trust had been received beyond the time-limit of 20 working days after the final response of the Editorial Complaints Unit at Stage 2 of the complaints process (which was dated 4 April 2013), there had been some correspondence with the Trust in between the two dates which had not been received owing to a technical problem within the Trust Unit. Therefore, the Adviser would not consider the appeal as having been received outside the normal timeframe under the Complaints Framework.

The Adviser noted that the relevant senior BBC manager had told the ECU's Complaints Director that he did not believe there was anything useful he could add to his previous responses to the complainant. The Adviser noted that the ECU had declined to take the complaint as it was about general bias and had referred the complainant to the BBC Trust. The Adviser noted the complainant did not feel he had received an adequate response to his concerns from the BBC Executive.

The Adviser considered the complaint against the Editorial Guidelines on Impartiality. The Adviser also considered whether the appeal engaged the Guidelines on Conflicts of Interest.

The Adviser noted that the complainant had contacted the BBC on 1 February 2013 to complain about a specific programme which had debated gay marriage. The Adviser noted that the complainant believed that the presenter devoted too much time generally to debating "LGBT issues".

The Adviser noted the relevant senior manager, had, in a letter dated 13 February 2013, written in response to the complaint about the item relating to gay marriage:

"We do not promote sectional interests or the views of lobby groups. Editorial decisions about programme content and approach are informed by the BBC's Editorial Guidelines and the professional judgement of BBC staff – in this case, colleagues with long-established journalistic expertise."

The complainant replied, arguing that the response he had received did not address his full complaint.

In a further response dated 25 February 2013, the relevant senior manager stated:

“Editorial independence and impartiality are fundamental principles in everything that we do. We reject entirely your suggestion that the [receipt of an award] and/or a presenter’s holiday destination has had any material bearing on BBC output, including the selection of discussion topics and/or the treatment of guests...”

The Adviser considered that the senior manager had given a clear and reasoned response to the allegations made by the complainant. The senior manager had restated the editorial justification for the discussion about gay marriage which had preceded the complaint and had reiterated that a wide range of views on the subject had been heard, in line with the requirements of the Guidelines. The Adviser noted that the senior manager had also stated that decisions about which subjects should be covered were not taken alone by the presenter, but were taken by a team of programme makers. The Adviser considered Trustees would be likely to conclude that no evidence had been brought forward to indicate the Editorial Guidelines had not been followed.

The Adviser did not consider that Trustees would be likely to conclude that the receipt of an award constituted evidence which might lead them to consider a possible breach of Editorial Guidelines on Impartiality or Conflicts of Interest.

For completeness, the Adviser considered whether the complaint about the references to a location as a holiday destination raised issues under the Guidelines on Undue Prominence and Personal Benefits. The Adviser did not believe that Trustees would be likely to conclude that references to the location were unduly promotional, or that there was any evidence to suggest that the presenter had personally profited from making references to the location as a holiday destination.

Therefore, for the reasons set out above, the Adviser considered that the complainant’s appeal did not have a reasonable prospect of success and she did not propose to put this appeal before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant alleged that references to the location had stopped since he had made his complaint. He repeated his view that the presenter’s receipt of an award was a crucial part of the 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 containing the discussion of gay marriage complained about.

The Committee noted that the complainant considered that the receipt of an award was “highly significant” but agreed with the Adviser that it would be unlikely to conclude that this constituted evidence which might lead it to consider a possible breach of Editorial Guidelines on Impartiality or Conflicts of Interest. The Committee noted the response from the senior BBC manager, who said that the BBC had no formal involvement with the awards and that they have no relevance to or influence on BBC decision making and output. The Committee was satisfied that there was no cause for Trustees to doubt that

response.

Further, the Committee did not believe that it would be likely to conclude that references to the location were unduly promotional or that there was any evidence to suggest that the presenter had personally profited from making references to the location as a holiday destination.

The Committee agreed that the senior BBC manager had given a clear and reasoned response to the allegations made by the complainant. The Committee believed that no evidence had been presented which would lead them to consider that there could have been a breach of Editorial Guidelines in this case and concluded that there was no reasonable prospect of success for the appeal.

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

***HARDtalk*, BBC News Channel, 1 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 regarding a *HARDtalk* interview with the Israeli writer, A.B. Yehoshua.

He asked the Trust to investigate two issues in relation to that interview and summarised the issues thus:

"[The presenter] was giving the viewers a misleading impression that Israel still exercises control of the Gaza Strip and wrongly stated that Israel still occupies it. He also said that the right in Israel is gaining in power and that is the opposite of the case. Israel has recently been shifting politically to the left, both in terms of its domestic politics and in its willingness to compromise for a two state solution with the Palestinians."

On the first issue, the complainant stated in relation to the interviewer's assertion that Israel continues to occupy and control the Gaza Strip that the applicable law is Article 42 of the 4th Hague Convention, which states:

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

The complainant argued that since Israel withdrew from the Gaza Strip in 2005 it could not be considered either in law or in practice in control of the Gaza Strip:

"On the ground first the Palestine Authority and then Hamas had almost total control. The Gaza Strip has/had a border with Egypt as well as Israel and it was totally up to Egypt what it let through its border with Israel. If at times Egypt chose to restrict what crossed the border between Egypt and Gaza that was Egypt's way of exercising control. There were over 1000 tunnels between the Gaza Strip and Egypt, including some concrete lined road tunnels through which Iranian made rockets and larger civilian items, such as cars, were imported and Israel had no control of that. Israel absolutely did not (since 2005) and does not control what goes on in Gaza, and [the presenter] was totally wrong in saying that it does."

The complainant also regarded a UN report cited by the interviewer was wrong, because the "tightening" referred to in the report (in terms of the blockade) had, the complainant said, long gone. The complainant said the presenter's remarks left the impression that Israel controls the Gaza Strip. "It doesn't," the complainant said, "Hamas does."

The second aspect of the complainant's appeal related to the interviewer's assertion:

"But the truth is it is the right that is in power and it is gaining in power – not just politically – when you think about the institutions in Israel; the army, the judiciary."

The complainant said the right-wing bloc had lost seats at the recent election, that there were fewer right-wing members of the Knesset than previously and that the government-controlled institutions in Israel were presenting a more moderate stance than they had before.

The complainant said if anything Israel has been shifting politically to the left. He pointed to the success of the new party Yesh Atid at the election, which he said is certainly not a party of the right.

The complainant said the clear context for the presenter's reference to the collapse of the Israeli left was specifically in relation to the two-state solution. The complainant argued that Prime Minister Netanyahu has been calling for direct talks with the Palestinians since he came to office and that the government's chief negotiator was Tzipi Livni, who was also chief negotiator in the Olmert administration when according to the complainant "the most generous offer that the Israelis have ever made to the Palestinians was made".

In relation to the judiciary the complainant said that for the first time Israel now had an Arab as one of its Supreme Court justices. He said the fact that there are more orthodox graduate officers in the military does not indicate a shift to the right and that there are far more orthodox Jews who refuse to serve than secular Jews, "being orthodox in Israel is not synonymous with being right wing... How orthodox a Jew is does not determine how right or left wing (s)he is."

The Trust Unit's decision

The Trust's Head of Editorial Standards replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit 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 Head of Editorial Standards for the Trust Unit was of the view that in considering this appeal Trustees would take into account viewers' expectation for *HARDtalk* which, as the title suggests, is an interview format where sometimes provocative ideas and positions are advanced, questioned, debated and clarified. In her view the questions posed by the presenter had to be considered in context with the answers given by the interviewee.

The Head of Editorial Standards first considered the first part of the complaint, that the interviewer had wrongly characterised the status of the Gaza Strip. The Head of Editorial Standards noted this was a live 30 minute interview exploring the prominent Israeli writer's take on the current state of Israeli political discourse; what the interviewee considered was meant by an Israeli identity; the expectations others have of an Israeli writer; and why in his view the Israeli government should be negotiating directly with Hamas.

The relevant content in respect of this allegation was in the context of the interviewer exploring the writer's views and testing why (despite being known for some radical views) Mr Yehoshua held what the interviewer suggested was a more mainstream Israeli position on the issue of Gaza:

"One of the views that you had though, that seems to be directly in the mainstream and also to be honest a bit of a myth is that when Israel withdrew its settlers back in 2005 it left Gaza a sort of pristine proto-Singapore. A place that

could become a territory of boundless possibilities for the Palestinians who are left behind. When actually it was, still, a miserable and occupied place.”

The Head of Editorial Standards noted that whilst the interviewer made the comment in the context of a particular point in history, i.e. 2005, the exchange which followed moved between the present and the past.

A B YEHOASHUA: It wasn't an occupied place.

INTERVIEWER: It was. The Israelis retained control.

A B YEHOASHUA: It wasn't occupied. No we don't retain control. They have an open border to Egypt. They have an open border to Egypt.

INTERVIEWER: That border was sealed by Egypt and it was on all other sides Israel retained control. There was no freedom of movement.

A B YEHOASHUA: Because these are enemies. They are throwing Qassam (missiles)...

INTERVIEWER: You can argue the reason for it but I'm just saying it's a bit of a myth to say that it was no longer occupied.

A B YEHOASHUA: No. This is an enemy and after the withdrawal ... we have withdrawn from Gaza without any conditions ...

INTERVIEWER: I'm sorry but that's simply not true. Take the UN report from just a few months ago, the blockade imposed by Israel intensified – this was following the Hamas takeover – intensified the closure applied since the early 1990s. It is a denial of basic human rights in contravention of international law and amounts to collective punishment. That's the UN saying you have not withdrawn.

A B YEHOASHUA: Yes now I have to say. In Gaza there was first of all settlements. There were 8,000 Jews living there in the heart of Gaza. This was a very I would say bad thing that we have done. One of the most vicious things that we have done. To take part of Gaza and to put 8,000 vis-a-vis one million and a half refugees. The people in Gaza fought against us and Israel was defeated. This is the main thing. After the withdrawal from Gaza. The people in Gaza... We were saying to Gaza: now you are by your own. You are governing yourself. You make yourself a Singapore. Take money from all the Arab countries. Invest and build etc. Instead they continue to throw Qassam and missiles on Israel and putting one million people on shelters. This is the situation and we have... And of course what we have to do. We have to say to them now take more sophisticated missiles from Iran in order to hit Tel Aviv. They already hit Tel Aviv. They are shelling our cities and a million people are... And they are... We don't have any reason to do it. They are free. Not one Israeli soldier is in Gaza. So when we are... (interviewer tries to interject) No give me the possibility to answer... So when we are in a state of war against us. A total state of war we don't have any responsibilities. They are our enemy and now for the first time we see very clearly that they can control the fire and for three month they are not shooting anymore because they can control and when they have shooted it was done by their own will and not because someone was obliging them.

The Head of Editorial Standards considered therefore whether the Trustees would be likely to consider that the exchange as a whole was duly accurate, taking into account the nature and type of content.

The Head of Editorial Standards considered that by the conclusion of the section on Gaza the Trustees would be likely to take the view that the audience would have understood what the interviewer meant when he said that Gaza remained occupied, i.e. that Israel retained control of the borders whilst the Egyptian border was sealed and that, according to a recent UN report, Israel continued to deny basic human rights to Gazans.

The Head of Editorial Standards considered too that by the conclusion of the section the Trustees would be likely to take the view that the audience would have understood why Mr Yehoshua considered Israel was no longer the occupying power in the Gaza Strip, that there was an open border on the Egyptian side and that in his view Israeli border restrictions were because of enemy action against Israel rather than because Israel remained in occupation.

The Head of Editorial Standards noted the complainant's view that the UN report referred to by the interviewer was wrong and his contention that the blockade is all but over. She noted too his view that the only human rights abuses in Gaza are imposed by Hamas.

She felt, however, that Trustees would be likely to take the view that the comprehensive response by Mr Yehoshua informed the audience that the military occupation was over ("not one Israeli soldier is in Gaza"), and explained fully his (and Israel's viewpoint) as to the reasons for any ongoing Israeli border restrictions.

Therefore, overall, in the opinion of the Head of Editorial Standards, the Trustees would be likely to conclude that the content was duly accurate and the audience would not have been misled as to the status of the Gaza Strip or be left with the impression that Israel remained in physical occupation of the territory.

The Head of Editorial Standards then considered the complainant's second point, that the interviewer was wrong to make the following statement which he regarded as both firm and untrue:

"But the truth is it is the right that is in power and it is gaining in power – not just politically – when you think about the institutions in Israel; the army, the judiciary."

The Head of Editorial Standards noted first of all the overall context for the discussion: having established that A.B. Yehoshua, along with Amos Oz and David Grossman were "on the left politically", the interviewer asked Mr Yehoshua:

"How far do you think your voice ... is increasingly marginalised at home?"

To which, Mr Yehoshua replied that on the one hand their voice is marginal, but on the other hand their ideas "were the drops of oil on the turning of the wheels of reality". The implication of his argument here and throughout this section was, in the opinion of the Head of Editorial Standards, that while the left may not have the job titles as it were, their ideas nevertheless had traction.

The Head of Editorial Standards noted the terms in which the complainant made his allegations: that the right wing bloc lost seats at the recent election and the government had fewer right-wing MKs (Knesset members) than before and that government controlled

institutions are presenting a more moderate stance than before. She noted that he had explained that there had been a definite shift to the left in Israel's political alignment after the last elections and that the strongest gainer was a new party, Yesh Atid. She noted that this party gained a number of seats in the election at the expense of others, but noted that while they are not a party of the right, as the complainant correctly noted, neither are they a party of the left. Essentially, however, the Head of Editorial Standards noted that the statement in question was about power and not about numbers of seats and she noted that Prime Minister Netanyahu remains in power as leader of a party considered to be on the right of Israeli politics and in charge of a government where the majority of ministers were from the ruling party. The Head of Editorial Standards noted too that at the time the interview took place the government had not yet been formed and its precise make up was not yet clear.

The Head of Editorial Standards noted the complainant's assertion that Prime Minister Netanyahu has been calling for direct talks with the Palestinians without preconditions since he came to office and that the government's chief negotiator was Tzipi Livni, who was also chief negotiator in the Olmert administration when according to the complainant "the most generous offer that the Israelis have ever made to the Palestinians was made". He viewed this as a shift to the left politically.

The Head of Editorial Standards considered the complainant's assertion that when the presenter said that the Israeli left was collapsing the clear context was in relation to the two-state solution. The Head of Editorial Standards noted that in fact it was Mr Yehoshua who raised the two-state solution in one of his answers. This was the exchange:

INTERVIEWER: Well you say the wheels of reality but the truth is that it is the right that is in power and it is growing in power not just politically but when you think about the institutions in Israel: the Army, the Judiciary... why is the left failing in Israel?

ABY: Not so much... First of all the right wing has recognised the solution... I'm thinking about the majority of the right wing, especially Netanyahu himself was repeating it just recently: the two-state solution. Secondly...

INTERVIEWER: Yes but what progress is there being made towards it? The two-state solution.

ABY: Yes but okay, first of all to have to recognise the concept of two-state solution. This by itself is an advantage. Because 20 or 30 years ago we could not speak about two-state solution

INTERVIEWER: But let me take you back to the original question which was why is the Left so marginalised? I mean, talk to any Israeli and they will say that the Left has collapsed. Why is that?

ABY: Yes, they will say the left is collapsed. The problem is not the Left has collapsed it is the ideas of the Left that are not collapsing. And I will put it. In Vietnam War you would say, why the right wing? Why Nixon and all these generals were so winning and so dominating? But those people, those hippy in Berkeley that was demonstrating against the war in Vietnam finally was right and finally convinced the other Americans. They have to do it. And don't forget the Palestinians didn't easy the way for us. The Palestinians for about 30 years after the Six Day War say we will never recognise Israel. The Hamas say we'll never recognise Israel. Only in '88 this was the first movement of the Palestinian that

was asked by saying we are ready to the two-state solution.

The Head of Editorial Standards noted that Mr Yehoshua was using the concept of a two-state solution as an example to make a specific point about the left in Israel: the argument effectively that, whilst the left may not be in power, their ideas have traction in a way they did not 20 or 30 years ago, when it would have been unthinkable to even suggest a separate Palestinian state. Mr Yehoshua suggested that the ideas of the left are alive and well. The Head of Editorial Standards noted that the presenter had not himself raised the two-state solution but had responded to it when raised and then had moved back to his original point, whereupon the interviewee had referred again to the two-state solution.

The Head of Editorial Standards noted that, in adopting the interviewee's point, the presenter had moved ground to accept his premise that the two-state solution was in effect an idea of the left and had then questioned what progress was being made thus implying that a government of the right was not moving towards the two-state solution. She noted, however, that the interviewee maintained his position in answering this question and had compared the adoption of the two-state concept with the shift in public opinion that had occurred in America.

The Head of Editorial Standards noted the complainant's point that Israel had recently been shifting politically to the left, both in terms of its domestic politics and in its willingness to compromise for a two-state solution with the Palestinians. In her view there was a very fine difference between the interviewee's assertion that an idea of the left had been adopted by the right and the complainant's perspective that Israel had moved to the left. The interview had in fact covered both the assertion that Israel was moving right as the left had collapsed and the counterargument that in fact it was adopting the ideas of the left.

The Head of Editorial Standards noted that the exchange about the left in Israel was not in the nature of a snapshot of the make-up of the current Israeli Government, nor was it related to any specific event; it was consistent with the nature and type of the content, which was a discursive conversation with one of Israel's most prominent writers.

The Head of Editorial Standards noted the complainant's assertions that "for the first time Israel now has an Arab as one of its very few Supreme Court Justices" and "The fact that there are more orthodox graduates of Israel's finishing officers courses does not indicate a shift to the right" and "being orthodox in Israel is not synonymous with being right wing" and that "far more orthodox Jews refuse to serve in the military at all than do more secular Jews". While the Head of Editorial Standards noted these points, she also noted that the interviewer did not refer to the make-up of the Supreme Court or to the number of orthodox graduates and that these points were advanced during the complaints process. The Head of Editorial Standards noted again that the interview in question was a discussion about ideas. In this context, the interviewer was, in the view of the Head of Editorial Standards, referring to support for the ideas associated with the right – which might for example include support for settlements. Earlier in the interview, the interviewer had noted that Mr Yehoshua was opposed to settlements and, along with Amos Oz and David Grossman refused to visit them:

"You all boycott the settlements, you won't go and talk for example in Ariel one of the big settlements on the West Bank."

She noted in this respect the recent legal opinion of three prominent members of Israel's legal community, commissioned by Prime Minister Netanyahu, which concluded that the

settlements were legal. She noted too the fact that more members of the army were religious than previously and for many the settlements were at root a religious duty. It seemed to her that this was a proper question to put and it was open to the interviewee to push back if he did not agree.

In conclusion, the Head of Editorial Standards considered that the interview was of an entirely different nature from a news interview discussing a contemporary event, such as for example the prospect for success of John Kerry's peace talks. The context here was a long-view discussion of Israeli politics, with the interviewer reasonably taking the devil's advocate view with someone from the left.

The Head of Editorial Standards considered that Trustees would be likely to take the view that the exchanges were consistent with what the audience would have expected from the well-established format of the *HARDtalk* strand; the introduction to Mr Yehoshua signposted the scope of the discussion and during the course of the interview the interviewee was given adequate opportunity to challenge, respond and/or refute all the assertions which were put to him. In addition the Head of Editorial Standards considered the Trustees would take the view that the interviewer's questions and observations were well-sourced, based on sound evidence and duly accurate in relation to the nature and type of content.

It followed from this that the Head of Editorial Standards did not consider the appeal had a reasonable prospect of success on these points and it should not therefore be put before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He made the following points:

- The presenter said four times that the Gaza Strip was occupied and did not accept Mr Yehoshua's statements to the contrary; it is unusual to flatly deny the interviewee's answer so often.
- It is very apparent that the Gaza Strip is no longer occupied by Israel, and the UN's report on the blockade comes from an institution that is biased against Israel.
- "Yesh Atid may not be a party of the left (or right), but it is certainly committed to a two state solution. The Labour party, which is a party of the left, also gained seats. It is clear that after the election there was a greater commitment to a two state solution than there was before, and the current negotiations prove that ...The impression that [the presenter] was giving of Israel moving further and further from any possible peace agreement based on a two state solution because Israel was moving further to the right was a false impression."

The Committee's decision

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

The Committee noted the complainant's concerns, as set out above. The Committee noted that the Head of Editorial Standards for the Trust Unit was of the view that "in considering this issue, Trustees would take into account viewers' expectation for *HARDtalk*

which, as the title suggests, is an interview format where sometimes provocative ideas and positions are advanced, questioned, debated and clarified." The Committee noted that, in her view the questions posed by the presenter had to be considered in context with the answers given by the interviewee.

The Committee agreed with this view and considered that it would be likely to conclude that the exchange as a whole was duly accurate and impartial, taking into account the nature and type of content. In particular it noted that robust questioning was the style of the programming and that audiences understood that tough questions had to be seen in context and alongside forceful answers. The Committee did not believe it would be likely to find that the audience had been misled about the status of the Gaza Strip or was left with the impression that Israel remained in physical occupation of the territory.

With regard to the complainant's concern that the viewer was given the impression that Israel was becoming more hard-line because of false assertions by the presenter, the Committee agreed with the statement by the Head of Editorial Standards who considered that:

"the interview was of an entirely different nature to a news interview discussing a contemporary event, such as for example the prospect for success of John Kerry's peace talks. The context here was a long view discussion of Israeli politics, with the interviewer reasonably taking the devil's advocate view with someone from the left."

The Committee also agreed that it would be likely to take the view that:

"the exchanges were consistent with what the audience would have expected from the well-established format of the HARDtalk strand; the introduction to Mr Yehoshua signposted the scope of the discussion and during the course of the interview the interviewee was given adequate opportunity to challenge, respond and/or refute all the assertions which were put to him."

The Committee believed that it would be likely to conclude that the presenter's questions and observations were well-sourced, based on sound evidence and duly accurate and impartial in relation to the nature and type of content. The Committee did not consider that the appeal had a reasonable prospect of success.

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

“Iraq 10 years on: In numbers”, BBC News website, 20 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 Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint regarding the use by the BBC of figures calculated by the Iraq Body Count (IBC) project when referring to the number of civilian deaths in Iraq. In his complaint to the BBC, the complainant had stated that he considered the figures provided by IBC were misleading and had been selected by the BBC because they reflected: “...UK/US war killing in its least damaging light”. The complainant considered this was inaccurate and resulted in bias. He said that “no serious or satisfactory consideration” of his concerns had been offered at the previous stages of his complaint. His points and questions included the following:

- The BBC was consistently inaccurate and biased in its coverage of civilian war deaths in Iraq because of its frequent reliance on IBC figures, which were “limited and misleading”.
- To improve balance, the BBC could cite other sources and their respective data (which suggested much greater numbers of deaths), in addition to the IBC figures. Why had the BBC not done this?
- Who at the BBC had made the editorial decision to adopt IBC as a principal source and how had that decision been arrived at?
- For the purposes of the complaint, he cited the online article “Iraq 10 years on: In numbers” as an example of the biased use of IBC figures, specifically the section headed “Violence” and its associated graphic.
- He also cited a recent survey by a market research company, in support of his appeal, which suggested “a shocking absence of ... public awareness” in relation to the “true scale of war-related deaths” in Iraq. He reminded the Trust of the BBC’s public education role in this respect.

The Trust Unit’s decision

The Trust’s Senior Editorial Complaints Adviser (“the Adviser”) replied to the complainant explaining that the relevant correspondence and the article in question 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.

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 noted that the complainant’s appeal was principally couched in general terms, relating to an alleged BBC practice of virtually exclusive reliance on Iraq Body Count

figures in its overall reporting. However, she noted that, for the purposes of the complaint, the complainant wished to cite the online article, "Iraq 10 years on: In numbers", published on the BBC News website on 20 March 2013, to illustrate his concerns. The Adviser, therefore, focused on this article in her review of the complaint.

The relevant section of the article in question included the following:

"VIOLENCE

US and other coalition troops remained in Iraq in a combat role until 2010, as security operations were gradually handed over to Iraqis.

Deaths per week

Some 4,488 US service personnel died in Iraq since the start of Operation Iraqi Freedom on 19 March 2003, according to the latest figures from the US Department of Defense. British forces lost 179 personnel. But tens of thousands of Iraqi civilians have also died since 2003 as a result of sectarian killings and a violent insurgency.

The Iraq Body Count organisation, which cross references reported deaths with official figures, says 4,571 civilians were killed in 2012, bringing the number of civilian deaths since March 2003 to between 112,017 and 122,438. The spike in numbers for 31 August 2005 represents the deaths of about 1,000 people in a stampede of Shia pilgrims on a river bridge in Baghdad. Witnesses said panic spread over rumours of suicide bombers.

Iraq Body Count says the most sustained period for high-level violence was from March 2006 to March 2008, when sectarian killings peaked and some 52,000 died.

'The country remains in a state of low-level war, little changed since early 2009,' says the organisation, 'with a "background" level of everyday armed violence punctuated by occasional larger-scale attacks designed to kill many people at once.'

The Adviser noted that the context of the article was set out in the introductory sentence of the piece as follows:

"Ten years after the US-led invasion of Iraq – how much has changed? We look at the numbers behind the country that is still emerging from conflict."

The article, she noted, then went on to look at figures relating to Iraq's economy, technology, refugees and displaced persons, food, human development, and, as set out above, violence. The text under all these headings, she further noted, sought to compare Iraq's position in 2003, at the point of the invasion, with the country's situation 10 years later. The Adviser noted that, in accordance with the Editorial Guidelines on Accuracy, the sources for all the information collated in the article were given.

In the case of the section on violence, the Adviser noted that a consistent run of figures for those years was clearly required to assemble a graphic to illustrate civilian deaths. She noted that it had been explained by the BBC at previous stages of the complaint that the IBC figures, which have been produced on an ongoing basis over the years, were considered by the BBC's Middle East Editor to be appropriate in this case.

The figures were clearly sourced to IBC in the article, she noted, and a brief summary of the methodology for collecting the figures was given: "The Iraq Body Count organisation, which cross references reported deaths with official figures..."

The Adviser noted that the complainant suggested that using two other sets of data, in addition to the IBC figures, would have resulted in a "fairer and more viewer-serving graphic". She noted that the complainant said these figures were from a Lancet/Johns Hopkins survey covering the period March 2003 to the end of June 2006 and from an Opinion Research Business (ORB) survey in August 2007.

She further noted that the following had been explained by the BBC at Stage 1:

"The Iraq Body Count is the only organisation to offer an actual count covering the period since the US-led invasion. Other organisations seek to estimate the death toll at particular points in time, using statistical and sampling techniques."

The Adviser also noted the response from the Head of Editorial Compliance and Accountability, BBC News, at Stage 2, which expanded on this point:

"As previously explained, what matters here is the pattern over a number of years. Other agencies cannot provide this information so the Middle East editor felt that IBC was the right source in this instance. Using other studies as well – based on different methodologies – would have been pointless and confusing for readers."

The Adviser agreed with that view and considered that in practical terms it would have been very difficult for the graphic to have incorporated three sets of data, all for different periods and collected in different ways, in a way that was meaningful for the audience.

The Adviser appreciated that the complainant felt strongly that IBC figures vastly understated the numbers of civilian casualties, compared with the other surveys he had cited, and she noted that the complainant had made the following allegation at Stage 1:

"It's clearly evident that the BBC has selected IBC's data because it reflects UK/US war killing in its least damaging light. Your every excusing word makes the BBC complicit in disguising that crime."

She considered it unlikely that the Trustees would agree with the complainant that this motivation was "clearly evident" from the selection of data for the article in question, and she noted that the complainant had not provided evidence to support this allegation at any stage of the complaint.

The Adviser also thought it likely that the Trustees would wish to take into account that the BBC was not isolated in its citing of IBC data, and that many other reputable organisations also cited IBC where appropriate. She noted that the complainant had acknowledged this in his blog which stated that the Channel 4 News's "10 years after" report on Iraq had used a similar graphic, with figures sourced to IBC, and that it was "standard" for "almost every other 'authoritative' news outlet" to use IBC figures.

The Adviser fully appreciated that reporting on civilian casualties in any conflict situation was fraught with difficulties. She noted that the BBC had explored these issues in various articles over the years, and these articles had been cited at earlier stages of the complaint.

She considered Trustees would be likely to conclude that it was for the BBC to make an

editorial judgement about the use of data in this particular article and there was no evidence this had not been done within the Editorial Guidelines.

The Adviser noted that the complainant had repeated his request to be informed about who at the BBC had made the decision to use IBC as a source. Her view was that the Trustees would consider this had been answered at Stage 2 by the Head of Editorial Compliance and Accountability, and that, in this particular case, it was the Middle East Editor who had considered IBC was the most appropriate source.

The Adviser thanked the complainant for forwarding the weblink to the ComRes survey on public perceptions of the Iraqi death toll.

The poll appeared to suggest that 66 per cent of those questioned in May 2013 thought there had been fewer than 20,000 deaths (of both combatants and civilians) as a result of the 2003 invasion. She noted that this figure was hugely at variance with even the IBC figures quoted in the website article in question (112,017-122,438 civilians), which the complainant had said were themselves vastly understated.

For the reasons set out above, the Senior Editorial Complaints Adviser considered there was no reasonable prospect of the Trustees finding the article had been in breach of the Accuracy and/or Impartiality 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 said that the reply had circumvented a central issue, which was: "how can the BBC justify the selective and continuous use of data which vastly understates the death figures in Iraq...?"

He said that the BBC's particular focus on the "10 years after" piece was diverting discussion from the particular issue of why the BBC had selected IBC as a main source across all its output.

The complainant also argued that the wider usage of IBC across other major media did not absolve the BBC from its own particular responsibility to offer a varied and impartial range of information and opinion.

With regard to the Adviser's response that the Middle East Editor made the decision to adopt IBC, the complainant asked where the editorial-making evidence was for this. The complainant thought the question would be likely to "invoke the likely 'safe editorial hands' process". But, in the interests of transparency, he asked whether the BBC audience should be "entitled to a closer and more detailed account of who was involved in that decision and how it was determined".

He noted that the Adviser acknowledged the ComRes poll, but did not say how the BBC's selective use of IBC had contributed to the massive lack of public awareness noted in that poll.

The complainant considered that on every aspect of his complaint, the BBC had failed to justify its principal use of IBC or explain its own part in keeping people so uninformed about the Iraq death toll.

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 article in question.

The Committee noted the complainant's concern about the BBC's use of IBC statistics when reporting on civilian war deaths, which he believed understated the death figures in Iraq. The Committee noted that although the complainant was concerned about the use of IBC figures in BBC reporting generally, he cited the "Iraq 10 years on" article as an example of his concerns. However, the Committee also acknowledged the complainant's response that "the BBC's particular focus on the '10 years after' piece was, in itself, a standard deceit, diverting discussion from the particular issue of why the BBC had selected IBC as a main source across all its output".

The Committee was of the view that the Trust Unit's response to the complaint, as well as previous responses from the BBC Executive, had included clear and detailed reasons for the use of IBC figures more generally as well as in relation to the specific article cited by the complainant. The Committee noted in particular the reasons put forward at Stage 1 of the complaints process:

"The Iraq Body Count is the only organisation to offer an actual count covering the period since the US-led invasion. Other organisations seek to estimate the death toll at particular points in time, using statistical and sampling techniques."

And at Stage 2:

"As previously explained, what matters here is the pattern over a number of years. Other agencies cannot provide this information so the Middle East editor felt that IBC was the right source in this instance. Using other studies as well – based on different methodologies – would have been pointless and confusing for readers."

The Committee noted the Adviser's statement that the BBC was not isolated in its citing of IBC data, and that many other reputable organisations also cited IBC where appropriate.

The Committee noted the complainant's concern that this was an underestimate and that he felt this point had not been addressed by the Adviser. However, the Committee felt it had been explained to him that the BBC had addressed the difficulty in reliably assessing numbers of deaths in other articles and in this article had both sourced the data and explained the methodology.

The Committee also noted his concern that the public's knowledge of the level of deaths was poor. The Committee also noted that in the ComRes poll cited by the complainant 66% thought that fewer than 20,000 had died. Trustees noted this was significantly lower than the IBC figure. The Trustees did not accept that the use by the BBC of figures from the IBC could be responsible for the low figure for deaths in the ComRes poll given the figures were different and given the many other factors that would affect the public's understanding.

The Committee agreed it would be likely to conclude that there was no reasonable prospect of success for the appeal on the grounds of a lack of accuracy or impartiality in relation to the BBC's use of IBC data, either generally or in the specific article cited by the complainant. The Committee acknowledged that the complainant would have liked to know more about the editorial process which led to the BBC Middle East Editor's decision

to use IBC data, but the BBC was under no obligation to provide this. The Committee did not believe any evidence had been presented which would lead it to conclude that editorial decisions had not been made in accordance with the Editorial Guidelines.

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

Today, BBC Radio 4, 9 May 2013

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

Appeal to the BBC Trust

Two complainants wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold their complaints regarding an edition of BBC Radio 4's *Today* programme, broadcast on 9 May 2013. The programme featured an interview with Dr Toby Greene, of the Britain-Israel Communications and Research Centre, and Dr Ghada Karmi, who is a Palestinian writer at the University of Exeter. The item concerned the decision by Dr Stephen Hawking to refuse an invitation to visit Israel in support of an academic boycott of Israel organised by Palestinians.

Both complainants stated that the presenter, John Humphrys, was disproportionately challenging to Dr Karmi. One complainant described this in her appeal as a "blatant disparity in the interviewing techniques" which faced Dr Karmi with two challengers not one:

"We heard one of [the interviewees] repeatedly challenged and interrupted, rather brusquely at times, while the other one was treated with comparative courtesy and leniency and not challenged even once."

She added that the presenter:

"... was even heard a couple of times to utter words of approval while Dr Greene was speaking, forfeiting all semblance of impartiality".

She also added that, if the presenter:

"... thought it was a good idea to act as devil's advocate to Dr Karmi, he should have done the same with Dr Greene."

The second complainant argued that the interviewing style was unfair to Dr Karmi. This point of complaint was not considered further as complaints of unfairness are only considered by the Editorial Standards Committee if they have been brought by one of the concerned parties or their representative, and that was not the case in this instance. The Editorial Complaints Procedure states:

This Procedure is applicable to all editorial complaints including "first party complaints". This is a complaint alleging that someone ("the first party") has personally been treated unfairly, or suffered an unwarranted invasion of their privacy, in BBC content, or in the making of BBC content. Such complaints can be brought only by the first party or someone who has the authority to represent them.

However, the second complainant also contended that:

"Karmi, unlike Greene, was persistently interrupted whilst Greene made his points unchallenged, and Greene was given more time to speak than Karmi."

She added that she was familiar with the presenter's interviewing style but has "rarely heard him interrupting an interviewee so forcefully and persistently as on this occasion

(she didn't get her first sentence out without being interrupted) whilst, at the same time, allowing the other interviewee, putting the counter view, to do so with no interruptions at all".

The second complainant also objected to a reference by the presenter (in a question to Dr Karmi about the West Bank and Gaza) to "the occupation as you describe it", stating that this breached the BBC's guidelines on due accuracy. (This point was also raised at Stage 1 by the first complainant but was not raised on appeal to the Trust.)

The complainant referred to a blog containing what she described as "the categorical statement of the UN about the occupation of Gaza" and to a statement on 30 November 2010 by the Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford):

"Although there is no permanent physical Israeli presence in Gaza, given the significant control that Israel has over Gaza's borders, airspace and territorial waters, the UK judges that Israel retains obligations under the fourth Geneva Convention as an occupying power."

The complainant stated in her appeal:

"In the light of these categorical statements about international law and its interpretation it is absolutely unacceptable for the BBC to defend this aside about the occupation 'as you call it', and to talk about a 'level of debate' which actually is not a debate: it is one country (Israel) and its supporters doggedly refusing to accept and acknowledge international laws and continuing to breach them."

The complainant also challenged the position of the BBC that this was an "aside":

"The other aspect I would like to challenge is the view of the BBC that this was an aside and therefore trivial and inconsequential, and just acknowledging an alternative viewpoint. I was bound to think about the acceptability of the BBC acknowledging alternative views, particularly when they breach (international) laws and views held by only a minority of people of a particular political persuasion, and also that those views may well be offensive to listeners."

The Trust Unit's decision

The Head of Editorial Standards, BBC Trust, replied to both complainants explaining that the relevant correspondence had been reviewed by the Trust Unit and an independent editorial adviser, and she did not consider that the appeals had a reasonable prospect of success. She did not propose to proceed in putting the appeals to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards noted that the item was introduced by the presenter as follows:

INTERVIEWER: "If a country stages a big international science conference it wants big names to attend and they don't get any bigger than Stephen Hawking. So the Israelis were delighted when he said he'd go to theirs. Now he's pulled out in support of an academic boycott of Israel organised by Palestinians. It's a serious blow to Israel's standing on the international stage and the academic world is divided. Well I'm joined by Dr Ghada Karmi who is a Palestinian writer at the University of Exeter and Dr Toby Greene of the Britain-Israel Communications and

Research Centre and you think it's wrong that he should have pulled out Dr Greene?"

The Head of Editorial Standards noted that Mr Humphrys tried on two occasions to interrupt Dr Greene during his answer to this question:

TG: "If Professor Hawking has strong views about the situation between Israelis and Palestinians he should come to Israel and express those views directly to Israelis"

INTERVIEWER: "Alright..."

TG: "and he'll be heard here in Israel with respect. There's nothing he can say that is not said every day in the public discourse and the free public debate here in Israel and unfortunately this decision,"

INTERVIEWER: "Doc..."

TG: "he's denied himself the opportunity to express his views to Israelis and denied himself the opportunity to hear what the Israelis had to say in return."

INTERVIEWER: "Right. Dr Karmi isn't it always better if people talk to each other?"

The Head of Editorial Standards was not persuaded by a complainant's claim that the presenter expressed approval for Dr Greene's comments. In her view the presenter's final "right" echoed his first interruption when he said "Alright" as it appeared to her that he was attempting to curtail Dr Greene's answer in order to turn to Dr Karmi.

The Head of Editorial Standards noted the subsequent exchanges between the presenter and Dr Karmi:

GK: "Well it would be, it's always better and we welcome talking..."

INTERVIEWER: "So why the boycott?"

GK: "Well if it has any effect and the whole issue with Israel is that talking, engaging, all the stuff that Dr Greene was talking about has been happening for decades and we wouldn't stop it but the fact that ..."

INTERVIEWER: "But you have stopped it with the boycott"

GK: "No not at all. Let me correct you. This is very important. We've never stopped. We never would stop talking. The issue is not that. The issue is what is to be done because it is not enough to talk. People have been talking to Israel for a very long time. It has made no difference whatsoever."

INTERVIEWER: "But if a boycott isn't intended to stop people talking to each other what is it meant to do?"

GK: "It's meant to give a signal to raise awareness to make people understand who might not know the situation that Palestinian academics under occupation have no academic freedom. That's what this is about. Now for Professor Hawking to refuse to go to this conference is honourable, it is principled and he is to be commended because he has given an important signal to the world saying a state

like Israel which practises the kind of repression and apartheid against Palestinian academics should not be dignified with the attendance of people like him.”

The Head of Editorial Standards noted the BBC’s guidelines on due impartiality, with the term ‘due’ meaning that

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

Due impartiality is often more than a simple matter of ‘balance’ between opposing viewpoints.”

The Head of Editorial Standards also noted the section of the impartiality guidelines relating to ‘due weight’ which state:

“Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme, web page or item.”

The Head of Editorial Standards noted that listeners to BBC Radio 4 would be aware that interviews in the *Today* programme were often robust and challenging and that the role of the interviewer was often to take a devil’s advocate approach if he/she felt it to be the most appropriate device with a particular interviewee to draw out their position.

The Head of Editorial Standards noted that the point under discussion, as signposted in the introduction, was whether the boycott was justifiable or effective. In this case the Head of Editorial Standards concluded that a legitimate role of the interviewer was to challenge the supporter of the boycott on these points. In responding to these challenges, Dr Karmi put forward several arguments including significant concluding points about Israel’s treatment of Palestinian academics.

The Head of Editorial Standards noted that the interviewer then put to Dr Greene the point that the boycott was successful, in that it had raised the attention of the media. She noted that Dr Greene did not answer the question and was promptly interrupted by Dr Karmi:

TG: “Well first of all I think it’s important to say that it’s nonsense the idea that Israel restricts academic freedom. Go to any university campus in Israel and you will see Arab and Jewish students studying side by side and Arab and Jewish faculty teaching side by side...”

GK: “Go to the West Bank, why don’t you go to the West Bank? Then you will see what I’m talking about?”

TG: “Well the university, well if I can finish, the universities in the West Bank are not under Israeli control,”

GK: (laughs)

TG: “they’re under the control of Hamas in the case of the Gaza Strip and the Palestinian Authority,”

GK: (laughs)

TG: "in the case of the West Bank."

GK: (laughs)

The Head of Editorial Standards found no evidence to support one complainant's claim that the presenter was brusque to one interviewee and comparatively courteous to the other. The Head of Editorial Standards noted that the presenter allowed Dr Karmi to challenge Dr Greene directly and she noted too that the role of the presenter as ringmaster was sometimes complex, in that its success could be judged as much on what was left unsaid as said. In this case she concluded that, had the presenter been biased towards Dr Greene, as the complainants alleged, he would not have permitted Dr Karmi to challenge Dr Greene in this manner. She concluded that this exchange, facilitated by the interviewer, effectively presented both sides of the argument to the listener.

She found no evidence that one interviewee gained significant advantage over the other in this item, nor that either of the interviewees were prevented from getting their points across effectively. This was not a matter of how much time was given to both guests but whether their views were presented to the audience. The Head of Editorial Standards concluded that an appeal to the Trust on the grounds of a breach of the BBC's Editorial Guidelines on Impartiality would have no reasonable prospect of success.

Turning to the complaint about accuracy, the Head of Editorial Standards noted the section of interview in question:

GK: "Dr Greene, listen, take a taxi, do me a favour, go to the West Bank, try and go to Gaza, see what's going on there..."

INTERVIEWER: "His point is that they are not controlled by Israel."

GK: "Well that is nonsense, they are under Israeli occupation, and that is simply nonsense. The reality is that life for Palestinian academics is extremely hard, they suffer from under-funding, the universities are under-funded, the universities are closed, they're prevented from getting to their places of work, students are prevented from going to their lectures by checkpoints. They are under extremely harsh conditions."

INTERVIEWER: "So the boycott will continue until the occupation as you describe it is lifted."

GK: "Absolutely and I think that everybody with the slightest conscience in the world should understand that and should support the idea that a state like Israel which practices the kind of apartheid and repression against another people cannot be given credit or treated business as usual."

The Head of Editorial Standards noted that Dr Greene had earlier referred to Israeli universities and what he described as "academic freedom" there. When challenged by Dr Karmi to visit the West Bank, he stated that the universities in Gaza were under the control of Hamas, and those in the West Bank were under the control of the Palestinian Authority. Dr Karmi gave a strong and impassioned response to this. The Head of Editorial Standards noted that the interviewer's reference to the occupation "as you describe it" came immediately after this exchange. She concluded that, in what was clearly intended to be the final question in the interview, the presenter was simply acknowledging that Dr Greene disputed the notion that universities in Gaza and the West Bank were under Israeli

control.

The Head of Editorial Standards noted that the BBC advised its journalists that "Israel is the occupying power in Gaza" but she concluded that the reference was intended as an acknowledgement that other views on the subject existed, whilst giving Dr Karmi what was expected to be the concluding remarks of the interview. The Head of Editorial Standards agreed with the ECU that this was an aside and noted that the guidelines on due accuracy mean that "the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation".

It followed from this that the Head of Editorial Standards did not consider the appeals had a reasonable prospect of success on these points and they should not therefore be put before Trustees.

Request for review by Trustees

The complainants requested that the Trustees review the decision not to proceed with their appeals.

One complainant did not agree that the presenter was trying to interrupt Dr Greene. She gave two examples of where the same presenter had treated two interviewees of "diametrically opposite views" equally and invited the Trust to compare those examples with the Karmi/Greene interview to see the difference.

The second complainant referred to the comment addressed to Dr Karmi by the presenter when referring to the Israeli occupation of the West Bank and Gaza as "the occupation, as you describe it". She said that by using the aside "as you describe it", John Humphrys had "...inappropriately and unacceptably given weight to that country's illegally held position..."

She referred to an analogy she had made in her appeal, to which she had not received a response: she had asked whether, if the discussion had been about the Holocaust and the presenter had said, "the holocaust, as you describe it", it would be acceptable, even as an aside, because it acknowledged an alternative viewpoint. She said that alternative viewpoints "should not always be acknowledged, particularly when the weight of international opinion was against them".

The Committee's decision

The Committee was provided with the complainants' appeals to the Trust, the consolidated response from the Head of Editorial Standards and the complainants' letters asking the Committee to review her decision. The Committee was also provided with the programme in question.

The Committee noted the complainants' concerns that the two interviewees had not been treated equally by the *Today* presenter and their view that he was disproportionately challenging to Dr Karmi.

The Committee acknowledged the invitation from one of the complainants to compare the interview with two examples of other interviews broadcast on 20 July 2013, but did not consider that the content of those interviews was relevant in the context of this appeal.

The Committee carefully considered the specific interview in question and did not believe

it would be likely to conclude that there was an imbalance in the weight given to the arguments of both interviewees. The Committee was of the view that both interviewees were able to put their points across during the interview, but considered that it was in the nature of interviews that some interviewees express themselves in a way which requires more probing from the interviewer to ensure their points are put across to the listener.

The Committee noted the points made by the Trust's Head of Editorial Standards that the presenter:

"allowed Dr Karmi to challenge Dr Greene directly and ... that the role of the presenter as ringmaster was sometimes complex, in that its success could be judged as much on what was left unsaid as said. ... had the presenter been biased towards Dr Greene, as the complainants alleged, he would not have permitted Dr Karmi to challenge Dr Greene in this manner. ... this exchange, facilitated by the interviewer, effectively presented both sides of the argument to the listener."

"...listeners to BBC Radio 4 would be aware that interviews in the Today programme were often robust and challenging and that the role of the interviewer was often to take a Devil's Advocate approach if he/she felt it to be the most appropriate device with a particular interviewee to draw out their position."

The Committee agreed with that view and did not consider that any evidence had been presented which would be likely to lead it to conclude that the interview had breached Editorial Guidelines on Impartiality due to lack of balance.

The Committee acknowledged the complainant's view that it was not acceptable for the interviewer to refer to Israel's presence in the West Bank and Gaza as "the occupation, as you describe it". The Committee noted that the Head of Editorial Standards had addressed that point in detail when reaching her decision and had concluded that

"in what was clearly intended to be the final question in the interview, [the presenter] was simply acknowledging that Dr Greene disputed the notion that universities in Gaza and the West Bank were under Israeli control".

The Committee noted that the Head of Editorial Standards also said:

"...the presenter's reference was intended as an acknowledgement that other views on the subject existed, whilst giving Dr Karmi what was expected to be the concluding remarks of the interview."

The Committee noted that the Head of Editorial Standards agreed with the ECU that this was an aside and noted that the guidelines on due accuracy mean that 'the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation'."

The Committee agreed with the view of both the Head of Editorial Standards and the ECU's Complaints Director and considered that it was a valid comment by the presenter. The Committee did not consider that there was any reasonable prospect of success for an appeal on the grounds that the Editorial Guidelines on Accuracy or Impartiality had been breached.

The Committee therefore decided that these appeals did not qualify to proceed for consideration.

BBC News website, Israel and Palestinian Territories country profile pages

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

Appeal to the BBC Trust

Three complainants wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold their complaints regarding the Israel and Palestinian Territories country profile pages on the BBC News website.

Their complaints related to the 'Facts' web pages contained in the country profiles of Israel and the Palestinian Territories on the BBC News website. The respective pages can be found here:

<http://www.bbc.co.uk/news/world-middle-east-14628840>

<http://www.bbc.co.uk/news/world-middle-east-14631271>

Whereas other country profiles list the country's capital, the Israel profile states:

"Seat of government: Jerusalem, though most foreign embassies are in Tel Aviv"

The Palestinian Territories profile states:

"Intended seat of government: East Jerusalem. Ramallah serves as administrative capital"

The complainants objected to these descriptions and escalated their complaints to the BBC Trust. They had been dissatisfied by the responses they had received from the BBC's Editorial Complaints Unit at Stage 2.

The complainants raised the following issues in their appeals to the Trust:

- It was inaccurate to describe Israel's "seat of government" as being in Jerusalem.
- The only party who referred to Jerusalem as Israel's capital was Israel – and therefore, in referring to it as the "seat of government" the BBC could be seen to be endorsing the perspective of the Israeli state.
- The capital of Israel "recognised by the world" was Tel Aviv.
- If the description of Israel's "seat of government" was to be applied to Jerusalem, the web pages should make clear the government was based in West Jerusalem.
- The web pages should make clear that East Jerusalem has been earmarked the future Palestinian capital.

- The web pages should make clear that Jerusalem is a divided city.
- The reference to “Palestinian Territories” was inaccurate as the UN General Assembly had accepted Palestine as a state and pages should be amended to reflect this.
- The profile pages should include further information about the population of the areas. One complainant stated:

“It would not require much effort to mention the 537,000 settlers living in Palestine (including Occupied East Jerusalem), the 20,000 Israelis and 20,000 Syrians living in the Occupied Syrian Golan Heights and the 1,617,000 ‘Israeli’ Palestinians living in Israel.”

The Trust Unit’s decision

The Trust’s Senior Editorial Complaints Adviser (“the Adviser”) considered that the complaints related to the BBC’s Editorial Guidelines on Accuracy and Impartiality.

The Adviser noted that the ECU had responded to all the complainants at Stage 2, referring them to a previous adjudication by the BBC Trust, in the context of the Olympic country profile pages. The ECU noted that the Trust was the BBC’s sovereign body, and the judgements of the ESC were binding on the BBC. The ECU stated that they were therefore not able to revisit this matter.

The Adviser noted that many points of complaint had been addressed by an ESC finding in January 2013 (referred to below but which was provided to the complainants in full). She noted that the Committee said its considerations for that appeal were in relation to the Olympics profile pages and, where relevant, the related content on the BBC News country pages, as at August 2012. The Adviser noted the following points from the ESC’s decision which were relevant to these complaints:

“The Committee noted that until 1967 when Israel occupied East Jerusalem (which it later annexed) following the Six-Day War, 24 foreign embassies were situated in West Jerusalem. Following the declaration of the Jerusalem Law in 1980 which stated that Jerusalem was the complete and united capital of Israel, a resolution was passed at the UN calling on all nations with missions in the Holy City to withdraw. It noted there are no longer any embassies in Jerusalem, all have moved to Tel Aviv.

The Committee noted the assertion by one complainant that despite Israel’s contention to the contrary, the capital of the country should be presented as Tel Aviv and that would be the appropriate formulation.

However, the Committee also acknowledged points made by other complainants that all branches of the Israeli government are located in Jerusalem, including the Knesset (Israel’s parliament), the residences of the Prime Minister and President and the Supreme Court and that this has been the case for the last 65 years. The Committee noted too that the buildings are all in West Jerusalem which has been under Israeli control since 1948....”

“The Committee said that Jerusalem’s status as a capital is unquestionably a matter of political controversy; to have stated unequivocally that it was or was not

Israel's capital would have been perverse.

The Committee considered the current formulation took a neutral path by reflecting instead what is factually correct, namely that Israel's seat of government is in Jerusalem...."

"Accordingly the Committee decided the revised formulation met the requirements for due accuracy and due impartiality. It agreed that this applied to the BBC News profile page for the Palestinian territories (as altered in November 2012) as well as to the Olympics page."

"...The Committee again noted that all of Israel's government buildings are situated in West Jerusalem and that prior to 1967 this reflected the entire sphere of Israel's control of the city. But it noted that currently Israel controls the whole of Jerusalem.

The Committee noted that the revised website formulation acknowledges the distinction between Jerusalem, which Israel currently controls, and the Palestinian Authority's aspiration as to where it would like to locate its capital.

The Committee noted that the Palestinian Authority (PA) has no presence on the ground in any part of the current municipal boundaries of Jerusalem. The closest area to Jerusalem which is under Palestinian control is Abu Dis, which the PA has designated as their official current capital. However, it has its administrative offices in Ramallah in the West Bank to the north of Jerusalem, as is accurately noted on the Palestine Olympics page...."

"The Committee noted that while the PA does not recognise Israel's annexation of East Jerusalem it has never exercised sovereignty over the area; prior to 1967 East Jerusalem was administered by Jordan...."

"Whilst the Committee noted the assertion by a complainant that the formulation on Israel's Olympic page implies Israel has sovereign rights over the whole of Jerusalem, the Committee noted the qualification in the wording, that while the seat of government is Jerusalem, most foreign embassies are in Tel Aviv. The Committee decided that this wording, along with the fact that the page does not state that Jerusalem is Israel's capital, guards against a misleading interpretation of Israel's rights over the territory."

"The Committee took the view that although all Israel's government buildings are in the west of the city, it does not alter the fact they are in Jerusalem. It noted that, despite the lack of international recognition of Israel's control of the municipality, Israel has exercised effective control of the whole of Jerusalem since 1967 and that there are no visual or administrative distinctions between the east and west of the city..."

"The Committee considered that the formulation on the Palestine page resulted from an appropriate editorial distinction between the factually accurate description on the Israel Olympics page recognising Israel's presence in, and control of, Jerusalem and the factually accurate recognition of Palestinian aspirations to site their capital in the east of the City.

Just as with Israel and the other competing Olympic nations, where the Committee considered there was no requirement to list Israel with a capital, the

Committee considered the formulation on the Palestine Olympic page was also duly accurate and duly impartial. In the Committee's view it would not be possible to directly compare the entries for Israel and Palestine on a like for like basis as their respective status and the reality on the ground were so different from one another.

Accordingly, the Committee decided no bias or inaccuracy had resulted from the formulations describing Jerusalem as Israel's seat of government alongside East Jerusalem as the intended capital of Palestine. This applied to the Olympics pages and to the BBC News country pages."

The Adviser considered that all the points of complaint listed above, apart from the last two, had therefore previously been considered by the Trustees of the Editorial Standards Committee. On those points, the Trustees had not considered the country profile pages were in breach of the Editorial Guidelines on either Accuracy or Impartiality. Therefore, on those points, the Adviser did not consider the points raised had a realistic prospect of success and did not propose to put them before Trustees.

Of the two remaining points in the present appeals, the first related to the use of the term "Palestinian Territories". One complainant stated that the title "Palestinian Territories" was inaccurate as the UN General Assembly has accepted Palestine as a state. She therefore claimed that the country title should be amended to reflect this.

The Adviser noted that the ECU had responded at Stage 2 to this point and had drawn the complainant's attention to the "Overview" page of the Palestinian territories web page. This had outlined the attempt by the Palestinian National Authority/Palestinian Authority for the Palestinian state to be recognised by the UN. The ECU response stated:

"It is a fact that an independent state of Palestine remains an aspiration of the Palestinian people, so I do not believe that it is misleading to refer here to the Palestinian Territories. I'd add that I see little prospect of readers being misled, given that the UN position that you refer to is included in the 'overview' section for the Palestinian Territories:

The PNA made a symbolic bid for recognition at the UN as the 'State of Palestine' in 2011, mainly in an effort to highlight the lack of movement in relations with Israel.

This failed to gain the required support, but UNESCO – the UN cultural and educational agency – did admit the 'State of Palestine' as a member in October.

In November 2012, the UN General Assembly voted to upgrade the status of the Palestinians to that of a 'non-member observer state' – a move that allows them to take part in General Assembly debates and improves their chances of joining UN agencies."

The Adviser noted that the BBC had updated the Overview section of the Palestinian Territories profile to reflect the UN General Assembly's vote upgrading their status to that of a "non-member observer state". She noted that, while many countries recognised "Palestine" as an independent state, it was not yet eligible to join the UN as a fully independent country. The Adviser considered Trustees would be likely to conclude the complainant had been given a reasonable response by the BBC at Stage 2 and there was no evidence that the BBC profile pages were inaccurate in their description of the current status of the Palestinian Territories. Therefore she considered that this point of appeal to

the Trust would have no reasonable prospect of success.

The final point of appeal in this case related to the population figures quoted on each 'Facts' page, which one complainant considered were inaccurate and biased.

The Palestinian Territories page stated:

Population: 4.4 million (UN, 2010)

The Israel page stated:

Population: 7.7 million (UN, 2012)

The complainant stated at Stage 1:

"I wonder why the Jewish settlers of the West Bank including East Jerusalem are part of the population of Israel, while the indigenous Palestinians of the 'disputed territories' (4,200,000 excluding East Jerusalem) which are controlled by Israel (i.e. the whole West Bank and Gaza), are not counted: this is illogical and confusing."

At Stage 2 this complainant stated:

"'Israel Proper' is the pre June 1967 state and yet its population includes the Israeli colonists in the West Bank with East Jerusalem, and in the occupied Syrian Golan Heights. You do not show the population of the 'Palestinian Territories' – Gaza, the West Bank (including East Jerusalem)..."

The Adviser noted that the ECU responded to this aspect of the complaint on 10 July 2013 and had stated:

"Assessing the true population of a state whose borders are the subject of dispute is not straightforward, and I can see that there might be an argument for a figure which reflects only those Israelis living in areas which are indisputably Israel under international law. However it remains the case that those living beyond those areas are also Israeli citizens, and in practice and under Israeli law, a part of their population, and I think therefore it is right that this figure includes them. Certainly that seems to be the view of the UN, who are cited as the source for those figures. Indeed I think it could reasonably be argued that to exclude the settlers from population would serve to downplay their impact on the region and on the occupied territories."

The Adviser was of the view that she could only consider this section to have misled readers if it gave a materially misleading impression of the facts – for instance, suggesting that the occupied areas were properly part of Israel, or that all Palestinians were Israeli citizens. She said she did not think it likely that readers would reach either conclusion as there was nothing in that number to support either suggestion, and the country profile as a whole makes the facts of occupation, and the number of settlers, very clear:

"The Palestinians in the West Bank and eastern Jerusalem have lived under Israeli occupation since 1967. The settlements that Israel has built in the West Bank are home to nearly 500,000 people and are deemed to be illegal under international law, although Israel disputes this."

The Adviser noted the complainant had said in relation to this point and in reference to the page for the Palestinian territories that it does not show the population of the territories. However, the Adviser noted that in fact it contains the UN estimate of the Palestinian population: 4.4 million and said that it was right that those people are counted as a part of this population, rather than that of Israel, and could not see how this would amount to an inaccuracy. Indeed to count those Palestinians as citizens of Israel when they are not would risk seriously misleading the audience on a very significant point.

In her appeal to the Trust the complainant stated:

“The excuse of a limited space is unacceptable. It would not require much effort to mention the 537,000 settlers living in Palestine (including Occupied East Jerusalem), the 20,000 Israelis and 20,000 Syrians living in the Occupied Syrian Golan Heights and the 1,617,000 ‘Israeli’ Palestinians living in Israel.”

The Adviser noted that there was a BBC News profile for the Golan Heights which contained the information requested by the complainant:

Population estimate: 20,000 Israeli settlers, 20,000 Syrians

The Adviser noted that the population statistics quoted in the “Facts” pages of the Israel and Palestinian Territories profile clearly attributed the sourcing to the UN. She noted that this sourcing enabled interested readers to further interrogate the statistics on the UN’s own website.

She noted that defining statistics in this area was difficult, with disputed borders and notions of citizenship. She therefore noted the importance of the “Overview” section; which included much detail about the history and disputed borders of Israel, including the following paragraph:

“The settlements that Israel has built in the West Bank are home to nearly 500,000 people and are deemed to be illegal under international law, although Israel disputes this.”

She also noted that the “Overview” page for the Palestinian territories started by stating:

“The Palestinian population of around ten or eleven million people is divided between historic Palestine and a diaspora, mainly in neighbouring Arab countries.”

The Adviser noted the BBC’s guidelines on due accuracy and due impartiality which state that both “must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation”.

The Adviser considered Trustees would be likely to conclude that the figures given in the webpages were in line with the amount of detail expected by users in the context of a general overview and that the source was given so that more information could be sought if desired. She considered Trustees would be likely to conclude there was no evidence of a breach of the BBC’s Guidelines on either Accuracy or Impartiality and therefore this final point of appeal did not have a reasonable prospect of success and should not be put before Trustees.

Request for review by Trustees

Two of the complainants requested that the Trustees review the decision not to proceed with their appeals. They said that the BBC had not been accurate or impartial regarding the profiles of Palestine and Israel. One complainant added that she had felt obliged to mention Syria and the Golan Heights in her request for a review of the Trust's decision because she had been referred to these in order to check figures.

One of the complainants ("**Complainant 1**") said that her issues of complaint about the country profile page were:

- "The exact description of Jerusalem
- The way in which Palestine was described
- The exact population figures"

Both complainants stated that "seat of government" referred to the actual buildings of the government which were located in West Jerusalem. The other complainant ("**Complainant 2**") said that by refusing to say this, the BBC was bolstering the Israel position. She also said that it ignored "the fact that throughout the 'peace process' East Jerusalem has been earmarked as the capital of a future Palestinian state".

Complainant 1 asked why the BBC described Ramallah as the administrative capital of the Palestinian Territories, while East Jerusalem was described as the intended seat of government. She asked why the BBC used the word "capital" for Ramallah and not for Tel Aviv, and also why East Jerusalem was not described as the intended capital of Palestine.

Complainant 2 objected to the decision not to revisit the previous adjudication by the BBC Trust with regard to the Olympic country profile pages.

Complainant 1 said that, regarding "the BBC's refusal to call Palestine Palestine," she found it strange that the BBC ignores the UN General Assembly's vote to call it a non-member observer State on 29 November 2012. She felt that "the excuse that it is still an occupied country, not a 'fully independent country'" was a poor one.

Complainant 1 added in response to the Adviser's reference to the Golan Heights page that "she had been surprised to find that there is a separate profile for "this Syrian territory which was seized by Israel in 1967". She concluded that "the BBC has unfortunately made a judgement" regarding Syria and the Golan Heights and said that this does not constitute impartiality.

Complainant 2's position was that "to avoid accusations of bias from whichever side the BBC should now remove every mention of Jerusalem in connection with capitals, present or intended, and stick to that. Israel has an internationally recognised capital: Tel Aviv". She considered it biased to refer instead to Israel's "seat of government". She added that, "since Palestine is not yet an internationally recognised state and does not have a capital as such, there is no reason to mention where its 'administrative capital' is".

The Committee's decision

The Committee was provided with the complainants' appeals to the Trust, the response from the Senior Editorial Complaints Adviser ("the Adviser") and the complainants' letters asking the Committee to review her decision. The Committee was also provided with the BBC News website pages in question.

As a preliminary issue, the Committee acknowledged the comments made by Complainant

1 about the Golan Heights profile page. The Committee noted that the Adviser had referred the complainant to information included on the Golan Heights profile page in response to the comments of the complainant that:

“The excuse of a limited space is unacceptable. It would not require much effort to mention the 537,000 settlers living in Palestine (including Occupied East Jerusalem), the 20,000 Israelis and 20,000 Syrians living in the Occupied Syrian Golan Heights and the 1,617,000 ‘Israeli’ Palestinians living in Israel.”

To this, the Adviser had responded that there was a BBC News profile for the Golan Heights which contained the information requested by the complainant:

“Population estimate: 20,000 Israeli settlers, 20,000 Syrians”

The Committee noted that the country profile pages for Syria and the Golan Heights did not form part of the original complaint to the Executive or part of the original appeal which the Trustees had been requested to review. The Trustees would therefore not consider any complaint about the Golan Heights page.

The Committee noted the complainants’ concerns about accuracy and impartiality in the country profile pages for Israel and Palestine.

The Committee noted the Adviser’s response that, in the previous ESC adjudication in the context of the Olympic country profile pages, Trustees had not considered that those profile pages were in breach of the Editorial Guidelines on either Accuracy or Impartiality.

The Committee noted that the webpages that were the subject of that previous decision were based on the webpages that are the subject of the present appeal and contained materially identical information on the Israel and Palestine profiles and therefore agreed with the Adviser that its previous finding is relevant to the present appeal. The Committee further agreed that its decision in that case had fully addressed many of the current complainants’ arguments, in the sections set out by the Adviser in her decision.

The Committee acknowledged that the complainants did not agree with the Trust’s original decision but it considered that the majority of the complainants’ concerns had been fully addressed in that decision. Further, the Committee noted that it had not seen any evidence to suggest that it should depart from the reasoning adopted in the earlier decision.

Notwithstanding this, the Committee noted the two arguments that had been raised in the present appeals but had not featured in the Olympic pages decision: the use of the term “Palestinian Territories” following the UN General Assembly’s vote to upgrade the status of the Palestinians to a non-member observer state; and the concern that the population figures were inaccurate and biased because “the Jewish settlers of the West Bank including East Jerusalem are part of the population of Israel, while the indigenous Palestinians of the ‘disputed territories’ (4,200,000 excluding East Jerusalem) which are controlled by Israel (i.e. the whole West Bank and Gaza), are not counted”.

The Committee noted the responses to these arguments by the ECU and the Trust’s Adviser. In particular the Committee noted the complainants had been told the following points by the Adviser:

- “the BBC had updated the ‘Overview’ section of the Palestinian Territories profile to reflect the UN General Assembly’s vote upgrading their status to that

of a 'non-member observer state' ... while many countries recognised 'Palestine' as an independent state, it was not yet eligible to join the UN as a fully independent country".

- that the population figures were clearly sourced to the UN, and
 - "...the country profile as a whole makes the facts of occupation, and the number of settlers, very clear: 'The Palestinians in the West Bank and eastern Jerusalem have lived under Israeli occupation since 1967. The settlements that Israel has built in the West Bank are home to nearly 500,000 people and are deemed to be illegal under international law, although Israel disputes this'."
- "that the 'Overview' page for the Palestinian territories started by stating: 'The Palestinian population of around ten or eleven million people is divided between historic Palestine and a diaspora, mainly in neighbouring Arab countries.'"

The Committee did not consider the points raised in these appeals had a realistic prospect of success.

The Committee therefore decided that these appeals did not qualify to proceed for consideration.

***Newsnight*, BBC Two, 12 December 2012 and 23 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, who also wrote on behalf of two individuals, contacted the BBC Trust on 7 June 2013 following the decision by the Editorial Complaints Unit (ECU) not to uphold a complaint of bias and inaccuracy relating to an edition of *Newsnight* that was broadcast on 23 January 2013.

The complainant said that the announcement earlier that day by David Cameron of plans to hold an 'in/out' referendum on EU membership provided an opportunity to debate the case for withdrawal but that this was not featured in the programme. The complainant said that there was a lack of balance on the programme between those in favour of the EU – 17 speakers in favour – and only one known advocate of withdrawal, and that this one advocate, Nigel Farage, was not given the opportunity to make the case for withdrawal.

The complainant stated that there is a huge disconnect between the views of the high commands of the main parties and public opinion, which the complainant said show half of the UK general public support withdrawal, in addition to those who wish to see a re-negotiation. The complainant said that there was a deliberate unwillingness (by the BBC) to take this into account.

In response to the ECU's statement, that it did not believe there was a requirement to reflect in this feature the range of public opinion on the 'in/out' issue because the programme was clearly set out as a debate about political reaction to Mr Cameron's speech and his proposal for a referendum, the complainant stated that this "was wholly the decision of *Newsnight*'s editors and journalists ... and that it would have been equally (or indeed more) valid to explore the substance of the referendum question itself."

Instead, the complainant said, the programme focussed on Cameron's speech "through the Westminster prism".

As part of the Stage 1 response, the Acting Editor of *Newsnight* provided a spreadsheet of other EU coverage on *Newsnight* from December 2012 to February 2013. This included a special programme broadcast on 12 December 2012 consisting of a debate on the 'in/out' question. A copy of this programme was sent to the complainant on 25 June 2013. Having viewed the programme, the complainant produced an analysis of contributors, with his interpretation on their stance on the EU and the number of words spoken (a similar analysis was supplied for the 23 January 2013 programme). The complainant said that this analysis showed that the 12 December 2012 programme did not provide balance because the 'withdrawalist' opinion accounted for only 26% of the contributions and was therefore not a 50-50 consideration of the withdrawal issue.

In summary, the complainant said that "to use the BBC's own post Bridcut terminology, in a debate that ought to have been a seesaw between the in and the out sides, the debate

became a wagon wheel of opinion, ultimately skewed towards those supporting British membership.”¹²

In addition, the complainant stated that the programme of 23 January 2013 broke Editorial Guidelines because it did not properly signpost that one of the contributors in the programme was an active supporter of the Liberal Democrats and that the three contributors in this segment were all “strongly pro-EU”.

The Trust Unit’s decision

The relevant correspondence was reviewed by the Trust Unit and an independent editorial adviser reviewed the programmes in question. In addition the Trust Unit’s Head of Editorial Standards reviewed the January edition of *Newsnight*.

The Senior Editorial Strategy Adviser (“the Adviser”) considered that the complainant’s appeal did not have a reasonable prospect of success and it should not go before the Trustees.

The Adviser noted that all BBC output was expected to comply with the value and standards set out in the Editorial Guidelines which can be found here: <http://www.bbc.co.uk/editorialguidelines/>. She referred to the guidelines on impartiality and accuracy.

The Adviser first considered the editorial justification for the programme on 23 January 2013. The Adviser noted that the BBC *News at Ten* on 23 January led with the story of David Cameron proposing an in-out referendum on the EU and Ed Miliband alleging in the House of Commons that this was an attempt to satisfy David Cameron’s Eurosceptic backbenchers. The Adviser considered it would be a reasonable editorial decision to place the focus on the political ramifications of this move, rather than focus on the detailed pros and cons of EU membership, regardless of the state of public opinion on the issue. The Adviser considered that the EU withdrawal debate is a ‘major matter’ as set out in the Guidelines but that the announcement of a referendum could not be construed as a ‘decisive moment’ given the timetable for the referendum post 2015 and the framing of the debate through the promised re-negotiation of the terms of the UK’s membership. The Adviser therefore considered that the Trustees would be likely to regard the programme’s editorial team’s decision to focus on the political reaction to Mr Cameron’s speech for this particular programme to have been based on good editorial reasons.

The Adviser then considered the content of the programme in the above context. The Adviser noted that the principal segment of the programme involved a debate between representatives of all the main political parties, UKIP included. The contributors were the spokespeople for their respective parties’ position, which the Adviser considered reasonable given the programme was seeking ‘official’ reaction. Although no ‘anti-EU’ MPs within the main parties featured in the debate, their existence was signposted by Kirsty Wark’s questions to Nigel Farage about possible Tory defections.

The Adviser noted that the programme also included reaction from the EU and considered this justifiable in the context of the discussion and whilst neither contributor under this heading was a ‘withdrawalist’, the Adviser noted that there has been no significant

¹²

http://www.bbc.co.uk/bbctrust/our_work/editorial_standards/impartiality/safeguarding_impartiality.html

political party in mainland Europe, even Eurosceptic ones, who have advocated withdrawal.

The Adviser noted that none of the politicians in the studio debate made any meaningful case for or against withdrawal because that was not the topic at hand. All, including Mr Farage, focussed primarily on the political implications of a speech setting out the aim of an in/out referendum.

The Adviser considered that the Trustees would be likely to conclude that the programme of 23 January 2013 achieved due impartiality and that the complainant's complaint on this point would have no reasonable prospect of success.

The Adviser noted the other coverage referred to in the spreadsheet provided and the range of issues covered and viewed the *Newsnight* programme of 12 December 2012 which provided an 'in/out' debate of the type the complainant is seeking and noted the complainant's view that the debate should be a "seesaw" and a "50-50 consideration of the withdrawal issue". The Adviser considered that this misinterpreted both the BBC guidelines, specifically: "Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme", and the Bridcut report, the intention of which was to indicate the need to move away from simple 'seesaw' type presentation in order to recognise the nuances that often exist in issues.

This was true of current attitudes to the EU which do not comprise only of 'stay in' or 'withdraw'. For example, the Adviser noted that Peter Kellner of YouGov reports on the EU referendum paradox whereby the usual gap in public opinion on withdrawal – typically 8-20% points in favour of withdrawal – changes substantially to a 60-40 majority for remaining in the EU if "British interests were protected" and "Cameron recommended remaining a member on the new terms".¹³

The Adviser noted that this is corroborated by an Open Europe/ComRes poll indicating that outright withdrawal is the favoured approach only among UKIP supporters and the most favoured option among supporters of all three of the other main parties is "EU member, no Euro and significant return of powers". This is also the preferred option among roughly 30% of UKIP supporters.¹⁴

The Adviser noted that the position is similarly nuanced with business, with a British Chambers of Commerce poll showing that the highest percentage of companies surveyed (64%) believed remaining in the EU, but with specific powers transferred back from Brussels to Westminster, could have a positive impact. Conversely, only 18% of companies felt that full withdrawal could have a positive impact.¹⁵

Even though the precise definition of repatriated powers is left open – and may not in practice be achievable – the Adviser concluded that the above nevertheless indicated that the question of withdrawal is not binary or a "see saw" debate but very much more a wagon wheel of the type that the Bridcut report advocated that the BBC should adopt to deliver impartiality. The Adviser therefore considered that the Trustees would be likely to conclude that the programme of 12 December 2012 provided due weight to the

¹³ <http://yougov.co.uk/news/2013/05/07/eu-referendum-paradox/>

¹⁴ <http://openeuropeblog.blogspot.co.uk/2013/05/new-open-europecomres-poll-british.html>

¹⁵ <http://www.britishchambers.org.uk/press-office/press-releases/businesses-favour-change-in-britain's-relationship-with-european-union,-says-bcc.html#.UdBqDBaRIOc>

significant views currently prevailing in the debate about EU membership and possible withdrawal and that the programme did not breach the Guidelines.

The Adviser then considered the complaint that the programme broke editorial guidelines because it did not properly signpost that one of the contributors in the programme was an active supporter of the Liberal Democrats. The relevant part of the guidelines covering sources and contributors is as follows

We should normally identify on-air and online sources of information and significant contributors, and provide their credentials, so that our audience can judge their status.

The contributor concerned was Peter Carroll, a former Liberal Democrat Parliamentary candidate and councillor. He, along with the other two contributors in this part of the programme, were introduced by Kirsty Wark as "some of those who we've talked to on Newsnight recently about how Britain's relationship with Europe affects their lives, to find out what they made of the Prime Minister's speech". Peter Carroll introduced himself as "a part owner of a small to medium sized business, operating in road freight in the UK and across Europe".

The Adviser reviewed Mr Carroll's contribution and the points he made. He expressed concern about the risk to exports to Europe, said that he wanted fairness so there are not different standards, regulations, working hours and other factors that could make it hard for him to compete, and that the most important thing at the time of speaking was to get the economy going.

The Adviser concluded that these points were sufficiently related to his declared role that the Trustees would be unlikely to believe that the audience had been misled, that his contribution was sufficiently significant to justify an introduction beyond that provided, and therefore that there had been a breach of this guideline.

The Adviser finally considered the three contributions in this part of the programme against the complaint that all three were "strongly pro EU". While none of the contributors called for outright withdrawal, at least two considered the scenario of the UK leaving. The junior doctor, Ben Molyneux, was mainly concerned with the Working Time Directive which, in his opinion, improved patient safety in preventing mistakes by tired doctors. But he concluded by saying that "if David Cameron can do something outside of Europe that delivers that, that's okay". Guy Smith, a farmer, said he thought Cameron "was right to bring the issue to a head" and that "we need to make our mind up as a nation whether we are in the European Union or not". Referring to the wars of the 20th century, he felt that the EU had contributed to "stability and prosperity" but, like Peter Carroll, his main concern for his business was "a level playing field".

The Adviser considered that the views expressed were more nuanced than the complainant had stated and that all three contributions were personal, based on the contributor's particular situation, and less concerned with the broader 'in/out' debate. The Adviser considered that it was unlikely that the Trustees would agree that all three contributors were "strongly pro EU" and that the guidelines on due impartiality had been breached.

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

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with an appeal. In a preamble the complainant said that he did not believe the complaint had been handled by a process that was genuinely independent or by individuals who properly understood the complexities of Euroscepticism or withdrawal. The complainant went on to say that the similarity of the *News at Ten* broadcast to the *Newsnight* programme which followed was a vivid example of institutional mindset as referred to by Lord Wilson (a reference to a report for the BBC Governors¹⁶). He queried the identity of the independent editorial adviser, critiqued the independence of the recent Trust report by Stuart Prebble¹⁷ and criticised the guidelines applied by the adviser.

The complainant then challenged the Senior Editorial Strategy Adviser's finding in 5 areas:

- 1) "That it was a reasonable editorial decision to place the focus on the political ramifications of David Cameron's speech on the EU."

The complainant said the justification that News at Ten chose a similar angle for its coverage "betrays the very institutional bias that triggered the complaint" which meant that "EU events are systematically viewed through the 'Westminster prism'." The complainant also said that the longer format of *Newsnight* should have allowed for a far greater range of opinion and that "withdrawalist opinion in all its nuanced forms ... was heavily outweighed".

- 2) "... that the EU withdrawal debate ... had not reached a 'decisive moment' on 23 January."

The complainant said that what was a 'decisive moment' and what constituted a 'major matter' in Guideline terms were matters of judgement. In the complainant's view, the Prime Minister's decision to offer a referendum on membership of the EU was clearly a 'decisive moment' on a highly controversial topic and that the national and international press were "united in their view that the most newsworthy element of Mr Cameron's speech was the 'in/out' referendum, rather than his plans to attempt a re-negotiation" and the complainant quoted the front page of a newspaper from the following morning in support of this.

- 3) "The principal section of the programme, involving a debate between the ... main political parties ... was reasonable given that the programme was seeking 'official reaction' to Mr Cameron's announcement."

The complainant said that this edition of *Newsnight* "was most certainly not only about mainstream political reaction" and that the programme was "patently designed to contain external, non-Westminster opinion" and that it deliberately gave the impression that the views included were a spectrum of those that were central to the overall EU debate. He noted that other contributors included the Czech Ambassador, a former EU commissioner, a professor of EU law, two Romanian immigrants, a leader of Portsmouth council and a head teacher and that none of these were withdrawalist.

- 4) With regard to the *Newsnight* programme of 12 December 2012, that the Adviser "claimed it provided an 'in/out' debate of the type sought by the complainant ... and

¹⁶ http://www.bbc.co.uk/bbctrust/our_work/governors_archive/european_union.html

¹⁷

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

that the Bridcut report had moved away from a 'seesaw' presentation to recognise the 'wagon wheel' nuances that exist".

The complainant agreed that the EU is a nuanced issue. He believed that the adviser had misrepresented the complaint and his view about how the debate should be covered. He said that "it had never been suggested that the EU debate should be represented as a seesaw or that there should be a 50-50 consideration of the withdrawal issue in general EU coverage". The complainant said that these comments were made in reference to the 12 December 2012 edition of *Newsnight* which the BBC had framed as "a 'seesaw' 'in/out' debate" yet the result was "four advocates of withdrawal against eight who supported continuing membership of the EU". Regarding the poll data quoted by the Adviser, the complainant said that "the argument for re-negotiation is a pro-EU argument" and that the referendum, if and when it comes, will be a binary "in or out, after renegotiation".

The complainant reiterated that the 23 January debate explored only one side of the debate – that which ultimately wants to see Britain remain part of the EU. Eighteen guests held broadly the same point of view with just one who believed the opposite.

- 5) That omitting Peter Carroll's credentials as a former Liberal Democrat parliamentary candidate and councillor would be unlikely to mislead audiences as his contribution related sufficiently to his declared role and that the three contributors in this section were not "strongly EU".

The complainant said that Kirsty Wark had included in her introduction to the section that featured Mr Carroll the words "before we hear from the politicians again", thus providing a "direct indicator" that none of the three contributors were politicians. The complainant also re-iterated that all three contributors were pro-European and that "this segment was completely one-sided".

The complainant also asked a series of questions relating to the Wilson report.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser ("the Adviser") and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the *Newsnight* broadcast of 23 January 2013 (which was the subject of the appeal) and the broadcast of 12 December 2012.

Point 1)

The Committee noted the complainant's point, that a previous impartiality review by Lord Wilson in 2005 warned of EU events being viewed through a Westminster prism. The Committee noted the Adviser's comment that it was a reasonable editorial decision to deal with the political ramifications of the announcement, rather than focus on the pros and cons of EU membership at that point. The Committee considered that a wider desire for BBC coverage of the EU not to be seen through a Westminster prism did not preclude a Westminster focus in an individual programme, provided this was editorially justified.

The Committee considered that the political reaction to Mr Cameron's speech, the extent to which he had satisfied his own backbench Eurosceptics and the response from the other main parties on their position regarding a referendum, together meant that the editorial decision to lead with this aspect in the 23 January edition of *Newsnight* had been both rational and reasonable and was clearly within the discretion of the editor.

The Committee therefore agreed that this element of the appeal did not have a reasonable prospect of success.

Point 2)

The Committee noted the complainant's belief that a 'decisive moment' had been reached with David Cameron's announcement and that the most newsworthy element was the 'in/out' referendum, rather than his plans to attempt a re-negotiation. The Committee noted the Adviser's point that a decisive moment had not been reached, because the referendum promised is, at present, implicitly dependent on two events, firstly the re-election of the Conservatives in the next General Election and secondly, David Cameron (or his successor) achieving a re-negotiation of EU membership that they are willing to support and place before the British people, neither of which is guaranteed. The Committee agreed with the complainant that the announcement of an 'in/out' referendum was both newsworthy and controversial, but did not agree that this meant it was a 'decisive moment' in the matter of an 'in/out' referendum, for the reasons given by the Adviser.

The Committee therefore agreed that this element of the appeal did not have a reasonable prospect of success.

Point 3)

The Committee agreed with the complainant that the *Newsnight* programme was not solely concerned with mainstream domestic political reaction, even though this was the largest element, and that a broader spectrum of opinion and analysis was also featured in the programme, including EU reaction, a piece on how immigration had affected Portsmouth and an expert analysis of the scope for re-negotiation of the UK's EU membership. The Committee noted the complainant's point that none of these contributors were 'withdrawalists'. With regard to the EU reaction, the Committee noted the Adviser's point that there is no significant political party in mainland Europe, even a Eurosceptic one, which has advocated withdrawal for their own country or the UK. The Committee also considered the context in which some of the contributions were made and noted that the professor of EU law's contribution included an analysis about how much the UK government could re-negotiate without treaty change and some of the timing implications. The Committee noted that, later in the programme, there was a feature on the impact of immigration in Portsmouth which included two Romanian immigrants being interviewed about their own experiences. The Committee noted that Portsmouth was chosen as the location through which to explore the impact of immigration and that the item included contributions from the council leader, a teacher and two members of the public, one of whom was opposed to further immigration from the EU. The Committee therefore considered that the complainant's portrayal of an "imbalance of 18-1" was based on an assumption that the programme's primary focus was an 'in/out' debate where consideration of a range of voices and opinions on that issue would be more relevant, whereas in fact the Committee considered that the programme set out to explore domestic and EU political reaction and analysis and then considered certain aspects of EU membership and the experiences of individuals. The Committee considered that the editorial decisions taken in choosing the contributors were reasonable.

The Committee therefore agreed that this element of the appeal did not have a reasonable prospect of success.

Point 4)

The Committee noted the complainant's point that the 12 December edition of *Newsnight*, which featured an 'in/out' debate on EU membership, "was transformed (from a 3 v 3 format at the outset) into four advocates of withdrawal against eight who supported continued membership of the EU". The Committee noted that the programme featured a range of opinions and perspectives including expert analysis from an EU advocate (Sony Kapoor) and a 'withdrawalist' (Tim Congdon) and contributions from two businessmen, Stuart Miller and Sir David Tang, neither of whom could be said to have made comments helpful to the 'pro-EU' side. Other contributions included perspectives from mainland Europe (Noelle Lenoir), Scotland (Irvine Welsh) and the two largest UK parties (Boris Johnson and Emma Reynolds). The Committee therefore agreed with the Adviser that the programme of 12 December provided due weight to the significant views currently prevailing in the debate about EU membership and that the programme did not breach the editorial guidelines.

The Committee therefore agreed that this element of the appeal did not have a reasonable prospect of success.

Point 5)

a) The Committee noted the complainant's point that the audience had not been made aware that Peter Carroll, was a former Liberal Democrat parliamentary candidate and local councillor. The Committee noted the comment by the Adviser that the contribution he made was sufficiently related to his declared role as to be unlikely to mislead the audience. The Committee noted the complainant's point, that Kirsty Walk had prefaced this segment by saying "Before we hear from the politicians again...", thus clearly implying that the subsequent speakers were not politicians.

The Committee agreed that this point raised a matter of substance and thus agreed to take this point on appeal.

b) The Committee noted the complainant's point that the three contributors in the section mentioned above were all 'strongly pro EU'. The Committee noted the comments of the three, who had been asked for their reaction to David Cameron's speech. Guy Smith said it was right to "bring the issue to a head", said he wanted a level playing field and that he was in favour of the EU because he believed it had brought peace and prosperity. Ben Molyneux said he disagreed with David Cameron's comment about the European Working Time Directive because he believed the Directive was in the interests of patient safety. However, he then said that if David Cameron could do something similar outside Europe, that was 'OK'. The Committee considered that this contributor was strongly in favour of the provisions in the directive, but this did not necessarily make the contribution 'strongly pro-EU'. Peter Carroll, meanwhile, was concerned that a referendum was a distraction from the key issue of economic growth and agreed with Guy Smith that he wanted fairness and a level playing field. The Committee considered that this did not lead them to the conclusion that Mr Carroll was 'strongly pro-EU' and noted his contribution to an earlier edition of *Newsnight* on 18 January 2013, where he had been critical of EU intervention in the UK haulage sector. The Committee therefore agreed with the Adviser that these contributions were somewhat more nuanced than being all 'strongly pro-EU' and that due impartiality had not been breached in this regard.

The Committee therefore decided that, with the exception of one element, this appeal did not qualify to proceed for consideration.

Michael Grade and the World's Oldest Joke, BBC Four, 6 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 appealed to the BBC Trust on 6 July 2013 as he was not satisfied with the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint regarding a joke which he considered offensive and totally unacceptable in any context. He said he had written several letters about his concerns and all the responses he had received failed to "intelligently and honestly address the crux of the matter".

The material complained of is as follows:

"Jesus is on the gates of heaven and suddenly he sees an old man and he says to the old man 'what are you doing here?' and the old man says 'I'm here to find my son' and Jesus says 'tell me more' and he says 'he was a special boy' and Jesus says 'tell me more' and he says 'well he had holes in his hands and holes in his feet' and Jesus goes 'father!' and the old man goes 'Pinocchio!'"

The complainant stated in a letter to the ECU on 14 June 2013, following the Complaints Director's Stage 2 finding, that the BBC would not dare to make any sort of joke against other faiths, such as Judaism and Islam.

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 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 considered that there were two elements to the complaint: first, the issue of offence caused to the complainant by the subject matter of the joke at the centre of the complaint; and secondly, the issue of whether the BBC would ever broadcast "a vaguely similar" piece of programme content which had the potential to cause offence to members of other faiths.

The Adviser considered the complaint against the Editorial Guidelines on Harm and Offence, which state that the Agreement accompanying the BBC Charter requires the BBC:

"...to apply 'generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material'. The understanding of what constitutes 'generally accepted standards' will evolve over time and will be informed by relevant research. Applying 'generally accepted standards' is a matter of judgement, taking account of the content, the context in which it appears and editorial justification."

The Adviser noted that the BBC Guidelines did not exclude challenging material which had

the potential to cause offence, as long as it could be considered editorially justified. The Guidelines on Harm and Offence state:

The BBC aims to reflect the world as it is, including all aspects of the human experience and the realities of the natural world. In doing so, we balance our right to broadcast innovative and challenging content, appropriate to each of our services, with our responsibility to protect the vulnerable and avoid unjustifiable offence.

Creative risk-taking is a vital part of the BBC's mission. However, in all our output, the greater the risk, the greater the thought, care and planning required to bring creative content to fruition. We must be sensitive to, and keep in touch with, generally accepted standards as well as our audiences' expectations of our content, particularly in relation to the protection of children. Audience expectations of our content usually vary according to the service on which it appears.

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, and ensure it is clearly signposted. Such challenging material may include, but is not limited to, strong language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, and discriminatory treatment or language.

The Adviser noted that context and audience expectation played a vital role in determining whether programme content could be considered editorially justified.

With regard to the context of the material which the complainant found offensive, the Adviser noted that, as stated by the Complaints Director, *Michael Grade and the World's Oldest Joke*:

"...was not merely a comedy programme, nor was it confined to the proposition set out in the title. Rather, as was explained, it was also an exploration of the development of humour and jokes over time and looked, for instance, at comic material from a number of historical periods examining both similarities and differences."

That being the case, the Adviser believed the Trustees would be likely to agree with the Complaints Director that:

"...given the editorial purpose of the programme, it was inevitable that it would include material that would offend some viewers for different reasons. It could not have told the story it did, or explored some of the themes it did, without risking giving offence to some...."

...it does seem to me that this joke, and other potentially offensive material included, was justified by the editorial purpose of the programme and that it would have fallen comfortably within the reasonable expectation of the programme audience."

The Adviser believed that the Trustees would be likely to conclude that the programme did not go beyond generally accepted standards for challenging humour and she decided that the complainant's appeal on this point did not have a reasonable prospect of success.

With regard to the complainant's question as to whether the BBC would broadcast a joke

about the Muslim or Jewish faiths, the Adviser noted that decisions relating to editorial and creative output did not generally fall within the remit of the Trust. The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which the Adviser believed Trustees would conclude did not apply in this case.

However, in relation to this point, the Adviser noted the Stage 1 response of 22 April 2013 from Audience Services:

"The 'Pinocchio' joke is one example of many the production team encountered during the research and production process which referred to Christianity. By contrast, they encountered none about Islam. While this may be an unsatisfactory state of affairs for many Christians, there are at least some reasons which may explain it.

"Over a number of centuries, Western Europe has seen a reduction of the power and mystique of Christianity. This, along with enlightenment thinking and liberal theology and study has brought us to the situation we have today, where there is a general acceptance of a certain amount of critical analysis of the basic principles of Christianity and an appreciation of humour based around the cultural and historical roots of the faith.

"One individual whom the programme profiles was Poggio Bracciolini – a papal secretary credited with reviving the lost art of the joke in the early 15th century. As Michael explains, Poggio's joke book, the *Liber Facetiarum*, contains fat jokes, drunk jokes, sex jokes and fart jokes, and, tellingly, a lot of jokes about randy or corrupt priests.

"Islam, on the other hand, is a relatively new presence in the UK and has not had a reformation or enlightenment moment comparable with Western Europe. For that reason, Islam and the basics of the religion are still held in a position by many followers and the communities they live in, that is not comparable to how Christianity is held in general by UK society.

"Understandably, those who write and tell jokes are generally better-placed to do so about the faith with which they are most familiar. Some do now feel able to make jokes relating to Islam within a framework of their audience's knowledge-base but ultimately the UK still has far more Christians – and people raised to be familiar with Christian traditions – than it does Muslims. Therefore, there is not yet an established tradition of comedy in Islam to the same extent as there is with Christianity.

"This situation is probably only likely to change when the public at large know enough about the faith to find humour in it and of course as Muslim comedians become more prominent on the UK comedy scene. In fact, there are signs of such progress already – BBC comedy *Citizen Khan*, for example, was written by and starred Adil Ray and included many jokes which are grounded in the Muslim identity of its main characters."

The Adviser believed that Audience Services had given a detailed and reasoned response

about the cultural history behind “old jokes” which addressed the complainant’s point about humour being more commonly directed at Christianity than at other religions.

The Adviser also noted that Audience Services had apologised to the complainant at Stage 1 for the offence which had been caused to him, and the Adviser wished to extend her own apologies on behalf of the Trustees. However, although the Adviser appreciated that the complainant was very unhappy about some of the programme content which he considered blasphemous, she believed that the Trustees would be unlikely to consider that evidence had been presented that would lead them to conclude there had been a breach of editorial guidelines on the issue. That being the case the Adviser considered there was no reasonable prospect of success for this appeal and decided that it should not proceed further.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He did not consider that his complaint had been addressed directly.

The Committee’s decision

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

The Committee noted the complainant’s concern about the joke and the manner in which his complaint had been responded to.

The Committee noted that the BBC was able to include challenging material if it was justified. Trustees agreed that context and audience expectation were vital considerations in determining whether programme content could be considered editorially justified. The Committee agreed with the response of the ECU’s Complaints Director that:

“...given the editorial purpose of the programme, it was inevitable that it would include material that would offend some viewers for different reasons. It could not have told the story it did, or explored some of the themes it did, without risking giving offence to some...”

The Committee regretted the offence that had been felt by this complainant but considered that the Complaints Director had been correct to say that this material “was justified by the editorial purpose of the programme and that it would have fallen comfortably within the reasonable expectation of the programme audience”.

The Committee noted the complainant’s belief that the BBC would not broadcast “a vaguely similar piece of programme content which had the potential to cause offence to Muslims or Jews rather than Christians”.

The Trustees did not consider this assumption was a relevant consideration in deciding whether his complaint that the programme breached offence standards had a reasonable prospect of success. The Committee also noted that decisions relating to editorial and creative output did not generally fall within the remit of the Trust unless, for example, it related to a breach of the BBC’s editorial standards. The Committee noted too that BBC Audience Services had pointed the complainant to the BBC Comedy Citizen Khan which “included many jokes which are grounded in the Muslim identity of its main characters”.

The Committee agreed that the BBC had given reasoned and reasonable responses to the complaints, as had the Trust Unit, and that there was no reasonable prospect of success for this appeal.

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

“Norway’s EU deal ‘not right for UK’”, BBC Online, 18 April 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 contacted the BBC Trust on 15 July 2013 following the decision by the ECU not to uphold a complaint of bias relating to a report on BBC Online that appeared on 18 April 2013 entitled “Norway’s EU deal ‘not right for UK’”.

The report included the opinions of Erna Solberg – Norway’s leading opposition politician – about whether the model of Norway’s relationship with the EU would work for the UK.

The complainant considered that Ms Solberg made: “a series of 8 arguments for why the UK should not (in her opinion) leave the EU and join the EEA. No other person quoted in the article provides any counter-balancing arguments against the opinions of Ms. Solberg on issues of relevance to the UK. The result is a one-sided BBC article that displays bias towards the view that the UK should remain a member of the EU.”

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 referred to the BBC Editorial Guidelines on impartiality which can be found at <http://www.bbc.co.uk/editorialguidelines/>.

The Adviser noted that BBC Online had reported a speech given during a visit to the UK on 15 April 2013 by Erna Solberg, leader of Norway’s Conservative Party. During her visit, she met with David Cameron and gave a lecture at the LSE’s European Institute called “Norway’s experience with the EEA. An Example for Britain?” The content of this speech was the subject of BBC Online’s report.

The Adviser noted that Ms Solberg’s speech gave her views about Norway’s membership of the EEA and its relationship with the EU and whether it provided a suitable model for the UK in the event of EU withdrawal. She noted that the opinions expressed by Ms Solberg at a public event constituted the bulk of the report.

The Adviser noted that, in his response of 24 June 2013, the Complaints Director had stated:

“There is, I think, a distinction to be made between an article which takes as a starting point a statement of view from a foreign politician, and one which explicitly sets out to consider the arguments for and against a particular point of policy. That is not to say that the former should not be duly impartial, but I do think that its impartiality must be understood in a different, and more narrow context.”

"... The article made entirely clear that the viewpoint being expressed was Ms Solberg's. I think readers would therefore have understood that this was not a statement of fact, but the perspective of a politician – albeit one presumably well-placed to judge the matters under discussion."

The Adviser agreed with this analysis that the main thrust of the report was to cover the views of Ms Solberg as they were expressed in an open meeting. The Adviser noted that the Guidelines allowed the BBC to produce content about any subject, on any point on the spectrum of debate, "as long as there were good editorial reasons for doing so".

The Adviser considered that Ms Solberg was a significant Norwegian politician who was able to discuss with some expertise how the reality of membership of the EEA worked for Norway; she was able to articulate positive elements of Norway's situation and also elements that caused dissatisfaction. She had opinions about whether the kind of relationship which Norway had with the EU would be acceptable to people of the UK and the Adviser considered that Trustees would be likely to conclude there was a clear editorial purpose in reporting those views.

The Adviser also agreed with the Complaints Director that the article made clear the views expressed were the opinions of Ms Solberg and were not statements of fact.

The Adviser noted that Ms Solberg was forthright in her opinion that the EEA would not be a suitable model for the UK, but had not advocated either the UK's continuing membership or withdrawal from the EU; neither was there any clear praise for the EU as an institution. Ms Solberg's main point was that she believed a large nation like the UK would be unwilling to accept the 'democratic deficit' arising out of enforcing much of the EU's legislation but having no seat at EU meetings.

The Adviser noted that the Complaints Director had addressed the complainant's concerns that the article "...displays bias towards the view that the UK should remain a member of the EU" and had written:

"I did not see her contribution as amounting to an articulation of a 'pro-UK-membership-of-the-EU case' as you suggest – I don't think it follows that because she does not think that this particular arrangement would suit the UK, she believes that the UK must remain in the EU, or that this is what readers would have understood her position to be."

"I recognise that you believe that the title of the article was itself problematic, but it seems to me that the quotation marks around the words 'not right for UK' made it quite clear that what was being discussed was her view."

The Adviser noted that the views of two other Norwegian politicians were referred to in the report, Audun Lysbakken of the Socialist Left Party and Trygve Slagsvold Vedum of the Centre Party. She noted that both were members of the current coalition government in Norway and both were critical of the EEA; however, this view was expressed in the context of a strong 'anti-EU' outlook including, in one instance, the opinion that the UK should leave the EU.

However, the Adviser considered that the main subject of the report was the talk given by Ms Solberg. She noted the complainant considered that, in order to meet the requirements of the Guidelines on Impartiality, the article should have included "a range of views on whether this arrangement would work for the UK".

The Adviser noted the Complaints Director had addressed this with reference to the Editorial Guidelines, and had stated:

“On the question of whether it was a breach of standards to focus on Ms Solberg’s views, the guidelines do allow for such an approach:

Due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed.

“The article made entirely clear that the viewpoint being expressed was Ms Solberg’s. I think readers would therefore have understood that this was not a statement of fact, but the perspective of a politician – albeit one presumably well-placed to judge the matters under discussion. I recognise that you believe that the title of the article was itself problematic, but it seems to me that the quotation marks around the words ‘not right for UK’ made it quite clear that what was being discussed was her view.

“It seemed to me that the article was entitled to focus on the newsworthy comments of Ms Solberg, that it made clear that these were her views and included a range of perspectives from others in Norway on this question. I don’t agree that balance would require that more comment on the particular implications for the UK were included, or a commentator who believed that this system would be effective here.”

The Adviser considered Trustees would be likely to conclude that there was no requirement under the Guidelines to include a range of opinions as to whether membership of the EEA would work for the UK. Therefore she considered the appeal did not have a realistic prospect of success and should not be put before Trustees 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 article lacked balance “because it gave a pro-EU politician from a country in which EU supporters make up less than 1/5 of the population, free-reign to make arguments for why the UK should remain in the EU which are not counterbalanced by anyone else on topics of relevance to the British reader.”

He noted that the BBC had not written about Ms Solberg previously and questioned the BBC position that she was prominent and her views newsworthy. He considered that every BBC article on the EU and Norway had a pro-EU bias and that the BBC had never interviewed prominent Norwegian politicians who had been involved in the successful campaign against EU membership.

The complainant believed the issue was an important one. He said that “EU law is supreme in this country and unlike national law cannot be changed following a general election result that returns a new government to Westminster. The question of viable alternatives to this subordinate relationship to Brussels is therefore one of the most important constitutional questions facing the UK.”

He believed the BBC was undermining the successful “Norwegian alternative” in the run-up to a referendum.

The complainant said that the BBC has a problem of bias in its EU coverage which has not yet been resolved. He felt his points had been ignored.

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 article in question.

The Committee noted the complainant's concern about impartiality in the BBC's EU coverage, with particular reference to the online article which formed the substantive complaint.

The Committee noted that due impartiality allows editorial teams to explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed. Trustees agreed the point of this article was to report Ms Solberg's opinions and they were clearly labelled as being her opinions.

The Committee noted the complainant considered that, in order to meet the requirements of the Guidelines on Impartiality, the article should have included a range of views in order to provide balance.

The Committee noted that the views of two other Norwegian politicians were referred to in the report, both of whom were members of the current coalition government in Norway and both were critical of the EEA.

The Committee agreed with the ECU view that

“the article was entitled to focus on the newsworthy comments of Ms Solberg, that it made clear that these were her views and included a range of perspectives from others in Norway on this question. I don't agree that balance would require that more comment on the particular implications for the UK were included, or a commentator who believed that this system would be effective here.”

The Committee considered the appeal did not have a realistic prospect of success.

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

BBC Online recipes containing foie gras

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 initially wrote to the BBC regarding some of the recipes on the cookery pages of the BBC website which included the use of foie gras: (http://www.bbc.co.uk/food/foie_gras). She requested that these recipes be removed because she believed that their inclusion on the BBC website implied that the BBC supported animal abuse as "the production of this 'delicacy' involves such a high level of extreme cruelty that its production is banned in the UK and a growing number of other countries".

Audience Services replied to the complainant's concerns, saying that while they appreciated that the use of foie gras in the UK was a controversial matter, there was currently no ban on its use and many people enjoyed it. They said that as long as foie gras remained legal and freely available there was a possibility of it being included in BBC output, including the website.

Audience Services provided a link to the BBC Trust's September 2012 Editorial Standards Findings which included details of the Trust's decision not to uphold an appeal about the use of foie gras in *The Great British Menu* (BBC Two, 7 May 2012): http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/19_sep.pdf

The complainant appealed to the BBC Trust.

The complainant considered the BBC should bear in mind the degree of suffering endured by the birds and provided information to the BBC to illustrate that suffering.

The complainant said that foie gras was only available in the UK due to a loophole in the law, and this situation was "taken advantage of by greedy people who have no conscience and take the opportunity to make money by exploiting defenceless creatures". The complainant felt that the BBC seemed only to be concerned with the law on this issue and sought to "escape through the legal loophole". She felt that the BBC should reconsider the issue from a more compassionate point of view.

She also stated that the BBC's audiences were being misled when they saw foie gras included in recipes as many people did not realise the full extent of the cruelty involved in its production. That being the case she said it was the BBC's duty to remove the recipes from the website and also ensure they did not appear in future cookery programmes.

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 had been directed by Audience Services to the

Trustees' finding on the use of foie gras in *The Great British Menu* in 2012.

Whilst acknowledging the complainant's concerns in relation to this particular appeal about recipes containing foie gras which were published on the BBC website, the Adviser believed the Trustees would be likely to consider that several elements from their previous finding were relevant to this appeal.

With regard to the Guidelines on Harm and Offence, the Adviser noted that in its September 2012 finding on the use of foie gras in *The Great British Menu*, the Editorial Standards Committee (ESC) had considered the Guidelines on Harm and Offence:

"The Guidelines state that the BBC is required to apply generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. However, the Committee noted that the Editorial Guidelines expressly provide that BBC content may include challenging material that risks offending some of its audience. Also, the Editorial Guidelines specify that applying generally accepted standards is a matter of judgement, taking account of the content, the context in which it appears and editorial justification."

In reaching its decision, the Committee had recognised the offence complainants had felt at the inclusion of a foie gras recipe, but had noted that the BBC had a right to produce challenging content as long as it complied with the Editorial Guidelines. The Adviser noted that a key factor in the Committee's decision had been that

"while production of foie gras is illegal in the UK, consumption and preparation of it is not".

The Adviser acknowledged that the complainant felt the BBC was using a "legal loophole" to justify decisions to include recipes for foie gras in its output, but believed that in considering this appeal, Trustees would be likely to remain consistent with their previous finding in which they stated:

"The Committee agreed with the Head of Editorial Standards [Trust Unit] that it was acceptable for the BBC ... to include ingredients that could be legally bought and consumed in the UK ... despite the fact that there were people and organisations who objected to foie gras, boycotts urged, stores who banned it and countries which banned its production."

The Adviser noted that the complainant considered that the BBC was misleading people by publishing recipes using foie gras on the website because, unless audiences are fully informed about the methods of producing foie gras, many people might not realise the cruelty to animals involved.

The Adviser considered this aspect of the appeal against the Editorial Guidelines on Accuracy, which state that:

We must not knowingly and materially mislead our audiences with our content.

We may need to clarify the nature of some content by labelling (for example, verbally, in text, or with visual or audio cues) to avoid being misleading.

The Adviser noted the information about foie gras published on the BBC website http://www.bbc.co.uk/food/foie_gras:

“Foie gras is a rich pâté made from the liver of ducks and geese that have been force-fed and fattened until their livers become enlarged. It has a rich flavour and the texture is silky smooth. The name literally translates from the French as ‘fat liver’. The south-west of France is the major foie gras producing area - the method of production is not practised in Britain. After preparation, the livers are soaked overnight before being marinated in Armagnac, port or Madeira, depending on the chef’s recipe.”

In terms of the website foie gras recipes, the Adviser noted that the BBC had given some introductory information about animals being force-fed in order to produce foie gras and had stated that foie gras is not produced (as opposed to purchased and consumed) in Britain. She appreciated that the complainant felt the BBC was not exercising sufficient compassion about animal cruelty in relation to its published information about the production of foie gras, or in its responses to her complaints, but she noted that the point the Trustees had to consider with regard to the appeal was whether the Editorial Guidelines had been applied correctly in terms of the website content. She noted that in its September 2012 finding, the Committee had agreed with the Head of Editorial Standards, Trust Unit, who had noted in her response to *The Great British Menu* appeal that, given foie gras may be used legally in cooking in this country, she did not consider the BBC was under a requirement to tell audiences how foie gras was produced in order to achieve due accuracy and avoid misleading audiences.

Taking both the current appeal and the ESC’s previous finding about *The Great British Menu* into consideration, the Adviser considered that Trustees would be unlikely to conclude that there had been a breach of Editorial Guidelines in terms of the foie gras recipes published on the BBC website.

With regard to the complainant’s request in her appeal for the recipes to be removed from the website, 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 (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC’s editorial standards which as previously stated, the Adviser believed the Trustees would be unlikely to consider was the case. Decisions relating to website content fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive. Therefore the Adviser considered it would not be appropriate for Trustees to consider this aspect of the appeal.

The Adviser appreciated that the complainant felt very strongly about the issues she had raised but she considered that the appeal did not have a reasonable prospect of success and should not proceed further.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She reiterated her original concern: her belief that the BBC was misleading the audience by not presenting the full facts concerning the suffering caused to birds such as that they are confined in tiny cages and force-fed vast amounts of food during the production of foie gras. The complainant said that she assumed that by acknowledging the possible inclusion of “challenging material”, the BBC thought that some people might find certain truths unpalatable; however, the fact was that no mention was made of the

true extent of the birds' suffering, which was not just about force-feeding. This was about harm to birds not offence to people.

She believed that many people would be misled into believing there was nothing distasteful about eating foie gras. She considered that when the BBC is seen as encouraging its use, that would be taken as confirmation that it was acceptable.

She said that it was illegal in other countries besides the UK to produce foie gras because of the cruelty of production methods but that this had not been acknowledged by the BBC.

She repeated her request for the recipes to be removed from the website and not included in future programmes.

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 strength of the complainant's concern about cruelty to birds during the production of foie gras and her belief that the BBC's inclusion of foie gras recipes on its website was offensive, caused harm and was misleading.

However, the Committee agreed that the Editorial Guidelines expressly provide that BBC content may include challenging material that risks offending some viewers and that the application of generally accepted standards is a matter of judgement, taking into account the content, its context and the editorial justification for it.

The Committee noted that it is legal to prepare and consume foie gras in the UK, notwithstanding that production is illegal and that there are individuals and organisations who object to its use on the grounds of animal cruelty.

The Committee agreed with the Senior Editorial Complaints Adviser that it was acceptable for the BBC to include recipes in its output that contained foie gras, given that it could be legally bought and consumed in the UK; and that the BBC was not under a requirement to tell audiences how foie gras was produced in order to achieve due accuracy and avoid misleading audiences, again because the cooking of foie gras is legal in the UK.

As such the Committee did not consider that this aspect of the appeal had any reasonable prospect of success.

With regard to the complainant's request for the recipes to be removed from the website and not include foie gras in future programmes, the Committee agreed with the Adviser that it was not appropriate for Trustees to consider this aspect of the appeal, as it related to the direction of the BBC's editorial and creative output which was the responsibility of the BBC Executive unless the Committee considered there had been a breach of editorial standards. Again the Committee concluded that this aspect of the appeal did not have any reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to complaint about negative coverage of India

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's correspondence with the BBC dated back to May 2011 and related to the complainant's central concern that the BBC denigrated Indian culture. The complainant considered the BBC generally overlooked the wealth of its history and its civilisations and underplayed the inventions that had come from India, choosing to focus instead on slums and poverty.

The complainant wrote to the BBC Trust following the decision by BBC World News on 8 May 2013 not to respond further because they felt they had nothing further to add and did not consider the points she raised suggested a possible breach of standards.

With regard to her substantive concerns, the complainant said in her appeal that the BBC was always playing down India at every opportunity. She considered that this was evident in the BBC's coverage of the factory accident in Bangladesh, which the complainant considered compared unfavourably with CNN's coverage. She argued that India had a very established, deep culture which she felt the BBC completely overlooked. She contended that the BBC's coverage of India only focuses on the country's poor people and is guilty of "playing down India at every opportunity".

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, however, that BBC World News had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She also noted that the complainant had escalated her complaint to the Trust well outside the twenty-working-day limit set out in the Complaints Framework and offered no reason for the delay in submitting the appeal.

The Adviser therefore felt that the complainant was well outside the time limit in appealing to the Trust and therefore the appeal did not have a reasonable prospect of success and should not be put before Trustees.

Request for Review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She said that the BBC generally ignored Dravidian history and felt that the "cutting out" of a civilisation when producing documentaries could not be justified. She requested the BBC not to "ignore the ancient Dravidians ... and please be open about India's sophistication before the Mughals or the Europeans arrived on the scene".

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 noted that BBC World News had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. The Committee also noted that the complainant had escalated her complaint to the Trust well outside the twenty-working-day limit set out in the Editorial Complaints and Appeals Procedure and no reason for the delay in submitting the appeal was offered.

The Committee also noted, in passing, that the complainant did not specify which BBC World News report was the basis for her appeal and that previous requests for the complainant to give specific examples to illustrate her complaint had not been met.

Having considered the correspondence between the BBC and the complainant, the Committee was of the view that the complainant was well outside the time limit in appealing to the Trust and that no good reason had been offered for the delay. The Committee therefore concluded that there was no evidence of any exceptional reasons why the Committee should consider the appeal out of time and, for this reason, the Committee believed that the appeal did not have a reasonable prospect of success.

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

Great Bear Stakeout, 24 April 2013, BBC One and iPlayer

Summary

Background

The Great Bear Stakeout was a two-part series about grizzly bears shot on location in Alaska. It was made by the Natural History Unit and transmitted on BBC One on 24 April and 25 April, 2013 at 9pm. It was partly about animal behaviour and partly an observational documentary about the work of the bear experts.

In June 2013 the BBC Executive informed the Editorial Standards Committee (ESC) of the BBC Trust that an editorial breach had occurred. The first episode of the Great Bear Stakeout contained misleading footage. The programme showed accurate footage of a mother bear leading her two cubs into water to catch fish and one of the cubs disappearing into the waves. However the film showed the bear guide apparently watching the events, reacting to them and commenting on them. In fact the bear guide had not been present when the footage was filmed - his contribution was filmed later as if he had been present.

The Executive explained that the producer of programme one considered the editorial truth he was representing was the behaviour of the animals. His view was that the "re-enactment" with the guide enhanced the narrative. The bear guide did not think this was an issue either until asked to take part in an interview about the sequence at which point he raised the matter. The programme was removed from iPlayer and re-edited. The re-edit was offered to the BBC's global partners but they preferred to broadcast the original version.

The BBC published a post from the Executive Producer on the Great Bear Stakeout programme page apologising for the misleading scene. (This post is also included at the end of this document.)

An Executive report was provided to the ESC in September and follows this finding. The Executive committed to the delivery of a number of actions including: face to face training; monthly review boards; and the development of a "Gold Standard" code of practice available on the Natural History Unit intranet setting out best practice for those making natural history content for the BBC.

Trust Finding

The Trustees finding follows in full but in summary the Trustees concluded that: The BBC Editorial Guidelines explain that the BBC is committed to achieving due accuracy and that this commitment is fundamental to the BBC's reputation and the trust of audiences. The requirements will vary according to genre but the licence fee payer, who pays for the BBC's output, must be able to trust the BBC in all its programming.

Trustees noted the Executive's assurance that the natural history depicted in this episode was accurate. Trustees considered that this was the issue that they expected to matter most to audiences.

The ESC then considered the staging of the bear guide's reaction. The Trustees accepted this had been done as a production technique to tell a narrative and to enhance the viewing experience. Even so viewers were on a journey with the guide and this was a crucial event which was interpreted through the eyes of the guide. The Trustees agreed that it was not acceptable to portray him as if he was present when he was not present. The public had been misled.

The BBC's natural history programming is one of the jewels in the crown of British broadcasting. It is renowned world-wide. The ESC was concerned that enactments of this nature could undermine the trust of the public in the BBC's natural history programmes and even risked casting doubt on the accuracy of the natural history depicted in the BBC's programmes. This would be an extremely unfortunate outcome which could damage a world class brand.

The ESC accepted that Safeguarding Trust and Safeguarding Values training had been in place. This was about a misunderstanding as to what was acceptable under the BBC's Editorial Guidelines. This was a failure of editorial judgement in the original shoot which had been carried through to the edit without the Executive Producer's knowledge. The Trustees were pleased that the BBC Natural History Unit had dealt with this matter openly and firmly. They commended the swift public correction and the strong editorial leadership which made it clear that misleading content would not be tolerated. Trustees agreed that the actions taken by the BBC were thorough and were encouraged to see that the BBC is determined to set a premium on the Natural History Unit's reputation for accuracy and authenticity and wished to create a gold standard that audiences could trust.

The ESC found that there had been serious breaches of the editorial guidelines which say:

Accuracy principles

We must do all we can to ensure due accuracy in all our output.

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

Production Techniques

For news and factual content, unless clearly signalled to the audience, or using reconstructions, we should not normally:

- Stage or re-stage action or events which are significant to the development of the action or narrative
- Intercut shots and sequences to suggest they were happening at the same time if the resulting juxtaposition of material leads to a misleading impression of events.

Commentary and editing must never be used to give the audience a materially misleading impression of events or a contribution.

The Editorial Standards Committee Finding in full

Background

The Great Bear Stakeout was a two-part series about grizzly bears shot on location in Alaska. It was made by the Natural History Unit and transmitted on BBC One on April 24 and April 25, 2013 at 9pm. It was partly about animal behaviour and partly an observational documentary about the work of the bear experts.

In June 2013 the BBC Executive informed the Editorial Standards Committee (ESC) of the BBC Trust that an editorial breach had occurred. The first episode of the Great Bear Stakeout contained misleading footage. The programme showed accurate footage of a mother bear leading her two cubs into water to catch fish and one of the cubs disappearing into the waves. However the film showed the bear guide apparently watching the events, reacting to them and commenting on them. In fact the bear guide had not been present when the footage was filmed - his contribution was filmed later as if he had been present.

The Executive explained that the producer of programme one considered the editorial truth he was representing was the behaviour of the animals. His view was that the "re-enactment" with the guide enhanced the narrative. The bear guide did not think this was an issue either until asked to take part in an interview about the sequence at which point he raised the matter. The programme was removed from iPlayer and re-edited. The re-edit was offered to the BBC's global partners but they preferred to broadcast the original version.

The BBC published a post from the Executive Producer on the Great Bear Stakeout programme page apologising for the misleading scene:

<http://www.bbc.co.uk/programmes/p0176qj5>

(This post is also included at the end of this document.)

Trustees asked for a report. They considered that on the face of it the staging of the reaction appeared to be a serious breach even though it did not affect the natural history being shown to the viewers which was factually accurate. A report was provided in September and follows this finding. The Head of the Natural History Unit and the Director of Television attended the ESC in September to discuss the report and their proposed actions.

Summary of the Executive Investigation

Compliance Issues:

The sequence which shows a mother bear taking her two cubs into the ocean where one cub is washed away and drowns was shot by the NHU camera team, but both the additional documentary team tasked with filming the crew and the expert guide/presenter of the series were filming elsewhere.

The on-location programme producer felt a reaction to the events from the expert bear guide was important as part of the narrative in line with the series brief to feature the experts as well as the animals. A sequence was subsequently shot and later included in the transmitted programme showing the bear guide apparently watching and commenting on the scene as it unfolded. The bear guide's comments and the impression that he actually witnessed the events first hand were misleading.

Editorial Oversight:

The on-location producer of programme one also oversaw the editing of the programme; he left the series and the BBC at the end of his contract in March 2013. There was a different producer for programme two.

Editorial Safeguards:

The producer of programme one had completed the mandatory Safeguarding Trust training, which contains a module on misleading audiences with examples taken from NHU content.

During the editing process the producers of both programme one and two were repeatedly asked about the accuracy of the content they had shot.

The producer of programme one did not believe there was any problem with the “re-enactment” he had shot for the sequence; he felt it was acceptable to enhance the narrative as it did not alter the editorial truth of the scene. It was only when a planned radio interview proposed to feature the cub-drowning sequence that the bear guide flagged up the fact that he had not actually been present at the time.

Summary of Actions taken by BBC Management

As a result of this investigation BBC management decided:

- All Natural History Unit staff were required to complete Safeguarding Trust and Safeguarding Values training by the end of September 2013¹⁸. There will be a monthly check to ensure that all new joiners have completed the required training.
- There will be a dedicated page on the BBC’s internal website (Gateway) with editorial guidelines for natural history filming¹⁹.
- There will be a bespoke training module for all Natural History Unit staff, including freelancers, editors and camera operators highlighting the importance of relating editorial guidelines on factual content to the world of natural history. The training will be delivered face-to-face by Natural History Unit executive producers.
- There will be monthly Natural History Unit Programme Review Boards so the entire unit can review output and discuss editorial issues and concerns.
- There will be an annual open day including training seminars (as above) for independent producers to discuss Natural History issues and editorial standards.
- The BBC will create a “Gold Standard” code of practice setting out best practice which will be a working document for Natural History Unit, BBC Earth and BBC Worldwide staff and independents making content for the BBC. All new joiners will receive it and it will be available on the NHU intranet site.²⁰

¹⁸ This was completed on time

¹⁹ A launch is planned in the New Year

²⁰ By the end of October 2013 a draft Gold Standard Code of Practice was produced and the NHU was consulting on it with independents and BBC producers with the aim of launching the finalised version in 2014.

The Executive's oral report to the ESC

The Director of Television told the ESC that story telling in the genre of Natural History was moving rapidly. The fact that other broadcasters thought it acceptable did not make this right for the BBC. This choice by the producer was wrong.

The Head of the Natural History Unit said that after the controversy generated by the use of footage from a zoo within a sequence shot in the wild with Polar Bears the BBC decided to adopt new levels of rigour and discipline in its approach to its representation of wildlife (even though the BBC had been transparent about the insertion of zoo footage on its website). The Head of the Natural History Unit assured the ESC that landmark pieces such as Africa were made to the very highest standards. The Great Bear Stakeout was unusual because it combined the genre of natural history with observational documentary and the rigour applied to the natural history sequences was not carried across to the sequences shot with the bear guide.

Finding of the ESC

The BBC Editorial Guidelines explain that the BBC is committed to achieving due accuracy and that this commitment is fundamental to the BBC's reputation and the trust of audiences. The requirements will vary according to genre but the licence fee payer, who pays for the BBC's output, must be able to trust the BBC in all its programming.

Trustees were aware that the demarcation between what may and may not be accepted by audiences in the presentation of natural history programmes can be unclear. Previous research undertaken by the Trust shows that for audiences there are no hard and fast rules and that each case needs to be assessed on its merits.

Trustees consider that where wildlife is concerned modern audience are sophisticated enough to accept both what is shot on the ground and what is shot elsewhere and that as long as the BBC is honest about these techniques it can do them. Audiences accept that the BBC can't shoot everything live. Trustees noted the Executive's assurance that the natural history depicted in this episode was accurate. Trustees considered that this was the issue that they expected to matter most to audiences.

The ESC then considered the staging of the bear guide's reaction. The Trustees accepted this had been done as a production technique to tell a narrative and to enhance the viewing experience. Even so viewers were on a journey with the guide and this was a crucial event which was interpreted through the eyes of the guide. The Trustees agreed that it was not acceptable to portray him as if he was present when he was not present. The public had been misled.

The BBC's natural history programming is one of the jewels in the crown of British broadcasting. It is renowned world-wide. The ESC was concerned that enactments of this nature could undermine the trust of the public in the BBC's natural history programmes and even risked casting doubt on the accuracy of the natural history depicted in the BBC's programmes. This would be an extremely unfortunate outcome which could damage a world class brand. Trustees believed that the BBC has made great strides in educating audiences about the challenges of wild life photography and audiences would not have been perturbed to learn the bear guide had not been present when the cub had disappeared in the waves.

The ESC accepted that Safeguarding Trust and Safeguarding Values training had been in place. This was about a misunderstanding as to what was acceptable under the BBC's Editorial Guidelines. This was a failure of editorial judgement in the original shoot which had been carried through to the edit without the Executive Producer's knowledge.

The Trustees were pleased that the BBC Natural History Unit had dealt with this matter openly and firmly. They commended the swift public correction and the strong editorial leadership which made it clear that misleading content would not be tolerated. Trustees agreed that the actions taken by the BBC were thorough and were encouraged to see that the BBC is determined to set a premium on the Natural History Unit's reputation for accuracy and authenticity and wished to create a gold standard that audiences could trust.

The ESC found that there had been serious breaches of the editorial guidelines which say:

Accuracy principles

We must do all we can to ensure due accuracy in all our output.

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

Production Techniques

For news and factual content, unless clearly signalled to the audience, or using reconstructions, we should not normally:

- Stage or re-stage action or events which are significant to the development of the action or narrative
- Intercut shots and sequences to suggest they were happening at the same time if the resulting juxtaposition of material leads to a misleading impression of events.

Commentary and editing must never be used to give the audience a materially misleading impression of events or a contribution.

Report by the BBC Executive, September 2013

BBC TELEVISION EDITORIAL STANDARDS REPORT

Great Bear Stakeout

Introduction:

The Great Bear Stakeout was a two-part series about grizzly bears made by the Natural History Unit and transmitted on BBC One on April 24 and April 25, 2013 at 9pm. The programmes were shot on location in Alaska and edited in Bristol. The two-part series had been commissioned as a "people plus animals" show ie part animal behaviour and part observational documentary about the work of the bear experts. On May 9, Gavin Henderson, the Executive Producer in charge of the series, was made aware of an editorial inaccuracy in programme one. He immediately referred the matter to the Head of the NHU, Head of Factual, the commissioning executive and Chief Creative Officer, BBC Production; the issue was escalated to Director, BBC Television and Director, Editorial Standards.

An acknowledgement of the inaccuracy was posted on the programme's web page (see appendix).

No viewer complaints had been received about the film and there was no media follow-up after the web page statement was published.

Compliance Issues:

Approximately 11.40 minutes into the film a sequence shows a mother bear, "Parsnip", taking her two cubs into the ocean. One cub is washed away and drowns. The action was shot by the NHU camera team, but both the additional documentary team tasked with filming the crew and the expert guide/presenter of the series were filming elsewhere.

The on-location programme producer felt a reaction to the events from the expert bear guide, Chris Morgan, was important to include in the final film as part of the narrative, in line with the series brief to feature the experts as well as the animals. A sequence was subsequently shot and later included in the transmitted programme showing Chris Morgan apparently watching and commenting on the scene as it unfolded in front of him and the cameraman. In reality, Chris Morgan was not on location when the events took place. Therefore his comments and the impression that he actually witnessed the events first hand were misleading.

Editorial Oversight:

The misleading sequence was sent to the edit without any accompanying information to indicate it was not actuality. It was included as part of the film and transmitted on BBC One. The issue only came to light on May 9, more than a fortnight after broadcast, when Chris Morgan contacted the executive producer ahead of an interview about the show with the BBC World Service.

The on-location producer of programme one also oversaw the editing of the programme; he left the series and the BBC at the end of his contract in March 2013. There was a different producer for programme two.

Once the misleading scene was brought to light, the programme was re-edited before delivery to BBC Worldwide. A re-edited version was also offered to two global coproduction partners but they were content that this was an acceptable form of storytelling and deciding to broadcast the original version.

The show was removed from BBC iPlayer and re-edited.

Editorial Safeguards:

Checks revealed that the producer of programme one completed the mandatory Safeguarding Trust training, which contains a module on misleading audiences with examples taken from NHU content.

During the editing process the producers of both programme one and two were repeatedly asked about the accuracy of the content they had shot. The producer of programme one did not believe there was any problem with the "re-enactment" he had shot for the sequence; he felt it was acceptable to enhance the narrative as it did not alter the editorial truth of the scene. The producer concentrated on natural history alone – his focus was solely on spotting and removing any misrepresentation of animal behaviour within the programme; he did not realise there was a significant issue concerning the depiction of the bear guide that should have been flagged to the executive producer.

Chris Morgan saw the film before transmission and did not raise any issues about the misleading sequence; he too concentrated on the veracity of the material featuring the bears. It was only when a planned radio interview proposed to feature the cub-drowning sequence that Chris Morgan flagged up the fact that he had not actually been present at the time.

The NHU takes any errors or any lapse in standards with the utmost seriousness and are mindful that its reputation for accuracy must be retained in an increasingly competitive world. While it is clear that staff are thoroughly conversant with the guidelines around working with animals, there is a need for greater knowledge and understanding of the challenges presented by content and formats that go beyond traditional animal documentary film-making. The NHU is committed to ensuring that staff specialising in filming animals also develop a similar expertise and understanding of best practice in factual programme-making as a whole.

Actions:

Head of the NHU, Wendy Darke, attended Editorial Standards Board on 14 May to explain the issue and discuss steps to strengthen the editorial oversight of NHU content. ESB approved the following actions:

- Training Audit. All NHU staff are required to complete Safeguarding Trust and Safeguarding Values training by the end of September 2013. There will be a monthly check to ensure that all new joiners have completed the required training.
- A dedicated Gateway page featuring editorial guidelines for natural history filming.
- New Training Module. Head of Talent, Head, Editorial Policy, Factual and Learning and Controller, BBC Academy are devising a bespoke training module for all NHU staff, including freelancers, editors and camera operators. The new training course will highlight the importance of relating editorial guidelines on factual content to the world of natural history. Content will include but is not confined to;
 - case histories from the NHU
 - key editorial issues
 - training on narrative script-writing.

The training will be delivered in face-to-face sessions by NHU executive producers as this will ensure debate and discussion amongst staff and enable them to establish acceptable boundaries for their productions.

- Monthly NHU Programme Review Boards. A forum for the entire unit to review output and discuss editorial issues and concerns. A Review Board was held in May to discuss in detail the issues of Great Bear Stakeout; a member of Editorial Policy and a member of Television Compliance attended this meeting.
- An annual open day for independent producers to discuss Natural History issues and editorial standards. Training seminars (outlined above) will be included as part of the event.
- Creation of a "Gold Standard" code of practice. This is intended to be a working document available to all staff within the NHU, setting out best practice to enable the unit to deliver a wide range of content for our audiences. It will cover a number of areas including:
 - the role of technology in revealing the natural world and the issues raised by the use of techniques such as CGI;
 - a narrative "voice" which is accurate and appropriate for the content and engages the audience whilst maintaining the truth of real events;
 - scientific accuracy and the need to ensure audiences are aware of the context of statements, especially when the science is exploratory.

The willingness of both the BBC's global coproduction partners to include the misleading sequence in their broadcast and a recent controversy involving Disney's natural history film of chimpanzees show there are significant differences of approach to story-telling within this area of documentary-making. The NHU acknowledge this and is committed to establishing a Gold Standard for BBC content which all staff will understand and work to.

This document will be used within the NHU, BBC Earth and BBC Worldwide. It will also be made available to independent companies making natural history content for the BBC. The first draft of this document will be completed by October 2013²¹.

It will form part of an introductory pack for all new joiners to the NHU and will be permanently available on the NHU intranet site.²²

Conclusion:

The Natural History Unit is committed to ensuring all staff adheres to the highest possible standards of content making. Part of the challenge is for content makers to balance the respect for literal truth with the need to provide informing and entertaining narratives which engage audiences. In an increasingly competitive environment, the NHU's reputation for accuracy and authenticity is ever more important.

As the NHU seeks new and innovative approaches to telling the stories of natural history, it faces an on-going challenge in how it presents content to audiences. Previously, online programme pages and the "making of" films have gone a long way to explaining the programme-making process. But each new series will be required to examine that process afresh to ensure that audiences - and the media - understand the context of how a programme is constructed.

²¹ By the end of October 2013 a draft Gold Standard Code of Practice was produced and the NHU was consulting on it with independents and BBC producers with the aim of launching the finalised version in 2014.

²² A launch is planned in the New Year.

Appendix:

A correction to episode 1

Following the transmission of Great Bear Stakeout it has come to light that the first episode contained a scene which was misleading and so we have since taken steps to correct that scene. The scene in question is one where a mother bear Parsnip takes her two cubs Pushki and Wren into the ocean and Wren is presumed drowned; the bear guide is seen watching the events unfold and commenting on them.

We discovered only after transmission that at the time the main film crew captured the wildlife footage for this sequence the guide was elsewhere and that his contribution to the sequence was picked up at a later time. While the wildlife sequence is accurate and faithfully portrays the real events that the crew witnessed, the inclusion of the bear guide is misleading and having identified this, we have now re-edited the sequence to remove the bear guide.

All further BBC repeats will be of this updated version. As the Executive Producer, please accept my apologies for this mistake. The Natural History Unit is taking immediate steps to address the issues raised and to prevent similar issues occurring by providing additional training across the entire Unit.

Gavin Henderson