

# Editorial Standards Findings

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

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# Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

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<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

# Summaries of findings

## Decision of BBC News not to investigate a complaint regarding an item on BBC News online dated 17 June 2011

The appeal was made to the Trust following the decision of the Head of Editorial Compliance and Accountability for BBC News to close correspondence in relation to the substantive complaint which concerned a BBC News online report of a trial involving the complainant.

The Committee concluded:

- that the complainant's letter to a BBC producer of 27 March 2013, which was sent almost a year after a previous letter to the complainant from the Head of Editorial Compliance and Accountability on 21 June 2012 concerning similar matters, should be regarded not as a response to a stage 1a decision but as a fresh complaint about BBC content.
- that, as this was a first-party complaint about content currently published on a BBC website, the usual time limits for making a complaint did not apply; the appropriate test was therefore whether it is no longer practicable and cost-effective to investigate the complaint and adjudicate on it fairly.
- that, while at any stage of the complaints procedure, a complaint may not be investigated if it is trivial, misconceived, hypothetical, repetitious or otherwise vexatious, the fairness owed to the individual in this case outweighed the argument that the complaint might be considered repetitious.
- that, in the absence of a contemporaneous note of the entire proceedings, it would not be possible to determine precisely what was said in court and it was unlikely to be possible to determine whether due weight had been placed on those aspects of the evidence which the complainant alleged were omitted from the BBC report.
- that, even in the absence of a contemporaneous record, it should be practicable and cost-effective for the allegation that the BBC had wrongly reported as fact that the complainant had "created fake websites" to be investigated and adjudicated upon fairly, as this particular point related to a charge of harassment on which the complainant had been acquitted.
- that, even in the absence of a contemporaneous record, it should be practicable and cost-effective to investigate and adjudicate fairly the allegation that the BBC had wrongly reported that the man with whom the complainant's wife had been having an affair had been forced to leave his job because of the complainant's behaviour, as evidence had been produced in court that appeared to refute the allegation.
- that the Head of Editorial Compliance and Accountability for BBC News should review her decision not to proceed with these two issues raised by the complainant.

- that, contrary to the complainant's assertion, the BBC had not "led" the reporting of this trial.

The complaint was upheld in part.

For the finding in full see pages 7 to 16.

### **A History of Syria with Dan Snow, BBC Two, 11 March 2013**

The complainant said that it was not accurate for the presenter to state in the programme that "In 1967, Assad was Minister of Defence when Israel launched a series of strikes against Egypt, Jordan and Syria...". The complainant said that this inaccurately conveyed the message that Israel began the Six-Day War.

The Committee concluded:

- that the signposting made it clear that this was a programme concerned with Syria and the history which lies behind the present conflict rather than being primarily concerned with the history of Syria and Israel.
- that the events of the Six-Day War were so important in the history and politics of the Middle East, and remain so today, that, despite the brevity of the reference, more context was required.
- that the need to use clear and precise language was particularly acute in relation to content dealing with conflict in the Middle East, as the Committee has also stated in previous findings.
- that, while this was one line in an otherwise informative and nuanced programme, and particularly given the evidence that Jordan launched attacks on Israel before Israel's forces were engaged, it was not duly accurate to describe the events on 5 June 1967 in the way this programme did.

The complaint was upheld.

For the finding in full see pages 17 to 20.

### **Radio trail for *In a Prince's Footsteps*, BBC Radio 4, 6 May 2013**

The complaint was about a promotional trail broadcast on Radio 4 between 2 and 6 May 2013. The complainant said that a clip of someone saying they were unable to travel freely to Ramallah because of the security barrier was a controversial issue which required a balancing comment in order to achieve impartiality.

The Committee concluded:

- that the brief, promotional nature of the trail would have been understood by listeners and the nature of due impartiality that could be achieved in a brief trail designed to encourage listeners to listen to a programme was different from that expected from a story on the news or from a programme.

- that the security barrier/separation wall was a controversial subject but, while the trail gave a brief example of physical and political change, it was not about the security barrier/separation wall itself.
- that the statement ("Before the Wall we can go from here to Ramallah just five minutes. Now we cannot go to Jerusalem") was a matter grounded in fact rather than an opinion and it did not require another aspect of an argument or another perspective to be included within the trail in order to achieve due impartiality.

The complaint was not upheld.

For the finding in full see pages 21 to 23.

### ***Decision of BBC Complaints not to investigate a complaint about Sunday Politics, BBC One, 16 June 2013***

The complainant appealed to the Trust following the decision of BBC complaints not to investigate his complaint about an interview with Tommy Robinson of the English Defence League on *Sunday Politics*.

The Committee concluded:

- that the issue raised by the complainant was not trivial but that the complainant had offered no evidence to support his claims of bias.
- that the complainant had used gratuitously abusive or offensive language in making his complaints.
- that, given the limited extent of the complaint as set out by the complainant, he had received a comprehensive response at Stage 1a and that the responses of BBC Complaints had been appropriate and adequate.
- that there was no evidence on which to uphold an appeal against the decision not to respond to this complaint further at Stage 1 and therefore no breach of the BBC's guidelines on accountability.

The complaint was not upheld.

For the finding in full see pages 24 to 27.

### ***Party, BBC Radio 4, 10 October 2012***

The complaint was about a reference to giving Gypsies the run of a concentration camp which was made in an episode of the BBC Radio 4 comedy serial *Party*. The complainant said that the reference was highly offensive and trivialised the Roma/Gypsy/Traveller experience in the Holocaust. The complainant also said that the BBC's compliance and complaints processes are potentially discriminatory towards Gypsies.

The Committee concluded:

- that the basic premise of the show, to satirise the hypocrisy and naivety of a new political party, did not provide it with automatic editorial justification to reference a vulnerable minority group through a potentially offensive comment in the script.

- that it did not agree with the complainant's assertion that the Holocaust is inherently "too sensitive an area to joke about" on a BBC platform.
- that no subject should be outside the bounds of comedy, and audience research showed that most listeners would allow comedy some licence in pushing at acceptable boundaries. However, in this context, including the remark that giving Gypsies the run of a concentration camp was "not a bad idea" was ill-considered given the reality of the Holocaust experience for Gypsies and the prejudice that Gypsies have encountered in the past and which is still to some extent present today.
- that the joke in question was offensive because it trivialised the experience of a minority group during the Holocaust.
- that, in this instance, insufficient consideration had been given to the offence that this casual use of an exaggerated remark for comic effect could cause.
- that there was insufficient editorial justification for the remark, as required by the Editorial Guidelines.
- that it wished to apologise for the offence that this had caused.
- that there was evidence that care and attention had been given to this issue both in making the programme and in handling the complaint at all stages of the process.
- that the decisions made at stages 1 and 2 of the complaints procedure were reasoned and thoughtful, and, although it was the case that on this occasion the Committee disagreed with the BBC, this did not mean that the compliance and complaints processes were potentially discriminatory towards this particular ethnic minority group.

The complaint was upheld in part.

For the finding in full see pages 28 to 36.

### ***Today, BBC Radio 4, 28 March 2012***

This is a first party complaint from Sir David Barclay and Sir Frederick Barclay. The complaints said that a report in the *Today* programme on 28 March 2012 about the island of Sark was, amongst other things, inaccurate, partial and unfair towards them.

The Committee concluded:

- that the subject matter of the piece was controversial and that, therefore, the particular requirements of the controversial subjects in the Guidelines on Impartiality would apply to its consideration of this appeal.
- that, while the subject matter was controversial, it was not a "major matter" within the meaning of the Guidelines.
- that it is essential to the achievement of the BBC's public purposes that the BBC should be able to report freely on matters that are within the public interest, and the Committee did not wish it to be supposed that, by refusing to contribute,

individuals or organisations could in effect wield a veto on the BBC output in question.

- that, in such circumstances, it is incumbent on the BBC — especially in the case of controversial subjects such as this — to ensure that contributors' views are appropriately represented.
- that the significance of this particular story to *Today* listeners was within the programme makers' discretion and, as such, concerned the direction of the BBC's editorial and creative output, which was a matter for the BBC's Executive Board and not the Trust.
- that, as regards the contention that piece did not adequately set the story in context, the introduction to the *Today* piece had clearly set out the context to the story, had explained that there was a notable degree of division and dispute within Sark, and had signposted that the piece was going to look at certain aspects of that dispute. The item had covered the major facets of the background to the story and the introduction had provided sufficient contextual detail to meet the requirements of due accuracy. The BBC had not knowingly or materially misled its audience, and, in regard to the introduction, the enhanced requirements of due impartiality applicable to controversial subjects had been met.
- that, as regards the contention that the piece misstated the proportion of Sark owned by the complainants' family, the significant point the piece was trying to make — and the point that listeners would have taken from the comment — was that the complainants' family owned a substantial portion, but nevertheless a minority, of mainland Sark. In this context, the difference between one quarter (the Chief Pleas' Agriculture and Environment Committee's estimate of the complainants' family's landholding on mainland Sark) and one third (the reference made in the piece) was not so significant as to have materially affected the audience's appreciation of the facts, and was close enough to satisfy the requirements of due accuracy.
- that a reference to the Sark Newsletter as a "parish paper" was not a pejorative term and was referring to the relatively limited extent of the Newsletter's circulation, not to the import of its contents, and that due accuracy and due impartiality (to the enhanced standard applicable to controversial subjects) were met.
- that the script and an interview with a contributor gave the false impression that it was the election of candidates who had stood against those promoted by the complainants which led to an immediate loss of business for the contributor. Given the seriousness of the allegation and given that the contributor had said he could prove the allegation he had made, the BBC should have asked him to do so before broadcasting this allegation. On this point of appeal there had been a breach of the Editorial Guidelines on Accuracy. The Committee was satisfied that this point of the complainants' appeal did not raise any potential breach of the Guidelines on Impartiality.
- that, as regards the contention that the presenter of the piece had failed to challenge certain interviewees adequately, in the context of the piece and particularly in light of the complainants' lack of participation, there was a duty on the BBC to represent the complainants' views by referring to them in the item in order to achieve fairness, and that doing so would usually also enable the BBC to achieve impartiality. Noting that one of the issues underlying the dispute between

the complainants and their opponents on Sark was the complainants' objection to the vestigial feudal elements of Sark's constitution, the Committee was surprised contributors were not challenged by the Presenter on these issues, but it was satisfied that the complainants' views on this subject and their role in introducing democracy had been referred to in the commentary, and in this respect had been given due weight and sufficient prominence in the piece to meet the requirements of the Guidelines on Impartiality.

- that, while noting the argument that, looked at in isolation, certain interviews lacked balance, the question of whether or not the BBC achieves due impartiality and affords due weight to particular viewpoints should be looked at in the context of the piece as a whole. The piece as a whole satisfied the requirements of the Guidelines on Impartiality.
- that the Seigneur's comments about the views of the Queen were an expression of his personal opinion, and the piece was duly impartial (to the enhanced standard applicable to controversial subjects) in this regard.
- that a comment about the change that had occurred on Sark was a legitimate expression of the Presenter's professional judgement. The Presenter was not expressing a personal opinion about the merits of the dispute between the complainants and their opponents on Sark, but rather was commenting on the changes—in terms of people's willingness to express their opinion—that had resulted from that dispute. The piece was duly impartial (to the enhanced standard applicable to controversial subjects) in this regard.
- that, as regards the contention that the piece ignored independent reports that the perpetrators of bullying and intimidation were allied to the feudal establishment, the piece was an accurate reflection of what the presenter had found on Sark, and the omission of any reference to the contents of independent reports was not a failure to meet the requirements of due impartiality (to the enhanced standard applicable to controversial subjects) in this regard.
- that, considering the impartiality of the piece as a whole, and the contention that the piece was one-sided and neglected issues of substance on Sark, the Guidelines on Impartiality do not prevent particular aspects of an issue from being explored, or require that equal weight be given to all views in the case of controversial subjects, and this piece had made it clear that a range of views exists on this issue and afforded them due weight.
- that the piece represented and gave due weight to the complainants' views to the extent that was possible in circumstances where the complainants had declined to participate.
- that, accordingly, the reporting of the complainants' views was fair and did not breach the requirements of the Guidelines on Fairness.
- that it is not a requirement of the Guidelines that contributors should always be identified and, in this case, the anonymous comments were *vox pop* criticisms, to which the complainants could have responded without knowing the identity of the persons making them. The piece did not breach the Guidelines on Fairness in this regard.
- that no unfairness was caused to the complainants in the way the piece had told the story of the medical evacuation of the Seigneur's wife and its aftermath, and

that the piece was duly impartial (to the enhanced standard applicable to controversial subjects) and fair in this regard.

- that the presenter had taken sufficient steps to make the complainants aware of the allegations against them, and in doing so had discharged her obligation under the Guidelines to give them a fair opportunity to respond to the allegations.
- that the piece had made the complainants' position clear in relation to their objections to the feudal elements of Sark's constitution and there was no obligation to repeat these elements as part of the complainants' response to the allegations referred to at the end of the piece.
- that the primary focus of the piece was on the allegations of bullying and intimidatory conduct on the part of the complainants and the Newsletter, and the Guidelines on Politics, Public Policy and Polls were not engaged.
- that, even if these Guidelines had been engaged, the breach of the Guidelines on Accuracy which had been found by the Committee did not relate in substance to a matter of politics and public policy.
- that the Guideline which states "we must not express an opinion on current affairs or matters of public policy other than broadcasting or the provision of online services" applies to the BBC corporately rather than to individuals who work for the BBC, and this Guideline was not engaged.
- that this was a factual report for a flagship news programme, not a campaigning or personal view piece. Accordingly, there was no breach of the Guideline which states that "we must not campaign, or allow ourselves to be used to campaign".
- that the interviews with the Seigneur and the Chair of the Chief Pleas had been considered against the Guidelines on Impartiality and the complaints about these interviews did not separately engage the Guidelines on Politics, Public Policy and Polls.

The complaint was upheld in part with regard to accuracy.

For the finding in full see pages 40 to 36.

## **Decision of BBC News not to investigate a complaint regarding an item on BBC News online dated 17 June 2011**

### **1. Background**

This is an appeal by a first-party complainant who challenged the decision of the Head of Editorial Compliance and Accountability for BBC News not to consider allegations that BBC News' coverage of the verdict in his trial at Westminster Magistrates Court in June 2011 was inaccurate.

On 17 June 2011 after a three-day trial, the complainant was acquitted of two charges of harassment by a judge at Westminster Magistrates Court.

The charges related to an internet campaign the complainant was alleged to have conducted to exact revenge on his wife's boss after the complainant discovered the two of them had been having an affair.

The case was widely reported across the media, including on the BBC.

In March 2013 the complainant wrote to the BBC alleging that a television news report by a BBC reporter which had been broadcast shortly after the verdict in June 2011 contained a number of inaccuracies and was misleading. The report had been broadcast on BBC TV news bulletins and also published on the BBC News website, where it was still accessible.

The Head of Editorial Compliance and Accountability for BBC News, who had investigated a similar complaint from the same complainant a year earlier, stated that there appeared to be no valid reason why the complaint had not been made nearer to the time of broadcast and that it would represent a disproportionate use of resources to investigate a complaint into an item broadcast 21 months earlier.

### **2. The complaint**

#### **Stages 1 and 2**

The complainant initially wrote to the Chairman of the BBC Trust on 14 May 2012, almost a year after the broadcast of the item which was the subject of the complaint. He outlined what he said were the facts of the case and detailed where he considered the BBC had been inaccurate in its reporting.

He said the BBC News report was "wholly inaccurate and misleading" in a number of respects and had caused him "significant damage". These were his main points:

- no evidence had been produced in court to support the prosecution's claim that the complainant had used social media to discredit his wife's boss
- it had been admitted in court that his wife's boss had resigned from his job in February 2010 because he was being investigated for making false expense claims
- the court had heard that the complainant's websites went live some six weeks later and "were only ever used to publicise and campaign about the shameful use of public resources to prosecute me"

- the reporter had not told the real story of “an astonishing level of police corruption in Britain” but had instead focussed on the salacious and sensationalist angle of the ‘sexting’ between his wife and her boss, alleging that the complainant wanted to exact revenge on him.

The Trust Unit replied on behalf of the Chairman on 8 June 2012 advising the complainant of the correct route to lodge his complaint. He was notified that his letter had therefore been forwarded to BBC News.

The Head of Editorial Compliance and Accountability for BBC News responded on 21 June 2012. She said she understood his complaint to be:

“...that [the BBC] report about your case fell short because we missed the story in just giving a straight account of the court case rather than the reasons you allege the police had for bringing it. But please correct me if I am wrong in my understanding.”

The Head of Editorial Compliance and Accountability said that the BBC stood by the accuracy of the report, that it was consistent with what other media reported at the time and that no-one else had taken the angle suggested by the complainant. The reporter, she said, had reported what he had heard in court. The response noted that it was surprising that if the complainant felt the report was inaccurate and had failed to tell an important part of the story that he had not complained at the time of broadcast.

The complainant was supplied with an online link to the BBC’s complaints procedure.

Nine months later, on 27 March 2013, the complainant wrote to a producer in the Home Affairs Unit making a series of allegations about the contents of the BBC report. He repeated the allegations he had made a year previously but with additional detail and a slight change in focus.

The complainant stated that BBC News had broken the story of his acquittal live as he stood outside court after his victory and that every other news medium had repeated the BBC’s false account.

The letter from the complainant asked for a meeting the following week to discuss a series of questions the complainant had about the report and to give the producer the opportunity “to provide evidence to back up the report”.

The complainant raised the following main allegations in relation to the report, that:

- it falsely claimed that the complainant had used Twitter, Facebook and blogs to publicise the affair between his wife and her boss, even though, according to the complainant, the police had admitted in court that they had no evidence of this
- it falsely claimed that the complainant’s activities has caused his wife’s boss to resign, whereas, the complainant contended, he had resigned six months before the complainant had put up any kind of website and lawyers representing the boss’s company had confirmed in a letter to the court that the boss had resigned during a disciplinary investigation into the alleged misuse of company expenses
- the BBC had failed to report that under cross-examination one of the investigating officers had been questioned about why he said he had found large quantities of

crack cocaine at the complainant's home but had forgotten to seize it, log it or raise it with anyone else

- the BBC had failed to report that the complainant's barrister had told the court that police officers had used counterterrorism officers and had spent an estimated £1million on the case.

The complainant received a response on 28 March 2013, which included a response from the Head of Editorial Compliance and Accountability:

"The BBC Trust's complaints framework stipulates that complaints must be made within 30 days of broadcast. However, although [the complainant] contacted the BBC a year after the report was broadcast, I decided to overlook the delay because it was a first party complaint. If [the complainant] had made this further complaint about the inaccuracy of the report last June I would have been willing to consider it.

"I am not prepared to do so now because I can see no valid reason why the complaint was not made before. It would represent a disproportionate use of resources for us to investigate a complaint into an item broadcast 21 months ago because, of course, it is much more time consuming to look into matters so long ago. If [the complainant] wishes to challenge my decision, he can contact the BBC Trust, which is the final arbiter on complaints handling issues, to see if they will take it on appeal."

### **Appeal to the Trust**

The complainant wrote by letter and email to the BBC Trust, on 28 March and 3 April 2013 respectively, asking the Trust to investigate his complaint.

He said the delay in lodging his complaint was because his company had sustained large losses and he had been focussing on saving his business.

The complainant enclosed a letter from his accountant in support of his claims.

The complainant also said

"I have been advised that the excuse the BBC have provided that too much time has passed to now investigate is simply not true as the Jimmy Saville [*sic*] case proves."

The complainant identified four areas of the BBC News report as incorrect:

- that the complainant went online to discredit his wife's boss
- that the complainant created fake websites to reveal his wife's boss's behaviour
- that the report had showed the complainant's personal Facebook and Twitter accounts
- that his wife's boss had been forced to resign from his company as a result of the complainant's behaviour

The complainant said the report was "simply untrue", citing evidence he said was produced in court. He stated that a counterterrorism officer had testified in court that the complainant had "sent 1000's of tweets and blogged extensively about" his wife's employer, but had then admitted under cross-examination by the complainant's QC that neither she nor her team had ever personally seen "one Tweet, Facebook entry, or blog entry".

The complainant also submitted that the BBC had reported that the complainant had used social media to post personal information about his wife's employer, thereby harassing him into resigning, and noted that the report had displayed his personal Twitter and Facebook accounts. The complainant argued that the report had made no mention of "police corruption" and had ignored how police officers had spent "over £1m" in bringing his case to trial.

He said the BBC "ignored all the evidence that the defence presented in court and reported the hearsay evidence of the prosecution as 'fact'..."

The complainant said customers who had booked him to do work for them had cancelled, citing concerns about the BBC report. He said that his personal reputation was that of

"a member of the public who placed vast amounts of personal information on the web about another individual as a personal vendetta."

He concluded his letter of appeal by asking for an on air apology and damages. He also asked to discuss his complaint.

### **3. Scope of the appeal**

The Committee reviewed the decision by the Head of Compliance and Accountability not to consider this second complaint.

#### **(a) Delay**

The Committee noted that, when complaints about BBC content are first made to the BBC at stage 1a of the complaints procedure, they must comply with the following clauses from the Editorial Complaints and Appeals Procedures, as applicable:<sup>4</sup>

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

2.2 If you make a first party complaint about content currently published on a BBC website there is no time limit, but the BBC may decline to consider it if it is no longer practicable and cost-effective to investigate it and adjudicate upon it fairly.

**2.3 Otherwise if you make a complaint about content currently published on a BBC website you should make it within 30 working days of the date when it first appeared online.** The BBC may consider complaints received beyond that deadline but only if it is satisfied that there were good reasons for the delay, that the matter complained about was serious, as judged against the BBC's editorial standards, and that it is practicable and cost-effective to investigate it and adjudicate upon it fairly.

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<sup>4</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our\\_work/complaints\\_framework/2012/editorial\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/editorial_complaints.pdf)

The Committee further noted that complainants who are dissatisfied with the BBC's response at stage 1a of the procedure must comply with the following clauses of the Editorial Complaints and Appeals Procedure:

3.1 If you are dissatisfied with the BBC Executive's reply at Stage 1a, please contact BBC Audience Services, as set out in paragraph 2.1 above, **within 20 working days** of the date on which you received the response at Stage 1a. If you write after that time, please explain why your complaint is late. Exceptionally, the Executive may still decide to consider your complaint, if it decides there was a good reason for the delay. If the Executive decides not to consider your complaint because it is late, you can ask the Trust to review that decision ...

3.2 In your complaint, please include the following:

- a clear and concise statement of the reasons why you are dissatisfied;
- any reference number provided and the date of the Stage 1a reply you received;
- the points that you raised at Stage 1a that you want the BBC to reconsider. The BBC will not consider new points unless, exceptionally, it is necessary to do so in the interests of fairness.

The Committee noted the Head of Editorial Compliance and Accountability's comment when she was invited to explain why she had chosen not to investigate this second complaint:

"It seemed to me that we were open to his (first) complaint even nearly a year after the initial broadcast and that normally you should follow up your complaint at 1b within 20 working days. In fact, what he did in April this year was make the same complaint in a fresh way, by directing it at the producer, and making clearer the complaint was about inaccuracy, a point he had failed to clarify after my stage 1a response. So to sum up, I didn't think it reasonable to start up the same complaint again."

However, the Committee noted that, while the complainant's letter of 27 March 2013 repeated a number of points he had made to the BBC in his initial complaint almost a year earlier, his letter contained greater detail, had a slightly different focus, did not reference the Head of Editorial Compliance and Accountability's response of 21 June 2012 and was directed at another individual, namely a BBC producer. In addition, the Committee noted that, when the complainant's letter of 27 March 2013 was passed to the Head of Editorial Compliance and Accountability, she had stated that "complaints must be made within 30 days of broadcast" and had not purported to invoke the 20-working-day time limit set out in clause 3.1 of the Editorial Complaints and Appeals Procedure.

Accordingly, the Committee determined that the fairness to the complainant required that his letter of 27 March 2013 should be regarded not as a response to a stage 1a decision but as a fresh complaint about BBC content. The Committee therefore determined that clauses 3.1 and 3.2 of the Editorial Complaints and Appeals Procedure did not apply to the present complaint.

The Committee then considered the applicability of clauses 2.1-2.3 of the Editorial Complaints and Appeals Procedure (as set out above) to the complainant's complaint.

The Committee noted that, as this was a first-party complaint and the content currently appeared on a BBC website, clause 2.1 was not a valid ground on which the BBC could refuse to consider the complaint.

The Committee agreed that the relevant clause to apply in determining this appeal was 2.2 above and the consideration was whether "it is no longer practicable and cost-effective to investigate it and adjudicate upon it fairly".

(b) Repetition

In addition, the Committee also noted that, at any stage of the complaints procedure, a complaint may not be investigated if it:

1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.<sup>5</sup>

The Committee was satisfied that there were no other applicable grounds on which the Head of Editorial Compliance and Accountability could have declined to investigate the complainant's latest complaint.

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

The Committee considered first whether the complaint could be considered "repetitious" within the meaning of the provisions outlined in 1.7 of the Editorial Complaints and Appeals Procedures, as set out above. The Committee noted that this appeal was very similar to the complaint about the same content made almost a year earlier and not upheld by the Head of Compliance and Accountability for BBC News. The Committee noted that no appeal of that decision had been submitted to the Trust by the complainant at that time.

The Committee noted that at this stage it was a matter for the Trust whether to decline to examine an appeal on the ground that it is repetitious. The Committee accepted that the issues raised in the complainant's first complaint were very similar, although not identical, to those made on the present occasion. However, the Committee considered that, as the content in question remained available online and that the individual named in the content was also the complainant, it was reasonable as a matter of fairness to address the complainant's concerns so long as it would be practicable and cost-effective to investigate the complaint and adjudicate upon it fairly. The Committee emphasised that on this occasion the fairness owed to the individual outweighed the argument that the complaint might be considered repetitious.

The Committee then considered the question of whether it would be practicable and cost-effective to investigate the appeal and adjudicate upon it fairly.

The Committee noted that it was not required to consider the detail of the issues raised but instead to consider whether the complaint is still capable of being investigated and adjudicated upon fairly. The Committee noted the content which the complainant alleged was inaccurate, as set out above.

The Committee noted there is no contemporaneous verbatim record taken of proceedings in magistrates' courts in England and Wales and that therefore there was no official transcript of what was said in court regarding this case.

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<sup>5</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our\\_work/complaints\\_framework/2012/editorial\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/editorial_complaints.pdf)

The Committee was advised that an incomplete, unofficial record existed of some aspects of some of the testimony heard in court. The Committee noted that handwritten notes taken at the time by a QC in the complainant's defence team had been examined as part of the investigation for this appeal.

The Committee noted a summary of the QC's notes and noted that there appeared to be a fairly detailed record of the verdict and the judge's comments, but that the evidence of some witnesses was not recorded at all.

In respect of the issues raised in this complaint, the Committee noted that the QC's notes did not include any record of the evidence given by the detective who featured in the complainant's complaint or of an expert witness for the defence who gave evidence about the complainant's Twitter account and whom the complainant had referred to in his complaint. The Committee also noted that while the QC's notes appeared to be reasonably comprehensive in relation to the key prosecution witnesses, they were less full in relation to the defence case (as would be expected given the QC's role as a member of the defence team).

While the Committee accepted that the notes would be a valuable resource in any investigation, it concluded their incompleteness meant they would not enable the Committee to determine whether the BBC report was a fair and accurate account of the trial and the verdict. In particular, the notes could not be relied upon to aid in a determination of the complainant's key concern, that the BBC "ignored all the evidence that the defence presented in court and reported the hearsay evidence of the prosecution as fact".

The Committee further noted that the reporter had been assigned to the story on the day of the verdict and that he had supplemented what he heard in court with copy provided by the Press Association (PA) in order to compile his report. The Committee noted the complainant's assertion that it was up to any journalist writing or reporting to ensure that he was quoting other sources for his information. However, the Committee noted that it was normal practice across the national news media for reporters who could not themselves attend court throughout a trial to rely heavily upon established court reporting sources, notably PA.

The Committee noted that PA is considered a reliable source of UK domestic news content and the BBC would not normally require a second source before incorporating material from PA court reports into its editorial content.

The Committee noted that PA had provided for this appeal a complete set of the court reports it published to its subscribers, comprising nine substantive stories over the three days of the trial, most of which were written by a Press Association Crime Correspondent.

The Committee then considered whether it would be practicable and cost-effective to investigate each element of the complainant's complaint.

In relation to the claim by the complainant in his letter of appeal that he had "never reported, tweeted and/or blogged about the affair or [his wife's boss]", the Committee noted the following as relevant in determining whether this aspect of the complaint was capable of consideration:

- The claim that the complainant had used social media in this way had appeared in substantially similar form in the end-of-trial reports of all the media seen as part of the investigation into this complaint.

- There was reference in the QC's notes to the complainant's evidence and his statement that he did not believe he was harassing his wife's boss. But the QC's notes did not mention Twitter; they noted the complainant referring to "everything I put into the public domain".
- The complainant's lead defence barrister was quoted in various other media as making reference to the complainant's websites and use of the Internet, describing the case as one of freedom of speech.
- The BBC report included an extract from a post-verdict interview with the complainant's QC, in which he referred to his client telling the truth about an "adulterer".

The Committee concluded in relation to this point that, while there was substantial evidence that the internet was used in some form by the complainant at some point following the discovery that his wife was having an affair with her boss, in the absence of a contemporaneous note of the entire proceedings it would not be possible to determine precisely what was said in court. It was unlikely to be possible to determine whether due weight had been placed on those aspects of the evidence which the complainant alleged were omitted from the BBC report. The Committee therefore concluded that this point was not capable of being investigated and adjudicated upon fairly.

The Committee noted the complainant's contention that the BBC had missed the real story, that the police had spent more than £1m investigating him and that the defence had produced emails in court showing contact between the police and a private security company.

The Committee noted that the main angle taken in the BBC news item – that the trial was about freedom of speech on the internet – was consistent with that taken across the media and highlighted by the complainant's barrister in his closing speech. The Committee further noted that, in the absence of a full contemporaneous note of all of the points made by the defence in court in relation to the police's handling of the case, it would not be possible to consider whether the BBC's reporting of the trial gave due weight to that aspect of the defence's case.

Next, the Committee considered the allegation that the BBC had wrongly reported as fact that the complainant had "created fake websites". The Committee noted the following as relevant in determining whether this aspect of the complaint was capable of consideration:

- According to the QC's case notes a witness for the prosecution had told the court that a website had been registered in the complainant's name; the same prosecution witness had told the court there was no evidence the complainant had used a proxy server to disguise his identity.
- The complainant had been cleared on a charge of harassment in relation to three other websites with graphic details about the affair because the judge (again according to the QC's notes) had said there was no evidence of who had published those other websites.
- The end-of-trial report in the *Daily Telegraph* had carried similar information, offering corroboration that the QC's case notes were an accurate record of the judge's verdict.

As this appeared to relate to a charge of harassment on which the complainant had been acquitted, the Committee considered that it should be practicable and cost-effective, even in the absence of a contemporaneous record, for the point to be investigated and adjudicated upon fairly.

The Committee then considered the allegation that the BBC had wrongly reported that the man with whom the complainant's wife had been having an affair had been forced to leave his job because of the complainant's behaviour. The Committee noted the following as relevant in determining whether this aspect of the complaint was capable of consideration:

- A formal admission in writing to the court had been made by lawyers representing the boss's former employer. It stated that when the boss resigned he was facing disciplinary proceedings over allegations of misuse of office expenses.
- While this admission did not appear to have been reflected in any of the PA copy, it had been reported in the *Daily Telegraph*.
- PA had referred to the allegation that the complainant had forced his wife's boss to resign in their pre-trial story.
- The QC's notes stated that the boss had said in his testimony that the complainant's behaviour had caused him a great deal of distress and "I had to leave a job I love."

The Committee noted that while the prosecution had sought to demonstrate that the complainant had forced his wife's boss out of his job, evidence had been subsequently produced in court that appeared to refute the allegation. The Committee considered that even in the absence of a contemporaneous record it should be practicable and cost-effective to investigate and adjudicate upon this point fairly.

Finally the Committee noted that the complainant had asserted that the BBC had led the reporting and the rest of the media had followed.

The Committee did not agree that the BBC had "led" the reporting. The Committee noted a timeline, which had been compiled for this appeal, of how the story had been covered across the media. It demonstrated the following:

- PA had reported the verdict at 1701 in a two-sentence summary.
- The first mention on the BBC News Channel had been seven minutes later at 1708 in a short "breaking news" snap and foot of the screen ticker announcing the verdict.
- Also at 1708, PA had published their first full account of the trial and the verdict; this story included most of the content which subsequently featured in the BBC report that the complainant alleged was inaccurate.
- The first broadcast of the report which was the subject of this complaint had been on the BBC News at Six at 1814.
- The *Times's* story was timestamped 1714; the *Daily Telegraph's* story was timestamped 1812; it was unclear when the *Daily Mails* story had first been

uploaded; the *Guardian* was the only newspaper whose report had clearly postdated the BBC's first broadcast. It was timestamped 1927.

The Committee therefore decided that the Head of Editorial Compliance and Accountability for BBC News should review her decision not to proceed with two of the issues raised by the complainant. They related to the contention by the complainant that he did not set up fake websites and also his contention that his wife's boss had left his job because he was facing disciplinary charges for allegations that he misused his office expenses.

**Finding: Upheld in part.**

# A History of Syria with Dan Snow, BBC Two, 11 March 2013

## 1. Background

This was a one-hour programme on Syria's history which covered the history of Syria from ancient times until the present day and had a considerable portion devoted to the Assad years. It mentioned but did not dwell on Syria's relationship with neighbouring Israel. The programme was presented by Dan Snow.

## 2. The complaint

The complainant said the programme was not accurate when it said

"In 1967, Assad was Minister of Defence when Israel launched a series of strikes against Egypt, Jordan and Syria..."

which, he said, implied that Israel started the 1967 war.

### Stages 1 & 2

The complainant wrote to the BBC saying it was unsurprising that Israel was vilified when a BBC presenter could imply that the Jewish state started the 1967 War. He outlined some of the events leading up to the outbreak of war in June 1967. The BBC, which did not uphold the complaint, responded saying that there had been no implication as to who had been the aggressor, merely that the attacks were launched by Israel and that this was accurate. In later correspondence the BBC said that, in the context of a film covering such a large swathe of history – it was not possible to go into the kind of detail that the complainant required.

The complainant wrote to the ECU proposing an alternative sentence which he said would have been more accurate. The ECU did not uphold the complaint as it found that the language used in the broadcast was not materially inaccurate or in breach of the Editorial Guidelines. The finding said there was no requirement to provide such background detail and that the viewers would not have expected a detailed or nuanced explanation of the causes of the 1967 war.

### Appeal to the Trust

The complainant wrote to the BBC Trust and said he thought the sentence in the programme which said:

"In 1967 Assad was Minister of Defence when Israel launched a series of strikes against Egypt, Jordan and Syria"

conveyed the message that Israel began the Six-Day War. He added that he would like the Trust to adjudicate on whether his preferred sentence was more accurate:

"In 1967, Assad was Minister of Defence when Syria, Egypt and Jordan were at war with Israel"

The complainant objected to the statements in the earlier replies to his complaint which said Israel launched the first attacks of the war. He outlined a chronology of events in the run-up to the war, including Israeli and Syrian air engagement, the deployment of Egyptian troops in Sinai and the exclusion by President Nasser of UN troops from Sinai. He added that the closure of the Straits of Tiran to Israeli shipping was a "*casus belli*" (an act or event that provokes or is used to justify war) and a "gross breach of international law". He went on to mention the establishment of a joint military command by Jordan and Egypt, the landing of Egyptian and Iraqi troops in Jordan, an Egyptian mortar attack into Israel on 2 June, Egyptian aerial incursions into Israeli territory and the Radio Cairo declaration: "The Arab people is firmly resolved to wipe Israel off the map." The complainant emphasised that Israel acted in self-defence. He added:

"Resolution 242, passed by the UN Security Council following the war, gave implicit recognition to Israeli territorial conquests and affirmed Israel's right to safe and secure boundaries."

and concluded:

"Jordan attacked Israel first."

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

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

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

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

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

The Committee noted the alternative line offered by the complainant but noted that its role was to judge the broadcast against applicable editorial standards, as opposed to what the complainant regarded as more accurate. The Committee then considered whether the sentence

"In 1967, Assad was Minister of Defence when Israel launched a series of strikes against Egypt, Jordan and Syria..."

was duly accurate or breached the Accuracy guidelines. The Committee noted that this was an hour-long documentary about the history of Syria.

Trustees noted that the complained-about material was one line of commentary in a substantial programme on a matter of current and historical interest.

The Committee noted the points made by the complainant on appeal and noted that the Executive Producer, Northern Ireland (where the programme was made) had said:

"I think the ECU got it about right in its earlier response...

In essence, the prime focus of our film, as suggested in the title, *A History of Syria with Dan Snow*, was Syria itself.

So for me it is understandable that in terms of setting individual script lines within a broader context it was the Syrian one that we had foremost in mind.

The 'offending' line – about Israel launching a series of airstrikes in 1967 – is not inaccurate. It is bald, admittedly, but given the Syrian context of the film, I don't think it is reasonable to think that we should have created the space to place the line within a broader Israeli context. The focus was Syria (and in particular Assad himself) and to have spent more time on the background/context from an Israeli perspective would I think have been distracting or, worse still, confusing."

And the programme's Executive Producer added:

"I think that the complainant fails to understand what it is possible to achieve on television if he thinks that during an explanation of the already complex history of Syria we have to mention 'context about massed troops on Israel's borders [and] of the closure of the Straits of Tiran – declared by Israel in advance to be a *casus belli*' in order to achieve due accuracy. It is wrong to say that the line implies that Israel was somehow not justified in launching such strikes. It is neutral, true and accurate."

The Committee took into account the context as well as the subject and nature of the content: that this was a programme about the history of Syria and specifically, in this section, the rise of Hafez Assad to national leader. The section about Israel and the Six-Day War was short and therefore the Committee agreed that the audience would not have expected an extended explanation.

In addition it noted the introduction by BBC presentation to this programme:

"Now on BBC Two and the BBC HD Channel Dan Snow reveals the turbulent history of a country ravished by civil war."

The Committee also noted the introduction within the programme by Dan Snow:

"Syria has been at the heart of human civilisation for thousands of years. The violence now raging across the country often seems random and inexplicable – but it isn't. If you want to understand what is happening in Syria and this region at the moment there is only one place to start and that's in the past. Those fighting for control of Syria nurse grievances stretching back centuries...I have travelled to Syria to unravel a story that stretches back hundreds of years – a story of religion, treachery, empire and war."

The Committee agreed that the signposting made it clear that this was a programme concerned with Syria and the history which lies behind the present conflict rather than being primarily concerned with the history of Syria and Israel.

The Committee discussed whether the brevity and lack of qualification of the sentence in question did make it less than duly accurate.

The Committee noted that there was indeed, as the complainant says, considerable build-up to the events of the Six-Day War in assorted skirmishes, the aggressive rhetoric, the eviction of the UN peace-keepers and the closing of the Straits of Tiran. The Committee then considered whether it was duly accurate to join "Egypt, Jordan and Syria" together with no explanation or differentiation. The Committee noted that the first air strikes were on Egypt. The Committee then noted two different descriptions of the involvement of Jordan in the war. The Committee noted that according to Michael Oren (a historian now serving as Israel's Ambassador in Washington) in "Six Days of War: June 1967 and the Making of the Modern Middle East" Israel had not wanted to open a second front against Jordan, or at least, not so soon. But, at 1000 on 5 June 1967, Jordan began shelling Israel and flying military sorties over Netanya, killing one and injuring others:

"One result of Jordan's offensive was to draw both the Syrian and Iraqi air forces into the war".

The Committee also noted that Jeremy Bowen said on p 137 of his "Six Days: How the 1967 War Shaped the Middle East":

"The Jordanians gave up waiting for their unreliable allies. Sixteen RCAF Hawker Hunters took off on a mission to bomb Israeli bases including the one at Netanya, a town on the coast north of Tel Aviv. They came back half an hour later claiming they had destroyed four enemy planes on the ground without loss. But they were the only aircraft they saw. The Israeli air force was still concentrating on the Egyptians. But the planners in Tel Aviv were about to switch their attention elsewhere. Hod gave the order to go to the next phase of Operation Focus, the attack on Syria and Jordan."

The Committee considered whether the statement in the programme that: "Israel launched a series of strikes against Egypt, Jordan and Syria..." which the complainant alleged carries the implication that Israel started the Six-Day War, was

- well sourced
- based on sound evidence
- thoroughly tested
- presented in clear, precise language.

The Committee decided that the events of the Six-Day War were so important in the history and politics of the Middle East, and remain so today, that, despite the brevity of the reference, more context was required and the need to use clear and precise language was particularly acute in relation to content dealing with conflict in the Middle East, as the Committee has also stated in previous findings. The Committee appreciated that this was one line in an otherwise informative and nuanced programme, but concluded that, particularly given the evidence that Jordan launched attacks on Israel before Israel's forces were engaged, it was not duly accurate to describe the events on 5 June 1967 in the way this programme did. The Committee decided the programme breached the Editorial Guidelines on Accuracy.

**Finding: Upheld.**

## Radio trail for *In a Prince's Footsteps*, BBC Radio 4, 6 May 2013

### 1. Background

BBC Radio 4 broadcast a series of ten fifteen-minute programmes across a two-week period from 6 to 17 May 2013 on weekdays at 1.45pm. The series, *In a Prince's Footsteps*, was presented by John McCarthy who followed the journey made in 1862 by the then Prince of Wales and the photographer Francis Bedford.

To publicise the series a forty-second promotional trail was made and broadcast up to 15 times on BBC Radio 4 between 2 and 6 May 2013. The trail said:

John McCarthy: I'm standing on the Mount of Olives taking in one of the most remarkable views probably in the world of the Old City of Jerusalem.

Announcer: John McCarthy takes an evocative journey across the Middle East.

John McCarthy: We're surrounded by increasing numbers of people... oh and there's even a camel... with a woman looking terrified sitting on top of it...

Announcer: Considering the vast changes to the physical and political landscape since the Prince of Wales made the trip in 1862.

Unidentified contributor: Before the Wall we can go from here to Ramallah just five minutes. Now we cannot go to Jerusalem.

Announcer: *In a Prince's Footsteps*. Weekdays at 1.45 on BBC Radio 4.

### 2. The complaint

#### Stages 1 & 2

The complainant contacted the BBC to complain that:

"The trail included comments by presumably an Arab resident of Judea or Samaria about not being able to travel freely because of the security barrier. This is a controversial issue, and the barrier cannot be fairly discussed without including reference to the terrorism which it was designed to prevent.

The nature and short duration of the trail meant there was no possibility of any balancing comment being included.

The result has been the frequent repeating of a piece of Palestinian anti-Israel propaganda on many occasions on Radio 4."

The complainant received a reply from BBC Complaints that:

"The trail sets up the issue that is under consideration in the programme – but does not actually explore it. In this case, it sets up a programme that considers the barrier and includes exactly the perspective that you raise.

“While the barrier itself, and as considered in the programme, may be a controversial subject with the need for different context and perspectives – the statement that the local resident makes in the trail (that he can no longer go to Ramallah in a few minutes) is a matter of established fact and not contested so does not require any balancing statement.”

The complaint was escalated to the Editorial Complaints Unit (ECU), with the complainant adding:

“The program itself did provide more balance on the underlying issues than I had expected, after ... hearing the trail. My objection concerns the subliminal message (‘Apartheid Israel’) given to the millions of listeners who would have heard the trail, but not heard the episode on Samaria. I believe that the creator of the trail was well aware of what they were doing by featuring virtually the only politically controversial statement in the program.”

The ECU concluded that the trail had not breached the BBC’s guidelines on due impartiality. The ECU stated that the purpose of the trail was to give a flavour of a programme and that, whilst trails had to achieve due impartiality, the requirements of due impartiality were less rigorous than those which applied to the programme which they promoted, given their brief nature and the consequent expectation of the audience.

The ECU also stated that, since the construction of the separation barrier, it was a fact that people were unable to travel as they once did and the comment accurately reflected the physical change to the landscape.

### **Appeal to the Trust**

The complainant appealed to the Trust on 27 June 2013, claiming that the BBC’s guidelines on impartiality had been breached.

The complainant raised the following points in relation to the impartiality of the trail:

Point (A) The clip of someone saying they were unable to travel freely because of the security barrier was a controversial issue which required a balancing “reference to the terrorism which it was designed to prevent”.

Point (B) The complainant accepted that “the wall obstructs movement” but did not accept that this mitigated the need for balancing comment.

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

The sections of the BBC Editorial Guidelines relating to Impartiality are applicable to this case. The full guidelines are at [www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines).

### **4. The Committee’s decision**

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

In reaching its decision the Committee took full account of all of the available evidence, including (but not limited to) the Editorial Adviser’s report, and the subsequent submissions from BBC Radio 4, the ECU and the complainant.

The Committee noted that the Agreement accompanying the BBC Charter requires the BBC to achieve due impartiality which means that the impartiality must be adequate and appropriate to the output and that this obligation applied to all BBC output.

The Committee noted that the recorded trail was scheduled to be transmitted 15 times between 2 and 6 May 2013. The Committee noted the complainant's argument that many more listeners would have heard the trail than the actual programme.

The Committee also noted the comments of BBC Radio 4 that the trail format would have been well understood by the audience as simply providing a taste of a forthcoming programme; and the similar comments of the ECU about the expectations of the Radio 4 audience.

The Committee concluded that the brief, promotional nature of the trail would have been understood by the listener.

The Committee agreed that the nature of due impartiality that could be achieved in a brief trail designed to encourage listeners to listen to a programme was different from that expected from a story on the news or from a programme.

The Committee noted the complainant's allegation that the security barrier/separation wall was a controversial subject which required a balancing comment, as the trail left an "implied message" in the minds of listeners that the State of Israel was unjustifiably denying access to a route which was available in the 19<sup>th</sup> century.

The Committee agreed that the security barrier/separation wall was a controversial subject. They noted, however, that the trail was specifically about conveying briefly the subject of the programme which would "Consider[ing] the vast changes to the physical and political landscape since the Prince of Wales made the trip in 1862".

The trail gave a brief example of physical and political change but it was not about the security barrier/separation wall itself.

The Committee considered the statement "Before the Wall we can go from here to Ramallah just five minutes. Now we cannot go to Jerusalem" was a matter grounded in fact rather than an opinion. It did not require another aspect of an argument or another perspective to be included within the trail in order to achieve due impartiality.

The Committee concluded that there had not been a breach of the guidelines on impartiality.

**Finding: Not upheld.**

# Decision of BBC Complaints not to investigate a complaint about Sunday Politics, BBC One, 16 June 2013

## 1. Background

The BBC's Editorial Complaints and Appeals Procedure<sup>6</sup> states that:

- 1.7 At all stages of this Procedure, your complaint may not be investigated if it:
  - 1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or
  - 1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.
- 1.8 Everyone involved in making or handling a complaint will treat each other with respect, and will not use gratuitously abusive or offensive language, whether in their complaints or otherwise. If a complaint contains such language, the BBC may invite you to reword your complaint before investigating it. If you do not reword your complaint, the BBC may not investigate it.

## 2. The complaint

### Stage 1 complaint

The complainant contacted the BBC to complain about Andrew Neil's interview with Tommy Robinson of the English Defence League on *Sunday Politics*, 16 June 2013. The complainant stated:

"It's about time the BBC got unbiased commentators, his interview with tommy robinson was disgusting and full of lies, get rid of this idiot lets have unbiased "  
[sic]

The complainant received a reply from BBC Complaints who said:

"The English Defence League has been demonstrating across the country in significant numbers following the Woolwich murder, and also stands accused by some of having inspired (or even been directly responsible for) the recent increase in Islamophobic attacks. Also, six men were recently convicted for having tried to detonate explosives at an EDL rally. Given that background, we decided to interview the EDL's co-founder, spokesman and leader Tommy Robinson in order to give viewers a chance to understand more about the organisation through a testing interview. We believe the interview was editorially valuable.

"As with all Sunday Politics interviews, we seek to present a true picture of the subject and the subjects under discussion with meticulous research and robust interviewing. This was the approach we took with this interview.

"The item covered the history and ideological outlook of the group, its attitudes to Muslim Britons, its reaction to Woolwich as well as Mr Robinson's political and personal history, which was relevant material given his criminal convictions and

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<sup>6</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/complaints\\_fr\\_work\\_ed\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf)

the allegations of criminality on the part of EDL members. Given that the EDL is not a political party but a loose organisation, discussion of the character of the group and its leadership is particularly relevant. It was a robust interview, as our viewers would expect, given the importance and significance of the issues being discussed.

“Mr Robinson was given ample time and space to reply to Andrew Neil’s questions. He was shown video and stills of himself, and other EDL members, and again was given time and space to respond.

“Mr Robinson had 15 minutes on BBC One on one of our flagship political programmes and had the opportunity to put his case forcefully and clearly which he did. It is true that towards the end of the interview, Mr Neil and Mr Robinson talked over each other a few times and we appreciate some viewers may have found this frustrating. However, we believe the interview was fair, forensic and well conducted.”

The complainant replied to BBC Complaints:

“I complained about the idiot andrew neill and his biased interview with tommy robinson, I received a very biased reply, get real bbc you dont represent the british public although you charge very high charges no wonder the vast marojjity of the public are watching other channels, maybe you should charge the extreme muslims more and the true brits less because you lick the terrorists behinds” [*sic*]

BBC Complaints replied on 18 June 2013, stating that they did not have any further comments to make.

“We feel that we responded as fully as we could, given the nature of your complaint, and do not have more to add. This reply is therefore to explain that we do not consider the points you raised suggested a possible breach of standards. We reported them to the BBC staff responsible but are not able to engage in more correspondence or address new complaints and questions at this stage of the BBC’s complaints procedure.”

### **Appeal to the Trust**

The complainant appealed to the Trust on 20 June 2013. His appeal stated:

“i have a complaint about Andrew neill ...NOTHING BEEN ABOUT IT are you going to act?” [*sic*]

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

The section of the BBC Editorial Guidelines relating to Accountability is applicable to this case. The full guidelines are at: [www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines)

The BBC’s Complaints Framework is also applicable to this case and can be found at:

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

#### 4. The Committee's decision

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

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

The Committee noted that the Editorial Complaints and Appeals procedures states that:

- 1.7 At all stages of this Procedure, your complaint may not be investigated if it:
  - 1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or
  - 1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.
- 1.8 Everyone involved in making or handling a complaint will treat each other with respect, and will not use gratuitously abusive or offensive language, whether in their complaints or otherwise. If a complaint contains such language, the BBC may invite you to reword your complaint before investigating it. If you do not reword your complaint, the BBC may not investigate it.

The Committee considered whether the responses received by the complainant to date had been appropriate and adequate.

The Committee noted the BBC's Stage 1b response which stated that "we do not consider the points you raised suggested a possible breach of standards". The Committee noted that the response had gone on to explain that the complainant could "request a review by writing to the BBC Trust within 20 working days, explaining why you believe this decision is inconsistent with the BBC's complaints procedures".

The Committee noted that the complainant had not appealed specifically about how his complaint was handled. He simply stated "nothing been about it", which was open to interpretation: it may be understood to be an expression of dissatisfaction that his complaint had been rejected or dissatisfaction with how his complaint had been handled. The Committee noted that at Stage 1 the complainant had stated that he had received a "very biased reply" from BBC Complaints. In light of these points, the Committee was satisfied that the question for consideration was whether there was a reasonable prospect of success for an appeal against the decision of the BBC at Stage 1 not to respond further to the complaint.

The Committee also noted that BBC Complaints had received more than 200 complaints about the *Sunday Politics* interview. The Committee noted that the complainant was sent a standard response which explained the context for the decision to invite Mr Robinson onto the programme, and the rationale for how the interview was conducted. The Committee noted BBC Complaints' statement that a standard response was sent because the complainant had raised no new points or specific details that needed to be addressed.

The Committee also noted BBC Complaints' comments that the "vague and non-specific nature of the alleged bias, accompanied by the tone used by the complainant, were overriding factors" in not offering escalation to Stage 2 of the complaints process. The

Committee also noted BBC Complaints' statement that "the output being complained about, in isolation, could potentially constitute a significant editorial issue which would normally warrant further investigation" and that 9 other complaints about the programme had been offered the option of escalation to Stage 2. The Committee noted BBC Complaints' statement that these 9 complaints offered evidence of a clear matter of substance whereas this complaint, in their view, did not.

The Committee considered that the issue raised by the complainant was not trivial but that the complainant had offered no evidence to support his claims of bias.

The Committee also considered that the complainant had used gratuitously abusive or offensive language in making his complaints.

The Committee considered that, given the limited extent of the complaint as set out by the complainant, he had received a comprehensive response at Stage 1a and that the responses of BBC Complaints had been appropriate and adequate.

The Committee concluded that there was no evidence on which to uphold an appeal against the decision not to respond to this complaint further at Stage 1 and therefore no breach of the BBC's guidelines on accountability.

**Finding: Not upheld.**

## **Party, BBC Radio 4, 10 October 2012**

### **1. The programme**

*Party* is a sitcom about a group of young idealists trying to set up a new political party. It is based on the award-winning play from the 2009 Edinburgh Festival. It is now in its third series and is broadcast in the comedy slot on Radio 4 on Thursdays at 6.30pm.

### **2. The complaint**

#### **Stage 1**

The complainant contacted BBC Audience Services. The complainant felt that the programme contained a derogatory joke about Gypsies and the Holocaust and, as such, was highly offensive, incited racial hatred and trivialised the Roma/Gypsy/Traveller experience in the Holocaust. He said that "*Gypsies/Roma/Travellers in Nazi Germany were regarded with hostility and suspicion*" and "*around a quarter of the pre-war Roma/Gypsies/Traveller population were killed by the Nazis; some 220,000*". The complainant believed that substituting the term 'Jew' in this context would not have been allowed. He said that, if this was the case, it would "*make the BBC editorial standards process discriminatory*".

BBC Audience Services explained that "*that the traveller community were in no way intended as the target of this joke.*" They argued that the show "*exposes the outrageous and idiotic attitudes of a hapless group of young people.*" *Although what the character expresses "is offensive", "... the target is clearly his awful ignorance*". BBC Audience Services apologised if the complainant felt that the joke had "*misfired*".

#### **Stage 2**

The complainant contacted the Editorial Complaints Unit (ECU) as he was dissatisfied with the response at stage one. The ECU did not uphold the complaint

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

The Complainant wrote to the BBC Trust's Editorial Standards Committee (ESC) to escalate the complaint.

The complainant stated:

- The joke is offensive as it trivialises the Gypsy/Roma experience of the Holocaust.
- The Holocaust "*is too sensitive an area*" to joke about even when it is meant "*to poke fun at a bigoted character*". It is, in fact, not the bigoted character, Jared, who states "*You're forcing them to live somewhere, that's like saying you want to give Gypsies the run of a concentration camp*", it is one of the "*'sensible' characters*".
- A joke could be made by a Jewish or Roma comedian about the Holocaust for broadcast as "*there would be a context of ownership and empowerment*". Otherwise it inevitably causes great offence. Joking about the Holocaust by the BBC "*is a process of normalisation*" and most of the public would agree it should not be "*trivialised in this way*".

- "... the BBC is acting in a potentially discriminatory way because we believe that if the joke had referenced the Jewish experience of the Holocaust (or disabled, or Gay), it would not have been 'passed by compliance'..." or that a complaint about it would have been dismissed".

### 3. Applicable Editorial Guidelines

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

### 4. The Committee's decision

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

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

The Committee noted that this appeal raised issues which required consideration of the guidelines relating to Harm and Offence. The Committee considered whether the BBC had met generally accepted standards regarding potentially offensive content taking into account any editorial justification, the likely expectation of the audience and the service on which the content was broadcast. The Committee also considered whether the broadcast avoided careless or offensive stereotypical assumptions in the context of any editorial justification and whether it took into account likely audience expectations for a portrayal or stereotype which had been exaggerated for comic effect.

Complaint Point 1 – The programme included a joke about Gypsies in relation to a concentration camp which was offensive and trivialised their experience during the Holocaust.

The Committee noted that this was the fourth episode in the third series and in this episode the members of the Party arrive at the radio station with no idea of what they are going to talk about. Before the broadcast, the following exchange takes place:

*Jared: I'm sure I've got something on schools. What about in the back where I've got the miscellaneous ideas?*

*Mel: Oh, well, you've just written "Bring back Top of the Pops".*

*Phoebe: Oh, good idea.*

*Jared: Too right. What else?*

*Mel: And create a dwarf-only country in, for example, Wales.*

*Duncan: Oh lovely policy Jared.*

*Jared: Thank you Duncle. What does everybody think about that idea?*

*Duncan: Well, I love it.*

*Jared: Great. Well tourism-wise it would be absolutely amazing.*

*Mel: It's offensive Jared.*

*Jared: To the Welsh or the dwarves?*

*Mel: Both.*

*Jared: How is it offensive to dwarves Mel? I mean I'm giving them the run of a whole country.*

*Mel: You're forcing them to live somewhere. That's like saying you want to give Gypsies the run of a concentration camp.*

*Jared: Not a bad idea actually.*

The Committee noted that the Executive Producer's response addressed the context in which the remark was made and particularly the nature of the characters taking part in this exchange. The Executive Producer stated:

*"We're in our third series now and chart the progress of the students as they try to form a viable political party and devise their policies. Jared the self-nominated leader is the most dangerously craven, self-serving, character of them all and he will always come out with several breathtakingly stupid observations each episode....He is constantly the victim of his own pomposity and stupidity."*

*"In this episode the character, Mel, mentions the concentration camp as the least appropriate, suitable or fitting thing that Jared could suggest. Jared is too stupid and self-obsessed to understand why she has mentioned it."*

The Executive Producer apologised for any offence caused, stating:

*"...I'm really sorry if you feel that it misfired"... "...we intend to mock the ignorance and stupidity of our characters and not to cause offence".*

The Committee noted that the Complaints Director of the ECU appreciated the complainant's concerns, but he felt, "on balance", that the reference was unlikely "to perpetuate any negative stereotype about Gypsies or portray them in a negative or derogatory manner". The Complaints Director felt that "the audience is being invited to laugh at the ignorance and stupidity of Jared" and the point made by Mel was "to reinforce her colleague's crassness and lack of awareness".

Although the Complaints Director understood "the danger that even a passing reference to the plight of a group of people may be regarded as offensive by some", the context of the reference has to be considered. He cited an example of an earlier reference to people with dementia.

*"As you may recall, there was a play on words linking people with Debentures (for Wimbledon) with those with dementia. One of the characters suggested that those with dementia might enjoy watching tennis more because "maybe it feels less repetitive". This joke was clearly grounded in the idea that people with dementia can suffer from memory loss but I think it is clear that the audience was invited to laugh at the person making such a tactless and ill-informed comment, not at people with the condition."*

In further correspondence, the Complaints Director explained that:

*"...writers and producers do not have an unqualified right to broadcast material which some listeners or viewers may find offensive but the BBC's Editorial Guidelines (and the Ofcom Broadcasting Code) recognise that it may be acceptable to broadcast innovative or challenging content so long as unjustifiable offence is avoided. The guidelines and the code both refer to what are known as "generally accepted standards"; these standards will vary depending on, among other things, the content, the context, any editorial justification and the expectation of the audience. In the case of an established comedy such as Party, I think it is reasonable to assume that regular listeners will understand the tone and style of humour and will recognise that a script line such as the one in question was intended to highlight the crassness and ignorance of one or more of the characters, and was not intended to make light of the persecution experienced by Gypsies. That, I think, is an important consideration in assessing whether there was a clear editorial purpose, as required by the guidelines.*

*I completely accept that any reference to Gypsies and the Holocaust runs the risk of offending some members of the audience (and I am sorry that you believe the humour was unacceptable) but I have to judge whether it went beyond what might be regarded as appropriate or acceptable in this context. Bearing in mind that Party is a long-running Radio 4 comedy aimed at an adult audience, and attracts only a very small number of children, I do not believe that the joke went beyond what might be considered generally acceptable in such a context.*

The Committee noted that the complainant, in appealing to the Trust, said that

*"...whilst it is possible to imagine a situation in which a Jewish, or a Roma comedian makes a Holocaust joke for broadcast, there would be a context of ownership and empowerment involved. We believe that under any other circumstance, the Holocaust is too sensitive an area to joke about on a BBC platform and that misguided attempts to do so will inevitably cause great offense and concern."*

The Committee noted that the notion of what constitutes "generally accepted standards" under the Editorial Guidelines is a "matter of judgement, taking account of the content, the context in which it appears and editorial justification", but also that it is "informed by relevant research". The Committee noted the references provided as background information about the perception of endemic prejudice towards Gypsies in society today. This included a report from the European Commission against Racism and Intolerance (ECRI):

***ECRI Report on the United Kingdom, March 2010***

*The situation of Gypsies and Travellers remains a cause of concern for ECRI. It notes that although few data are currently available for Gypsies and Travellers, the available evidence tends to show that Gypsies and Travellers are still among the most disadvantaged minority ethnic groups in the United Kingdom and the most likely to face discrimination, and that they experience some of the most severe levels of hostility and prejudice.<sup>7</sup>*

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<sup>7</sup> [http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united\\_kingdom/GBR-CbC-IV-2010-004-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united_kingdom/GBR-CbC-IV-2010-004-ENG.pdf)

The Committee noted a submission to the Leveson Enquiry by the Irish Traveller Movement in Britain (ITMB). In its introduction, the ITMB outlined some views about the media's attitude towards Gypsies:<sup>8</sup>

*"The media's constant public lynching of the Gypsy, Roma and Traveller communities was picked up in 1998 by Hugh Harris, the then Deputy Chairman of the Commission for Racial Equality:*

*"Though Travellers are not a large group in Britain their treatment in the media is appalling. A measure of the real ability of our media to reflect the fact that we are a multiracial society is its treatment of Travellers. The use of racist language, prejudicial images and stereotyped coverage of Travellers endorses the principle of prejudice and so gives to those members of the public who it may influence the suggestion that racist attitudes to others are an acceptable and rational approach."*

*"Hostile media coverage of Gypsies and Travellers has also been acknowledged by the UN Human Rights Councils in its 2008 Universal Periodic Review of the UK. The Council noted:*

*"that negative and inaccurate reporting by certain media has contributed to hostile attitudes towards, in particular, gypsies and travellers, asylum-seekers, migrant workers and Muslims."*

The Committee noted that the remark in the broadcast made reference to 'concentration camps' and by implication the Holocaust. The Committee noted the following article as a representative view of the extensive literature on this subject.

***Roma (Gypsies) and the Holocaust*** by Mary Pottanat and Nadia Khan

*"In 1939, the Romani were no longer permitted to travel freely and were forced into encampments which were later transformed into fenced ghettos. Those not placed in concentration camps were expelled from Germany in 1940 to the territories of occupied Poland.*

*From the ghettos, many Gypsies were transported by rail to face the horrors of Auschwitz or were transported by caravan to Zigeunerlager (Ziguener is the German word for Gypsy from the Greek root meaning "untouchable.") This camp was especially for the Gypsies. There, as in other camps, disease flourished as a result of crowded, unsanitary conditions, and malnourishment.*

*In the camps, Gypsies were forced to wear black triangular patches which classified them as "asocial," or green triangles which identified them as professional criminals. They were subjected to medical experiments before they were exterminated. At Sachsenhausen, they were subjected to special experiments that were supposed to prove scientifically that their blood was different from German blood.*

*The Romani were often accused of atrocities committed by others; they were blamed for the looting of gold teeth from a hundred dead Jews abandoned on a Rumanian road. Some were murdered in the Soviet Union on the pretext that Gypsies were spies. Nazi physicians made Gypsy women their guinea pigs. Many*

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<sup>8</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-from-The-Irish-Traveller-Movement-March-2012.pdf>

*were sterilized because they were thought to be "unworthy of human reproduction," and were later exterminated. Romani who were married to Germans were not sent to camps at first, but were instead sterilized, as their children were to be after the age of twelve.*

*Later, many of these individuals also became victims of the Holocaust. The Romani were not only in danger in Germany, but also faced peril in all other parts of Europe. Vichy France deported 30,000 Gypsies to Nazi concentration camps. The Croatian Ustasha movement killed tens of thousands of Gypsies, and Romanians deported thousands of Romani to Transnistria (Ukraine) where many died of hunger and disease. There are no exact statistics on the number of European Gypsies exterminated during the Holocaust. Estimates place the number as high as between 500,000 and 600,000 people, with most of the deaths occurring at Auschwitz. The devastation brought by the Holocaust was not the end of Gypsy problems.<sup>9</sup>*

The Committee noted that the BBC commissioned the report 'Taste, Standards and the BBC' (BBC, June 2009), which was specifically commissioned to consider the area of taste and standards in the media and in particular the BBC's role. On the whole, the BBC was found to have high standards by the respondents and the following conclusions were reached about 'Material that could be offensive to minority groups':<sup>10</sup>

*"Very few spontaneously mentioned this as a key concern in the media (4%), although this increased to 30% who are extremely or very concerned when prompted (and a further 32% who are fairly concerned) so it is not an insignificant issue. When asked to think of specific examples of what material they had objected to being broadcast on TV in the past 12 months material that is offensive to minority groups was mentioned by 16% (or 6% of all respondents, while 14% mentioned religious humour or treatment of religion (around 6% of respondents overall)).*

*In the main, the audience in the qualitative research felt that the media has improved in terms of its treatment of minority groups, which echoes the findings of the Literature Review. However, although incidents may be seen to be infrequent, when they do occur they are likely to cause great offence to those being attacked, and great surprise amongst the wider audience."*

The Committee observed that, when examining attitudes to radio, the report found that radio is of less concern than television in the area of standards, but if offensive material is broadcast in scripted programmes then that this is considered more problematic.

*"Radio received very little criticism or concern in the area of taste and standards in either of the research approaches. Only 2% were concerned about standards of morality, values and behaviour on the radio, and only 12% felt standards had been slipping in recent years.*

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

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<sup>9</sup> <http://www.learn.org/hgp/aeti/aeti-1997/roma-in-holocaust.html>

<sup>10</sup> <http://downloads.bbc.co.uk/guidelines/editorialguidelines/research/taste-standards.pdf>

*Like the issue of scripting in TV, recorded radio programmes are more problematic, and they are judged more harshly if it is felt the programme could have been edited to remove offensive content."*

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

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

The Committee noted that another report was commissioned by the BBC in 2009 to consider the area of taste and standards in the media: *Taste and Standards: Qualitative Research* (2009);<sup>11</sup> and that one of the areas examined was the appropriateness and acceptability of language. With regard to an audience's attitude to comedy, the Committee noted that the report found:

- *"The context provided by a particular type of programme has a strong impact on audience expectations. This affects the way in which issues such as strong language or content are judged."*
- *"Comedy is arguably the most complex genre for the audience in this area of taste and standards. It is an extremely wide-ranging genre and opinions are often very subjective. Individual taste may permit or sanction what others may feel is in poor taste. For the majority, comedy overall comes with its own licence and even more specifically, each style of comedy/comedian has their 'own' licence; although this does not make them immune to perceived lapses in taste if they are felt to be out of step with expectations of the programme audience."*
- *"Audiences draw a distinction between a more derisive, potentially bullying tone and mockery, and as with the comedy genre, taste makes judgement quite subjective. How a line is delivered, and by whom, are crucial factors which define content as acceptable or unacceptable."*
- *"The absence of very strong language (the f-word) and lack of aggression are key discriminators, as is the personality of different presenters."*

The Committee noted that although *Party* was in its third series, there had only been four episodes in each series. It did not feel that this was sufficient time for the series to be considered "an established comedy" or "a long-running Radio 4 comedy", as described by the ECU. Consequently, the Committee did not accept that the majority of listeners would necessarily be familiar with the show. The Committee therefore did not agree with the ECU's assessment of the likely audience expectation.

The Committee appreciated that the character Mel was trying to find an example to explain to Jared the offensiveness of his policy for creating "a dwarf-only country" in Wales. However, the Committee considered that the basic premise of the show, to satirise the hypocrisy and naivety of a new political party, did not provide it with automatic editorial justification to reference a vulnerable minority group through a potentially offensive comment in the script. The Committee noted that audience research did

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<sup>11</sup> [http://downloads.bbc.co.uk/aboutthebbc/reports/pdf/taste\\_standards\\_qualitative.pdf](http://downloads.bbc.co.uk/aboutthebbc/reports/pdf/taste_standards_qualitative.pdf)

highlight that any potentially offensive material was considered more problematic by the audience if it was scripted.

The Committee took into account that the premise of the show could mean that reference may be made in scripts to many groups that may be potentially offended by some of the remarks. However, most were predicated on absurd propositions that had no foundation in reality, such as the policy relating to "*a dwarf-only country*". Most listeners would have recognised this and been less likely to be offended by such remarks. Similarly, the example raised by the ECU about people with dementia was a play on words and was not intended to target this vulnerable group. In these cases, the Committee believed that the ridiculousness of these comments would have lessened any offence so that the remarks would not have exceeded audience expectations.

The Committee did not believe that any subject should be outside the bounds of comedy and audience research showed that most listeners would allow comedy some licence in pushing at acceptable boundaries. The Committee also noted that the Editorial Guidelines provide that:

*"The BBC aims to ... 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. ...*

*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 into account generally accepted standards, and ensure it is clearly signposted."*

The Committee therefore did not agree with the assertion that the Holocaust is inherently "*too sensitive an area to joke about*" on a BBC platform.

However, the Committee felt that, in this context, including the remark from Jared that giving Gypsies the run of a concentration camp was "*not a bad idea*" was ill-considered given the reality of the Holocaust experience for Gypsies and the prejudice that Gypsies have encountered in the past and which is still to some extent present today. The Committee therefore agreed with the complainant that the joke in question was offensive because it trivialised the experience of a minority group during the Holocaust.

In this instance, the Committee considered that insufficient consideration had been given to the offence that this casual use of an exaggerated remark for comic effect could cause. The Committee therefore considered that there was insufficient editorial justification for the remark, as required by the Editorial Guidelines.

The Committee concluded that this programme was in breach of the BBC Editorial Guidelines. As the programme was found in breach of the Guidelines, the Committee would require the BBC Executive not to repeat this programme or sell it without editing the following lines:

*Jared: How is it offensive to dwarves Mel? I mean I'm giving them the run of a whole country.*

*Mel: You're forcing them to live somewhere. That's like saying you want to give Gypsies the run of a concentration camp.*

*Jared: Not a bad idea actually.*

The Committee also wished to apologise for the offence that this had caused.

Complaint Point 2: the Committee is asked to consider whether the BBC compliance and complaints processes are potentially discriminatory towards Gypsies.

The Committee took into account the BBC procedures when considering this complaint. At Stage One, BBC Audience Services forwarded the complaint to the Executive Producer of the programme. He stated that "*We discussed the use of this language in the compliance process in advance of the broadcast.*" During this process, he outlined the editorial justification for going ahead with the broadcast.

At Stage Two, the ECU explained the process for considering an appeal if the complainant was not satisfied with the response at Stage One. The joke was considered in the context of the BBC's Editorial Guidelines. In further correspondence, the Complaints Director stated:

*"I have considered your comparison with a similar joke about Jewish people, and I take the point you are making, but I hope you can understand that I have to consider what was broadcast in this programme, not a hypothetical scenario."*

The Committee considered that there was evidence that care and attention had been given to this issue both in making the programme and in handling the complaint at all stages of the process. The Committee considered that there was a fine line to be drawn between, on the one hand, comedy based around a crass and insensitive character and what was said by him or to him in exposing his insensitivity to the listener and, on the other hand, the causing of real offence. The Committee believed the decisions made at stages 1 and 2 of the complaints procedure were reasoned and thoughtful. The Committee agreed that, although it was the case that on this occasion the ESC disagreed with the BBC, this did not mean that the compliance and complaints processes were potentially discriminatory towards this particular ethnic minority group.

**Finding: Upheld in part.**

## **Today, BBC Radio 4, 28 March 2012**

### **1. Background**

Sir David Barclay and Sir Frederick Barclay ('the complainants') complained that a report in the *Today* programme on 28 March 2012 about the island of Sark was, amongst other things, inaccurate, partial and unfair towards them.

*Today* is BBC Radio 4's flagship news and current affairs programme. The report in question was by regular presenter Sarah Montague ('the Presenter'). The piece lasted 13 minutes 34 seconds, and was broadcast at 08.10 on 28 March 2012. In the introduction to the report, it was stated that the piece concerned allegations that:

- democracy on Sark was under threat;
- islanders were being bullied and intimidated by the complainants' representatives in the local newsletter; and
- the complainants were trying to take control of the island.

Sark is the smallest of the four main Channel Islands, and has approximately 600 inhabitants. It has a royal 'fief' (an estate of land held on condition of feudal service) granted by the Crown to Sark's 'Seigneur' (or Lord), an inherited title. In 1993, the complainants purchased the island of Brecqhou, situated 80 yards due west of Sark. They have since developed the island and built a residence there.

The complainants' family has also acquired land on mainland Sark. The complainants' family estate on Sark is managed by Sark Estate Management Ltd ('SEM Ltd'), which is a major employer on Sark. The Managing Director of SEM Ltd, Kevin Delaney, is also the Editor/Publisher of the *Sark Newsletter* ('the Newsletter'). The Newsletter is distributed weekly to every Sark household (apart from those that have asked not to receive it), is available online, and has been more widely circulated.

According to the complainants' advocate, Mr Gordon Dawes ('the Advocate'), who represented the complainants for the purposes of this appeal, the source of the conflict between the complainants and what the Advocate termed the "Sark establishment" (namely, the Seigneur and those whom the complainants regard as his allies) was the extent to which Sark sought to impose its will on Brecqhou. In particular, Sark claims jurisdiction over Brecqhou, which the complainants dispute. The complainants also oppose certain aspects of Sark's constitution and its laws and have repeatedly challenged them.

### **2. The complaint**

#### **Stage 1**

On 12 April 2012, the Advocate wrote to the Chairman of the BBC Trust and raised 17 points of complaint on behalf of the complainants in respect of the piece. In summary, the Advocate alleged that the piece breached the BBC's editorial values and the requirements of the BBC's Editorial Guidelines on Accuracy, Impartiality, Fairness, Contributors and Consent, Conflicts of Interest and Politics, Publicity and Polls. The *Today* programme Editor provided the BBC's stage 1 response on 24 April 2012. Overall, he stated that he was satisfied that the piece was accurate, balanced and impartial, and met the BBC's editorial standards. He also commented on each of the points raised by the complainants in their letter of complaint. The complainants were not satisfied with the BBC's stage 1 response and wrote to complain again on 28 May 2012. The complaint then

proceeded to Stage 2 of the complaints process, where it was considered by the Editorial Complaints Unit ('ECU').

## Stage 2

The ECU wrote to the Advocate on 26 September 2012, setting out its provisional findings. After noting that it would not be addressing certain points of complaint which fell outside its remit, the ECU responded to the complainants' remaining points of complaint as follows:

- 1 & 2 *Failure to achieve standards of truth and accuracy required by paragraph 1.2.2 of the Guidelines and a lack of impartiality contrary to paragraph 1.2.3 and section 4.*

In the ECU's view, the context provided by the Presenter in her studio introduction and at various points in the piece was sufficient to allow listeners to understand the issues aired in the piece, which was enough to satisfy the requirement of due accuracy.

The views of those on one side of the dispute predominated, but that was the inevitable consequence of the preference of those on the other side not to be interviewed. Such cases were covered by Guideline 6.4.28 (Refusals to Take Part), and it seemed to the ECU that the terms in which the Presenter reported the views of the complainants and their supporters met the requirements of that guideline.

Whether the story merited the prominence it was given is a matter of news judgement, which must be left to the discretion of the programme's Editor.

4. *Lack of fairness, contrary to paragraph 1.2.7, particularly regarding the complainants' right of reply.*

In the course of its investigation, the ECU had seen the relevant emails and the Presenter's notes of telephone conversations. In the ECU's view, the quoted extracts stated the topic broadly, and did not justify the inference that the scope of the piece would be restricted to the issues offered as examples.

The ECU noted that the first example put to the Advocate by the Presenter was not "bullying via the Newsletter", as the Advocate had stated, but the feeling of some islanders of being "bullied and intimidated by the way [the complainants] do business in the island", which was considerably broader. In a context where it was apparent (eg, from the contents of the Newsletter) that the nature and breadth of the criticisms of the complainants was well known to them and to the Advocate, the ECU believed the terms in which the Presenter approached the Advocate and Mr Delaney afforded a proper opportunity to respond.

5. *The Presenter failed to report the opposing viewpoint.*

As noted under points 1 and 2 above, the Presenter reported the views of the complainants and their supporters at various points in the piece. The ECU did not see that the complainants' reported offer to buy the Seigneur's feudal rights and give them to the people of Sark had such particular relevance to the issues aired in the piece that not reporting it gave rise to unfairness.

6. *Lack of accuracy contrary to section 3 of the Guidelines - allegations made by a contributor were false and would have been countered if they had been put.*

This allegation was that a contributor had no longer been given any business after the elections in December 2008. The terms in which Mr Delaney had responded to the Presenter's request seemed to the ECU so absolute as to render it unlikely that he would have responded differently, had that allegation been put to him.

If the programme makers had been aware that the contributor's account was disputed, the piece would no doubt have handled it somewhat differently. However, the ECU did not think the piece was unfair to the complainants in this respect.

The ECU cautiously inferred from the Advocate's reference to "failing to test the fact that those allegedly bullied and intimidated were broadcasting their complaints on national radio" that the Advocate regarded participants' willingness to broadcast their views nationally as grounds for doubting their claims to feel bullied and intimidated. If this inference was correct, the answer was in the ECU's view provided, at least in part, by reference to part of the complaint which objected to interview clips with unidentified individuals: the piece had indeed included some contributions by unidentified individuals, and it seemed to the ECU reasonable to suppose that anonymity would have gone some way to allaying any anxieties they might otherwise have felt in voicing their concerns on national radio. In the ECU's opinion, those who were identified in the piece were, for the most part, individuals whose views were already on the record and known to the complainants and their supporters, and who had already been exposed (as they felt) to such bullying or intimidation as might have been occasioned by those views.

In relation to the complainants' family's holdings on Sark, the ECU acknowledged that the Presenter's phrasing tended to suggest that the calculation excluded Brecqhou, and the ECU understood that, if Brecqhou were excluded, the figure would be closer to 25% than the third of Sark mentioned in the piece. However, the ECU did not think the difference was so great as to materially affect the impression listeners would have gained, the point being that the complainants had become very substantial landowners on Sark.

7. *The piece relied in part upon contributions by unidentified individuals, without explanation.*

The Guidelines did not require that contributors should always be identified. It may be a requirement of fairness to do so if the identity of particular contributors is of the essence in providing due opportunity to respond to particular allegations, but that was not the case here. The comments made by the unnamed contributors were not specific to them as individuals and, in so far as they were critical of the complainants, the criticisms were of the kind which would be familiar to any reader of the Newsletter.

8. *Part of the piece contained an interview with the Doctor, without making it explicit that the Doctor was indeed talking - the whole episode with the Doctor was unfairly introduced and described.*

It was not made explicit that it was the Doctor who was talking, but the ECU shared the *Today* Editor's view that it was clear. The ECU saw no unfairness to the complainants' family in omitting reference to the general availability of their helicopter for evacuation and to the position taken by the Seigneur, because the point at issue in this section of the piece was the criticism levelled at the Doctor in the Newsletter and his subsequent resignation.

9. *The net result of the piece was to mislead the audience.*

As the ECU was not persuaded that the piece was misleading in the particular respects specified, it had no ground for concluding that it was misleading overall.

10. *The Presenter failed to appreciate the political dimension of the piece.*

The existence of a political dimension did not introduce a new and distinct standard of impartiality. The standard and principal safeguard applicable to participants in a controversial matter, whether politicians or not, was to ensure that both sides of the story were appropriately represented. For the reasons set out in response to points 1 and 2 above, and bearing in mind the constraints arising from the complainants' positions, the ECU believed that standard was met in this instance.

11. *The Presenter failed to give a fair right of reply contrary to Guideline 6.4.25.*

Although reference was made under this point to a different guideline, the substantive issue was the same as in point 4, and the ECU's response was the same.

12. *The piece failed to comply with section 10 of the Guidelines concerning politics.*

If the Advocate's characterisation of the policy of the complainants' family's opponents were correct, it would not necessarily follow that a programme which reported their views was allowing itself "to be used ... to campaign". Such a charge might have substance if the programme makers had sought to represent only the opponents' views, or if the resulting item had endorsed them, but neither was the case on this occasion.

13. *The Presenter failed to achieve political impartiality or even to recognise what in fact she was reporting.*

The ECU had already addressed the question of impartiality. On the question of using the term "parish paper" with reference to the Newsletter, the ECU agreed with the *Today* Editor that it served to give a sense of the Newsletter's scale, and the ECU believed the item as a whole left no doubt that the issues of dispute were, as the Advocate had put it, "anything but parochial".

14. *There was no attempt by the Presenter to summarise the Newsletter's viewpoint as opposed to merely reporting its tone.*

The viewpoint of the complainants' family and their supporters (who included Mr Delaney, in his capacity as editor of the Newsletter) was summarised by the Presenter at various points in the item; and, as the *Today* Editor had pointed out, this included crediting the complainants with the introduction of democracy to Sark. However, as it was the tone of the Newsletter which was perceived by some as bullying and intimidatory, the ECU thought it neither surprising nor illegitimate that this should have the subject of some attention.

15. *The Presenter expressed her personal viewpoint contrary to Guideline 10.2.2.*

Guideline 10.2.2 referred to opinions issued by the BBC corporately, not to views expressed on air by individual broadcasters. That, however, did not dispose of the question of whether the Presenter's remark was impermissible or unsupported. In

the ECU's view, the Presenter was commenting on a change in the atmosphere on Sark, on the basis of her own longstanding experience, and her comment was supported by her conversations with individual inhabitants, some of whom were heard in the piece.

17. *It was inappropriate to permit the Seigneur to give the impression that the Queen objected to the complainants' actions.*

The Advocate had given no reason why it was inappropriate to allow the Seigneur to express his views on this point, and the ECU could see none.

The complainants disputed the ECU's findings, and the complaint proceeded to Stage 3 of the complaints process.

### **Stage 3 – Appeal to the Editorial Standards Committee**

The complainants appealed to the Trust on 16 November 2012. The Advocate raised the following points on their behalf:

1. The complainants wished the Trust to consider their complaint "in its totality, again and afresh". They questioned the extent to which the ECU refused to address issues such as the Presenter's personal interest and the expression of her personal opinion. They considered it inappropriate and obstructive to require a separate complaint to be made to BBC News' management, which would open a third line of complaint.
2. The Presenter, who (given her background) was bound to have friends and acquaintances on Sark, had been brought by someone to Sark with the intention that she should tell an aggressively anti-complainant story, and she had obliged.
3. There was no good reason why the story should have appeared on national radio, let alone the *Today* programme, let alone for 13 minutes at a prime time. The length and prominence of the piece raised serious questions. The piece fell outside the bounds of permissible discretion as regards the BBC's editorial judgement.
4. The content of the piece was principally directed at the Newsletter's tone, as distinct from its content, which also raised questions as to the piece's nature and appropriateness. No attempt was made to analyse the Newsletter's consistent message or to put its point of view to any of the contributors.
5. The piece was, even on the ECU's view, one-sided.
6. The complainants had not invited the Presenter to visit Sark or to make the report. They had no obligation to cooperate with her or to give their version. There was consequently a greater obligation on the Presenter to ensure that both sides of the dispute were reported fairly and given equal weight, which she had failed to do, notwithstanding that the complainants' position had been made public in other contexts, not least in their legal challenge to Sark's constitution.
7. The Presenter did not challenge any of the contributors, who included Sark's principal politician and the Seigneur. The substance of the dispute according to the Advocate concerned whether or not it was appropriate for Sark's constitution and government to continue to be dominated by feudal institutions, as represented by the Seigneur and Seneschal. The complainants stated that Sark's history of (partial) reform was well known. The Presenter, they said, had not raised issues such as the Sark establishment's obstruction of the abolition of male primogeniture and of the

Seigneur's "private tax" on the sale price of realty, or its fierce resistance to democracy (save for one passing reference crediting the complainants with introducing democracy). Neither had she raised any of the many incidents in recent years where the Chief Pleas had been used as a weapon against the complainants' interests.

8. The only challenge to the Seigneur was intended to bring out more fully his assertions that the Queen was aware of what was going on and, in some sense, was fully on his side and that it was a matter of shared regret that she was constrained to act through her ministers, who the Seigneur then criticised. In other words, the Presenter encouraged the Seigneur to give the impression that the Queen personally disapproved of the complainants' actions, for which there was no evidence.
9. The right of reply was of obvious importance when making a programme such as *Today*. For that right of reply to be effective, one must first know what was being put. All that was put to the complainants, through the Advocate, was that unspecified criticisms had been made, that some on Sark felt bullied and intimidated and that the complainants were trying to take control of Sark. When the piece was broadcast, it contained a great many more allegations, none of which had been raised with the complainants. There had been no indication of the vast majority of the allegations that were made, and therefore no effective right of reply had been given. In addition, The Presenter failed to read out the whole of the Advocate's email; such reply as had been given was cut down in length.
10. The piece gave the consistent impression of a one-sided attack on the complainants, with which the Presenter sided personally. This was confirmed by her comment, "*What is shocking to someone who knows it is to see how much it is changed.*" First, the complainants did not accept that Sark has changed, and certainly not for the worse; secondly the Presenter should not have expressed her personal opinion, particularly when presenting a piece containing predominantly one viewpoint and where no proper right of reply had been afforded.
11. As to the central allegation of individuals feeling bullied and intimidated, there were independent reports that the perpetrators were allied with Sark's feudal establishment, which the Presenter had failed to pick up.
12. The Presenter had come to Sark at the request of individuals most likely known to her and with political agendas bitterly opposed to the complainants. In the complainants' view, the Presenter delivered their message, and did little more than pay lip-service to impartiality.

The Trust Unit noted that at stage 2 of the complaints process, the ECU had not considered the aspects of the complaint that engaged the Guidelines on Conflicts of Interest. Accordingly, these aspects of the complaint were referred to BBC News for a stage 2 response and consideration of the remaining points of appeal were delayed, pending BBC News' response.

The Head of Accountability and Editorial Compliance, BBC News, wrote to the complainants on 11 January 2013 and set out her conclusion that there was no conflict of interest to declare on the Presenter's part. The Advocate wrote to the Trust on 8 February 2013 and stated that the complainants accepted what the Head of Accountability and Editorial Compliance had said on that issue. He also reiterated the complainant's complaint, concluding that the Presenter had been under an obligation to ensure that the piece was impartial and fair, notwithstanding the fact that the complainants had chosen not to engage with the programme, as they were entitled to do.

The Head of Editorial Standards, BBC Trust, responded on 19 February 2013. She explained that she had decided that, apart from two elements, the complainants' appeal raised a matter of substance and should therefore proceed to a hearing before the Editorial Standards Committee ('the Committee'). The Head of Editorial Standards had decided that (i) the position of the item within the programme and (ii) the length of the item were both matters of editorial discretion and, as such, concerned the direction of the BBC's editorial and creative output which was a matter for the BBC's Executive Board and did not engage the BBC Trust. In her view, those elements of the complaint did not therefore raise a matter of substance and should not proceed to a hearing before the Committee. The complainants did not challenge the Head of Editorial Standards' decision.

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

The Editorial Guidelines applicable in this case are those on the BBC's Editorial Values (section 1), Accuracy (section 3), Impartiality (section 4), Fairness, Contributors and Consent (section 6) and Politics, Public Policy and Polls (section 10). The full Guidelines are available at: [www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines).

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

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC's Editorial Guidelines. The Guidelines are a statement of the BBC's values and standards. In reaching its decision, the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and the subsequent submissions from the Advocate and BBC News.

#### Preliminary consideration

As a preliminary matter, the Committee considered whether the subject of the piece was a controversial one.

In the Committee's view, the subject of the piece was, as was stated in its introduction, allegations that islanders were being bullied and intimidated by the complainants' representatives in the local newsletter, and that the complainants were trying to take control of the island and that democracy on Sark was under threat as a result. The Committee agreed that this was a serious subject.

With regard to the level of public and political contention and debate, the Committee noted that, since the complainants had purchased Brecqhou, there had been a degree of national interest in, and debate about, the ongoing conflict between (on the one hand) the complainants and their supporters, and (on the other hand) certain inhabitants of Sark and their supporters. The Committee noted that this conflict had been reflected by the news media, by the Justice Committee of the House of Commons in its March 2010 report, and by the Minister of State for Justice during his visit to Sark in June 2012.

With regard to the topicality of the subject, the Committee noted that the Newsletter was, at the date of broadcast (and to the date of the Committee's meeting), published weekly. The Committee also noted that: in January 2012 (two months before the *Today* piece was broadcast) Sark's doctor had resigned, complaining of "[t]rial by the Press, in the form of the Sark Newsletter"; that a group of Sarkees had subsequently protested outside the offices of SEM Ltd; and that these events had been reported contemporaneously in the local press, the BBC and ITV. The Committee also noted that, at the date of broadcast, the complainants had an application pending in the ECtHR concerning the presence of the Seneschal and Seigneur in the Chief Pleas.

For the reasons stated above, the Committee concluded that it was satisfied that the subject matter of the piece was controversial. Therefore, the particular requirements for controversial subjects in the Guidelines on Impartiality would apply to its consideration of this appeal.

The Committee then considered whether the controversial subject of the piece could be considered to be a major matter within the meaning of Guideline 4.4.9. The Committee decided that, in view of the relatively small number of persons with a direct interest in the allegations and in view of nature of the allegations which could not in themselves be characterised as a matter of public policy or political controversy this was not a 'major matter' within the meaning of Guideline 4.4.9.

#### Editorial values

The Committee considered the appeal against the Editorial Guidelines on the BBC's Editorial Values.

**Point A:** The Committee considered the complainants' contention that the piece was not a story of significance to the BBC's audience, which in their view it should have been in order to comply with Guideline 1.2.6 which says "*We seek to report stories of significance to our audience*". The Committee regarded this sentence as a statement of intent, rather than setting a specific standard which had to be met in all the BBC's coverage. In the Committee's view, the decision to report a particular story is a matter of editorial discretion. The BBC could choose to report stories which had no significance but were matters of interest if the BBC chose to do so. It followed that the significance of this particular story to *Today* listeners was within the programme makers' discretion and, as such, concerned the direction of the BBC's editorial and creative output, which was a matter for the BBC's Executive Board and not the Trust.

#### **Finding: not upheld**

#### Accuracy and Impartiality

The Committee considered the appeal against the Editorial Guidelines on Accuracy and Impartiality.

**Point B:** The Committee considered the complainants' contention that the piece had failed to set the context of what was being reported and the history of the dispute between the complainants and their opponents on Sark. The Committee noted what the introduction had said:

*"The tiny channel island of Sark has a unique constitutional position. Part of Britain, but not the UK, it is still held as a fief on behalf of the Queen. It only became a democracy in 2008 but islanders have told us that that democracy is now under threat. They say they are being bullied and intimidated by representatives of Sir David and Sir Fredrick Barclay, the owners of the Telegraph, in the local newsletter. The two brothers now own a third of the island and local people told us they think they are trying to take control of it. Sark decides its own laws, sets its own taxes and with only 600 inhabitants is small enough to be taken over. I went to the island to find out what they were complaining about."*

In the Committee's view, the introduction to the *Today* piece had clearly set out the context to the story. It had explained that there was a notable degree of division and dispute within Sark, and had signposted that the piece was going to look at certain aspects of that dispute.

The item had also made it clear that the complainants had campaigned for democracy, believed that Sark was not yet truly democratic, were opposed to feudalism and to the role of the Seigneur, were investors in the island and had lost their case for the separation of Brecqou from Sark. The item also quoted from the Newsletter throughout. Even in a relatively long item such as this, there was a practical limit to the amount of contextual information that could be provided. In the Committee's view, the item had covered the major facets of the background to the story and the introduction had provided sufficient contextual detail for the piece that was to follow to meet the requirements of due accuracy. The Committee also concluded that the BBC had not knowingly or materially misled its audience, and that the enhanced requirements of due impartiality applicable to controversial subjects had been met in this regard.

### **Finding: Not upheld**

**Point C:** The Committee considered the complainants' contention that the Presenter incorrectly stated that the complainants' family owned one third of the island of Sark.

The Committee noted that the introduction had said:

*"The tiny channel island of Sark has a unique constitutional position. Part of Britain, but not the UK, it is still held as a fief on behalf of the Queen. It only became a democracy in 2008 but islanders have told us that that democracy is now under threat. They say they are being bullied and intimidated by representatives of Sir David and Sir Fredrick Barclay, the owners of the Telegraph, in the local newsletter. The two brothers now own a third of the island ..."*

And within the item the Presenter had said:

*"They claimed in the courts that Brecqhou was not part of Sark; a claim that was rejected. Since then they have bought up a third of Sark itself..."*

The Committee noted that the introduction had referred to the complainants owning a third of the island. It accepted that "the island" could mean either Sark alone or, more colloquially, Sark plus outlying dependencies.

The Committee then noted that the script within the item had referred to "a third of Sark **itself**" (emphasis added), and the Committee took the view that, considered in context, this phrase would have been understood by listeners as referring to mainland Sark alone, not to Sark and Brecqhou together. On this basis, the Committee accepted that the statement was, if strictly construed, inaccurate.

However, the Committee noted the requirements of due accuracy in this context, particularly Guideline 3.1 which states that "*the term 'due' means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation*". In the context of the piece, the Committee considered whether the audience's appreciation of the extent of the complainants' family's landholdings on mainland Sark would be materially affected by the difference between one quarter (the Chief Pleas' Agriculture and Environment Committee's estimate of the complainants' family's landholding on mainland Sark) and one third. The Committee agreed that the significant point the piece was trying to make by referring to the complainants' family's ownership of Sark — and the point that listeners would have taken from the comment — was that the complainants' family owned a substantial portion, but nevertheless a minority, of mainland Sark. In this context, the Committee concluded that the difference between one quarter and one third was not so significant as to have materially affected

the audience's appreciation of the facts, and was close enough to satisfy the requirements of due accuracy.

### **Finding: Not upheld**

**Point D:** The Committee considered the complainants' contention that the piece incorrectly described the Newsletter as a "parish paper". The Committee agreed that "parish" could be used in either a religious or secular sense as referring to a small administrative area of government and was not a pejorative term. Given that Sark has approximately 600 inhabitants, the Committee concluded that the use of the term in the context of the piece, particularly in the phrase "*It's not what you might expect from a parish paper*" was referring to the relatively limited extent of the Newsletter's circulation, not to the import of its contents. For these reasons, the Committee was satisfied that the requirements of due accuracy and due impartiality (to the enhanced standard applicable to controversial subjects) were met.

### **Finding: Not upheld**

**Point E:** The Committee considered the complainants' contention that the piece contained a false allegation by one contributor that he had no longer been given any business by the complainants after the Sark general election in December 2008. The Committee considered the relevant extract from the piece:

***Presenter:** ...They claimed in the courts that Brecqhou was not part of Sark; a claim that was rejected. Since then they have bought up a third of Sark itself and they have challenged Sark's ancient feudal system, successfully forcing the introduction of democracy, but when the Sark people were given the vote, they didn't choose the candidates promoted by the Barclays, and those they did choose, found they were in the firing line.*

***Paul Williams:** "I used to supply their hotels and restaurants. After the elections it stopped immediately."*

***Presenter:** Paul Williams lost nearly a third of his income after he was elected. The Barclays now own four out of the island's six hotels and any business from them suddenly stopped.*

***Paul Williams:** "I wanted to know why. I wrote letters. I sent emails. I didn't get a reply from anywhere. The only thing I got back was feed from other people saying that my opinion differed to theirs, therefore, they weren't going to give me any of their money at all and they have never dealt with me since."*

***Presenter:** It was on seeing the results of that election that the Barclays boarded up their businesses on the island. Their lawyers said the islanders had only themselves to blame for the way they voted..."*

The Committee also considered the unedited tapes of the Presenter's interview with the contributor and noted the Presenter's explanation that, before the piece was broadcast, the contributor had told her that, ultimately, he could prove the allegation about the loss of business, which was enough for her to feel satisfied with running the allegation in the piece. The Committee noted that the contributor had subsequently acknowledged that he had lost the complainant's business later than he had thought. The Committee noted that it was in fact after the 2010 elections and not the 2008 elections that he had lost the complainants' businesses.

In the Committee's view, listeners would have received the impression that the contributor's business relationship with the complainants stopped shortly after his election as Conseiller in December 2008.

The Committee noted the BBC's view that, notwithstanding the fact that the contributor's allegation about the loss of business appeared to have occurred two years later than the 2008 elections, the accusation is the same. During the Trust's investigation, the Presenter said that the contributor told her that he presumed that the loss of business two years after his election was because of what he had done during those two years, for example because he had supported other members who were not supported by the complainants.

The Committee noted the view of the contributor and of the BBC however, in the Committee's view, the accusation was not the same. The script and the interview combined gave the impression to the audience that it was the election of candidates who had stood against those promoted by the complainants which led to an immediate loss of business.

The Committee agreed that this was a serious allegation, in respect of which the contributor and, as a result, the Presenter had made inaccurate—but, in the Committee's view, not knowingly misleading—statements. Given the seriousness of the allegation, the Committee agreed that it would have expected the BBC to have tested the allegation by, for example, asking the contributor to evidence it before the piece was broadcast.

The Committee noted that the Presenter had asked the contributor for more detail about what he had told her in interview. She had also asked the contributor if he could prove the loss of business. The Presenter stated that the contributor had informed her that this would be hard because with all his customers he had no written contracts. The contributor had explained to the Presenter that "*that's the way Sark works*". Nevertheless, the contributor had told the Presenter that, ultimately, he could prove the allegation he had made. The Presenter explained that this was enough for her to feel satisfied with running the allegation in the piece. Notwithstanding this, the Committee considered that, given the seriousness of the allegation and given that the contributor had said he could prove the allegation he had made the BBC should have asked him to do so before broadcasting this allegation.

For the above reasons, the Committee concluded that the allegation by the contributor and the associated commentary by the Presenter breached the requirements of due accuracy, in particular the requirements in Guidelines 3.1 and 3.2.2 that the BBC should check and cross check facts and that all BBC output (appropriate to its subject and nature) must be well sourced, based on sound evidence and thoroughly tested. The Committee also agreed that, in the circumstances, the BBC did not take sufficient steps to check and verify the information the Presenter was given by the contributor and/or corroborate the allegation made by the contributor, in breach of the requirements of Guidelines 3.4.1 and 3.4.2.

The Committee therefore held that, on this point of appeal, there had been a breach of the Editorial Guidelines on Accuracy. The Committee was satisfied that this point of the complainants' appeal did not raise any potential breach of the Guidelines on Impartiality.

### **Finding: Upheld in relation to accuracy**

**Point F:** The Committee considered the complainants' contention that the Presenter had failed to challenge contributors, which included Sark's principal politician and the Seigneur. The Committee noted that the question whether or not to challenge an

interviewee is capable in itself of amounting to a breach of the Editorial Guidelines will depend on the circumstances and context of the item in question. The Committee also noted the requirements of due impartiality in the context of controversial subjects in this respect, in particular:

- Guideline 4.4.2: "*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. Instead we should seek to achieve 'due weight'*";
- Guideline 4.4.7 states that it is important to ensure that a range of views and perspectives are given due weight and prominence when a controversy is active; and
- Guideline 4.4.8 requires that if a specific aspect of an issue is being explored or a single view is being expressed the item in question should acknowledge that a range of views exists, and the weight of those views; and must not misrepresent those views.

The Committee agreed that, in the context of the piece, and particularly in light of the complainants' lack of participation, there was a duty on the BBC to represent the complainants' views by referring to them in the item in order to achieve fairness. The Committee also noted that doing so would usually also enable the BBC to achieve impartiality.

The Committee noted that one of the issues underlying the dispute between the complainants and their opponents on Sark was the complainants' objection to the vestigial feudal elements of Sark's constitution. The Committee noted that the complainants' views on this matter were not put to the Seigneur or to any other contributor who might reasonably be considered a political opponent of the complainants. The Committee was surprised that the contributors were not challenged by the Presenter on these issues, but was satisfied that the complainants' views on this subject and their role in introducing democracy had been referred to in the commentary, and in this respect had been given due weight and sufficient prominence in the piece to meet the requirements of the Guidelines on Impartiality. For example, the Committee noted that the introduction to the piece provided background information about Sark's constitution and made it clear that the complainants were opposed to feudalism and to the role of the Seigneur and had lost their case for the separation of Breccou from Sark. The Committee further noted that the piece acknowledged that the complainants had brought democracy to Sark and noted that they were investors in the island. The Committee also noted that the piece included extracts of specific criticisms from the Newsletter.

**Male 1:** "*Sark is a feudal state, reminiscent of 1930's Germany.*"

**Male 2:** "*Criminally unfit to represent the people of Sark cons...*" [fade out]

**Male 1:** "*Whilst half the world went to war to topple Hitler, Mr Beaumont has managed to manipulate the world at large into believing that Sark's feudalism is benign*"

**Male 2:** [fade in] "*...is the ringleader and architect of this malicious and criminal campaign...*" [fade out]

**Male 1:** "*The doctor's situation became untenable the moment he became part of the system and the feudal establishment.*"

**Male 2:** *[fade in] "... unqualified principal judge, unelected leader of parliament and chief feudal enforcer, Lieutenant Col Reg..." [fade out]*

**Male 1:** *"Informers and collaborators are useful for the regime to monitor and eliminate dissent."*

**Male 2:** *"...where it is believed that the organisation of the systematic hate campaign began."*

The Committee considered the fact that neither the Doctor nor the Seigneur was challenged to explain why the Seigneur's wife was not evacuated from the island by means of the complainants' helicopter (a matter which had been a source of criticism in the Newsletter). The Committee considered the argument that, looked at in isolation, the interviews lacked balance for that reason. Nevertheless, the Committee noted that the Newsletter's description of the failure to use the complainants' helicopter as being inhumane and negligent was included in the commentary to the piece. Since the purpose of mentioning this incident was to highlight the manner in which the Newsletter responded to these events, in the context of the central allegations of bullying and intimidating behaviour on the part of the complainants and the Newsletter, rather than to examine the medical or ethical implications of the decision not to use the helicopter, the Committee agreed that the failure to challenge the contributors more rigorously about this issue did not breach the requirements of due impartiality. The Committee emphasised that the question of whether or not the BBC achieves due impartiality and affords due weight to particular viewpoints should be looked at in the context of the piece as a whole. For the reasons given above, the Committee concluded that the piece satisfied the requirements of the Guidelines on Impartiality.

### **Finding: Not upheld**

**Point G:** The Committee considered the complainants' contention that the Presenter had encouraged the Seigneur to give the impression that the Queen personally disapproved of the complainants' conduct. The Committee noted that the complainants consider that the only challenge that was made to the Seigneur in the piece was intended to bring out more fully the Seigneur's assertions that the Queen is aware of what is going on in Sark and is on his (the Seigneur's) side, in the sense that it is a matter of shared regret that she is constrained to act through her Ministers, whom the Seigneur then criticised.

The Committee noted the requirements of the Guidelines on Impartiality in relation to personal view content, particularly Guideline 4.4.29. The Committee was satisfied that it was clear to the audience that the Seigneur was expressing his personal opinion with regard to this issue. Further, the Committee could find nothing in the Presenter's conduct of the interview in question that might reasonably be construed as encouragement, and nothing that would have suggested to listeners that the Seigneur had any knowledge of what the Queen thought. In the Committee's view, the Seigneur's comments were an expression of his personal opinion, and the piece was duly impartial (to the enhanced standard applicable to controversial subjects) in this regard.

### **Finding: Not upheld**

**Point H:** The Committee considered the complainants' contention that the Presenter had improperly expressed her personal opinion. The Committee noted that, in relation to personal view content, Editorial Guideline 4.4.31 states:

*"BBC staff and regular BBC presenters or reporters associated with news or public policy-related output may offer professional judgements rooted in evidence. However, it is not normally appropriate for them to present or write personal view programmes and content on public policy, on matters of political or industrial controversy, or on 'controversial subjects' in any area."*

The Committee noted that the script ran as follows:

*"Sark used to be the kind of place you would dream of moving to. It is a holiday island where you would take the kids and charge along tiny lanes on bicycles. What's shocking for someone who knows it is to see how much it has changed. People are scared to speak out."*

The Committee noted the complainants' view that this statement amounts to a personal judgement on the part of the Presenter and that, based on this statement, the audience was left in no doubt as to the personal opinion and sympathies of the Presenter. In the Committee's view, the Presenter was not expressing a personal opinion about the merits of the dispute between the complainants and their opponents on Sark, but rather was commenting on the changes—in terms of people's willingness to express their opinion—that had resulted from that dispute. The Committee agreed that the Presenter was expressing a professional judgement rooted in the evidence she had found on her visit to Sark, which she contrasted with her previous experience of the island. In the Committee's view, this comment was a legitimate expression of the Presenter's professional judgement. The Committee therefore found that the piece was duly impartial (to the enhanced standard applicable to controversial subjects) in this regard.

### **Finding: Not upheld**

**Point I:** The Committee considered the complainants' contention that the piece had ignored the existence of independent reports that the perpetrators of bullying and intimidating behaviour were in fact those allied with Sark's feudal establishment. The Committee noted that an article in the *New Yorker* dated 29 October 2012 magazine had referred to incidents of intimidation against Mr Delaney, and that the article did not identify the alleged perpetrators. The Committee also noted that, in an article in *The Guardian* from 27 June 2012, one Sarkee was reported as stating "There can be a much heavier response from the establishment than the Barclays if you dare to disagree with them...several people who had spoken in support of the Barclays had received dog poo through their letterbox". The Committee also noted that this was the only unequivocally pro-complainant comment in an article in which the preponderance of reported views were critical of the complainants. The Committee also noted that, according to BBC News, during their time on Sark, the Presenter and her producer had found no-one willing to speak up for the complainants, and that they subsequently found two people who supported the complainants, neither of whom would go 'on the record'.

The Committee accepted that the piece was an accurate reflection of what the Presenter had found on Sark, and could not agree that the piece had ignored compelling evidence that "Sark's feudal establishment" had engaged in bullying and intimidating behaviour, as the complainants had alleged. In reaching this conclusion, the Committee was particularly mindful of the fact that the articles referred to by the complainants post-dated the broadcast of the piece on 28 March 2012. The Committee could not therefore agree that the omission of any reference to the contents of independent reports, including but not limited to the *New Yorker* and *Guardian* articles, had failed to meet the requirements of due impartiality (to the enhanced standard applicable to controversial subjects) in this regard.

## **Finding: Not upheld**

### Impartiality of the piece as a whole

The Committee concluded its consideration of impartiality by considering the piece as a whole against the Editorial Guidelines on Impartiality.

**Point J:** The Committee considered the complainants' contention that the piece gave an almost entirely one-sided view and neglected issues of substance on Sark. The Committee noted that the complainants believed that insufficient weight had been given to their views on feudalism and democracy on Sark. In the Committee's view, the question for consideration was whether due weight had been given to the complainants' perspective, so as to ensure that the piece as a whole was duly impartial.

In relation to whether the piece neglected issues of substance on Sark, the Committee noted that Guideline 4.4.8 makes clear that due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue.. The Committee noted that it had previously found that the piece had provided sufficient contextual detail to meet the requirements of due accuracy and due impartiality (to the enhanced standard applicable to controversial subjects). As noted above, the in the Committee's view, the subject of the piece was, as was stated in its introduction, allegations that islanders were being bullied and intimidated by the complainants' representatives in the local newsletter, and that the complainants were trying to take control of the island and that democracy on Sark was under threat as a result.

In light of this, the Committee concluded that the piece had not neglected issues of substance, because the issues of substance that the complainants would have preferred the piece to examine were not directly relevant to the allegations that were the subject of the piece. In reaching this conclusion, the Committee agreed that the introduction to the piece provided sufficient signposting to the audience that it was not attempting to analyse the domination or otherwise of Sark's constitution and government by feudal institutions; rather, it was about the extent of the complainants' control over Sark, the impact of this on the islanders, and the potential implications for Sark democracy.

The Committee then considered whether the piece had given an almost entirely one-sided view of the allegations of bullying and intimidation. The Committee noted in this respect that Guideline 4.4.2 states that:

*"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. Instead, we should seek to achieve "due weight""*

As to whether or not it can be said that the piece made it clear that a range of views exists on this issue and afforded them due weight, the Committee noted that, in the piece, the Presenter:

- provided background information about Sark's constitution and made it clear that the complainants were opposed to feudalism and to the role of the Seigneur and had lost their case for the separation of Breccou from Sark;
- acknowledged that the complainants had brought democracy to Sark;
- noted that the complainants were investors in the island;

- quoted extracts from the Newsletter (which communicates the views of Mr Delaney);
- stated that she had tried to get a response from the complainants, but was told by their lawyer that they were unavailable;
- noted that she had found people who said they supported the complainants (although none would speak on the record); and
- referred to an email sent to the programme team from the complainants' lawyer, in which the allegations were said to be unsupported by evidence and false.

The Committee agreed that the piece had discharged its obligation to give the necessary range of views and perspectives due weight by reflecting these core facts. In reaching this conclusion, the Committee was particularly mindful of the fact that Guideline 4.4.7 does not require that equal weight be given to all views in the case of controversial subjects.

For the reasons given above, the Committee concluded that the piece satisfied the requirements of due impartiality.

### **Finding: Not upheld**

#### Fairness, Contributors and Consent

The Committee considered the appeal against the Editorial Guidelines on Fairness, Contributors and Consent.

**Point K:** The Committee considered the complainants' contention that, in the absence of their direct engagement, the Presenter had failed to discharge the much greater obligation to ensure that both sides of the dispute were reported fairly and given equal weight. The Committee noted that this point of the complainants' appeal engages both the Guidelines on Fairness and the Guidelines on Impartiality. The Committee considered that the impartiality aspects of this point of appeal had already been dealt with in its consideration of Point J above, in respect of which it had decided that there was no breach of the Guidelines on Impartiality.

In relation to fairness, the Committee noted the introduction to the Guidelines on Impartiality which explains that the BBC must "avoid unjust or unfair treatment of individuals" It also noted the requirements of Editorial Guideline 6.4.28, which (so far as material) states:

*"When our audience might reasonably expect to hear counter arguments or where an individual, viewpoint or organisation is not represented it may be appropriate to explain the absence, particularly if it would be unfair to the missing contributor not to do so. This should be done in terms that are fair. We should consider whether we can represent the missing contributor's views based on what we already know."*

For the reasons set out above in respect of Point J, the Committee noted that it had concluded that, on balance, the piece represented and gave due weight to the complainants' views to the extent that was possible in circumstances where the complainants had declined to participate. Accordingly, for the same reasons, the Committee was satisfied that the reporting of the complainants' views was fair and did not breach the requirements of the Guidelines on Fairness.

## **Finding: Not upheld**

**Point L:** The Committee considered the complainants' contention that the piece relied in part upon contributions by unidentified individuals without explanation. The Committee agreed with the conclusion of the ECU in relation to this point of appeal: in certain circumstances it may be a requirement of the Guidelines on Fairness to identify particular contributors if to do so was an essential element of providing due opportunity to respond to particular allegations. Notwithstanding this, it is not a requirement of the Guidelines that contributors should always be identified. In this case, the Committee decided that the anonymous comments were *vox pop* criticisms, to which the complainants could have responded without knowing the identity of the persons making them. For these reasons, the Committee agreed that the piece did not breach the Guidelines on Fairness in this regard.

## **Finding: Not upheld**

**Point M:** The Committee considered the complainants' contention that the episode with the Doctor was unfairly introduced and described. In particular, the complainants allege that the piece was unfair in that it contained an interview with the Doctor, without making it explicit that the Doctor was indeed talking. More generally, the complainants allege that the piece failed to state that their family freely made their helicopter available to the Guernsey emergency services to evacuate people in such circumstances, and that the Seigneur's wife had been evacuated by lifeboat instead (a decision that was supported by the Seigneur).

The Committee agreed that the complainants could only bring a fairness complaint in respect of these issues to the extent that they contend that the piece treated them unfairly by failing to identify the doctor and by failing to represent their views regarding the helicopter and their criticisms of the Seigneur's position. The Committee considered that, in addition to engaging the Guidelines on Fairness, aspects of this point also engaged the Guidelines on Impartiality. The Committee noted the commentary which led into the Doctor speaking:

*"Although he had overwhelming support in the island, not only from the patient's family but also from Sark's medical committee and the local BMA, Doctor Counsell felt he had no option but to resign.*

**Male [Dr Counsell] :** *"People in positions of authority and trust in the island are being undermined and if you are telling the population of Sark that the people that they want to trust, that they need to trust, such as the doctor, and such as the judge. The people that in any civilised community, in any democratic society, that they should feel they are able to trust. If the newsletter is telling them that they shouldn't trust them and they say it repeatedly, as in any form of propaganda, and I believe that this is propaganda, after a while, people do believe it."*

The Committee noted that it was common practice to lead into an interview with a reference to the person who was about to speak as a way of signalling to the audience who was speaking. In the Committee's view, listeners would have soon come to realise that the person speaking was the Doctor. Accordingly, the Committee was satisfied that no unfairness was caused to the complainants in this regard. In any event, the Committee also agreed that even if it had not been clear that it was the Doctor speaking in the piece, it was difficult to see how this could result in unjust or unfair treatment of the complainants so as to amount to a breach of the Guidelines on Fairness.

The Committee agreed that the story of the evacuation of the Seigneur's wife and its aftermath was relevant to the subject of the piece, in that the Newsletter had strongly criticised the Doctor for not using the complainants' helicopter, and because the Doctor had cited "[t]rial by the Press, in the form of the Sark Newsletter" as the reason for his subsequent resignation. The Committee also agreed that the purpose of mentioning this incident in the context of the piece was not to examine the medical or ethical matters relating to the Doctor or the Seigneur's conduct (such as, for example, the exercise of the Doctor's clinical judgement), but rather to highlight the manner in which the Newsletter responded to these events. In the Committee's view, the reporting of this incident gave listeners a vivid flavour of the Newsletter's *modus operandi*, and of the fact that the Doctor had found its criticisms intimidating; issues which went to the central allegations of bullying and intimidating behaviour on the part of the complainants and the Newsletter.

The Committee noted the requirements of fairness and due impartiality in this context under the Guidelines. In particular, the Committee noted that Guideline 4.4.2 states that:

*"Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across out output as a whole, or within a single programme, web page or item. Instead we should seek to achieve 'due weight'."*

The Committee therefore considered whether, in the context of the piece, it was unfair to the complainants to omit the reference to the general availability of their helicopter for evacuation and to the position taken by the Seigneur and whether this breached the requirements of due impartiality. As noted under Point F above, the Committee agreed that, had the purpose of mentioning this incident in the piece been to examine the medical or ethical implications of the Doctor and/or the Seigneur's decisions, fairness and due impartiality may have required the piece to include mention of the complainants' views regarding the helicopter, and their criticisms of the Seigneur's position. However, because the purpose of mentioning this incident was to highlight the manner in which the Newsletter responded to these events, in the context of the central allegations of bullying and intimidating behaviour on the part of the complainants and the Newsletter, the Committee agreed that omitting these aspects from this part of the piece did not breach the requirements of due impartiality and fairness. In reaching this conclusion, the Committee considered the extent to which the complainants' perspective in relation to the Newsletter had already been dealt with in the piece and was mindful of its conclusions in respect of Points J and K. The Committee therefore concluded that the piece was duly impartial (to the enhanced standard applicable to controversial subjects) and fair in this regard.

### **Finding: Not upheld**

**Point N:** The Committee considered the complainants' contention that they were given no effective right of reply. The Committee noted that the complainants contend that only very general allegations were put to them by the BBC, which gave them no effective right of reply and even then, the email reply was cut heavily and the fundamental points about Sark's feudal state were removed.

The Committee reminded itself of the principles set out in Guideline 6.2.1, which states:

*"We will be open, honest, straightforward and fair in our dealings with contributors and audiences unless there is a clear public interest in doing otherwise, or we need to consider important issues such as legal matters, safety, or confidentiality."*

The Committee also reminded itself of the provisions of Guideline 6.2.3, which states:

*"When our output contains allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or organisation, those criticised should normally have a right of reply, unless there is an editorial justification to proceed without it.",*

and Guideline 6.4.25, which also provides that a "right of reply" is "*a fair opportunity to respond to the allegations*".

The Committee noted the contents of the communications between the Presenter and the Advocate and Mr Delaney prior to the broadcast of the piece, in particular the Presenter's emails to the Advocate of 16 March 2012 and 27 March 2012, the relevant extracts of which appear below:

*"We're running a report on Monday's programme about Sark, the Sark Newsletter and criticism of what Sir David and Sir Frederick Barclay are doing in the island.*

*We've spoken to islanders who say they feel bullied and intimidated by the way the Barclays do business in the island and they allege the Barclays are trying to take control of Sark.*

*We would like to interview them in the programme to give them a chance to respond to what is being said."*

*"...we really are very keen to have either you, or your clients - Sir David or Sir Frederick Barclay - respond to criticism that we expect will be made in our programme tomorrow.*

*We have spoken to people on Sark who talk about the bullying and intimidation of the Sark Newsletter which they see as the mouthpiece of the Barclays in the island. It is also suggested that it is hard to see any other reason for the Barclays approach than that they want to take over the island.*

*As you will be aware I have tried to find someone to support the Barclays but no one is prepared to speak on the record. If neither Sir David nor Sir Frederick are available we would gladly interview you in their place."*

and the Presenter's email to Mr Delaney of 14 March 2012, the relevant extract of which appears below:

*"I'm in the island of Sark at the moment and am very keen to do an interview with you. We have heard lots of criticism of both the Sark Newsletter and the Barclay brothers since arriving in the island and I would be very interested to hear your response."*

Having considered the correspondence between the Presenter, the Advocate and Mr Delaney, the Committee agreed that the Presenter had effectively outlined the main thrust of the case against the complainants and the Newsletter. Although the Presenter had not listed each specific allegation made against the complainants and the Newsletter in her communications with the Advocate and Mr Delaney, in the Committee's view those specific allegations were all instances of the alleged "bullying and intimidation" to which the Presenter had referred in her emails to the Advocate of 16 and 27 March 2012. The Committee further noted that the Advocate's and Mr Delaney's responses left no room for doubt that they did not intend to engage with the programme about the allegations beyond the denial that the Advocate sent to the Presenter on 27 March 2012, the evening before the piece was broadcast. The Committee therefore concluded that the Presenter

had taken sufficient steps to make the complainants aware of the allegations against them, and in doing so had discharged her obligation under the Guidelines to give them a fair opportunity to respond to the allegations.

The Committee then turned to consider whether the reading of the extract from the Advocate's statement in response to the allegations complied with the requirement in Guideline 6.4.26 that:

*"Any parts of the response relevant to the allegations broadcast should be reflected fairly and accurately and should normally be broadcast in the same programme, or published at the same time, as the allegation."*

The Committee noted that the item had included this line:

*"I have tried to get a response from the Barclays. Their lawyer says they are not available. Their managing director in Sark, Kevin Delaney, says he does not do interviews. Everything he has to say is in the newsletter."*

The Committee also noted that the Newsletter was quoted in the item:

**Male 1:** *"Sark is a feudal state, reminiscent of 1930's Germany."*

**Male 2:** *"Criminally unfit to represent the people of Sark cons..." [fade out]*

**Male 1:** *"Whilst half the world went to war to topple Hitler, Mr Beaumont has managed to manipulate the world at large into believing that Sark's feudalism is benign"*

**Male 2:** *[fade in] "...is the ringleader and architect of this malicious and criminal campaign..." [fade out]*

**Male 1:** *"The doctor's situation became untenable the moment he became part of the system and the feudal establishment."*

**Male 2:** *[fade in] "... unqualified principal judge, unelected leader of parliament and chief feudal enforcer, Lieutenant Col Reg..." [fade out]*

**Male 1:** *"Informers and collaborators are useful for the regime to monitor and eliminate dissent."*

**Male 2:** *"...where it is believed that the organisation of the systematic hate campaign began."*

And:

*"Doctor Peter Counsell had chosen not to use the Barclays' helicopter to evacuate the wife of the Seigneur, Sark's feudal lord, when she had a stroke, sending her by boat instead. The newsletter described the decision as inhumane and the doctor as negligent"*

The Committee also noted that the Today programme had ended the item by saying:

*"...the Barclay brothers would not give us an interview but their lawyer emailed us last night to say the allegations we put to them were unsupported by evidence and, indeed, false. The same lawyer said he separately acted for Kevin Delaney,*

*the owner, publisher and editor of the Sark Newsletter. He also denied the allegations and said people often complained to him that they felt intimidated and unable to speak out against the feudal establishment and the Newsletter was the only effective political opposition on the island."*

The Committee noted the complainants' position that the Advocate's email of 27 March 2012 to the Presenter had been heavily edited to omit its central points concerning feudal issues. The Committee considered the email as sent by the Advocate, and as reported in the piece. The Committee noted the elements of the email which were not reported in the item:

*"...an island which is still owned and dominated by a feudal Seigneur, whose family bought Sark in the 19th century and pays the Crown £1.79 per annum for the fief whilst being paid an annuity of £30,000 out of public funds for unspecified duties. The Seigneur sits as of right in the Island's assembly and appoints the Island's principal resident Judge, who continues to preside over the Island assembly. The Seigneur has real political powers including the right to refuse Police access to the Island. Mr Delaney trusts that you will explain all these matters to your audience."*

In the Committee's view, the piece had already made the complainants' position clear in relation to their objections to the feudal elements of Sark's constitution. Accordingly, there was no obligation to repeat these elements as part of the complainants' response to the allegations at the end of the piece, since they did not directly pertain to the allegations that were the subject of the piece. The Committee therefore concluded that there had been no breach of the Editorial Guidelines on Fairness, Contributors and Consent in this regard.

### **Finding: Not upheld**

#### Politics, Public Policy and Polls

The Committee considered the appeal against the Editorial Guidelines on Politics, Public Policy and Polls.

**Point O:** The Committee considered the complainants' contention that the piece failed to treat a matter of politics and public policy with due accuracy and impartiality in news and other output, contrary to Guideline 10.2.1. The Committee noted that, in its view, the subject matter of the piece was allegations that islanders were being bullied and intimidated by the complainants' representatives in the local newsletter, and that the complainants were trying to take control of the island and that democracy on Sark was under threat as a result. Therefore, whereas the complainants saw the subject of the piece as the domination or otherwise of Sark's constitution and government by feudal institutions, the programme makers saw it (correctly, in the Committee's view) as alleged bullying and intimidatory conduct on the part of the complainants and the Newsletter. The Committee noted that some aspects of the piece referred to matters of politics - for example the interviews with the Seigneur and the Chair of the Chief Pleas and that there was context given relating to local Sark politics. However, the Committee concluded that the primary focus of the piece was on the allegations of bullying and intimidatory conduct on the part of the complainants and the Newsletter. In such circumstances, the Committee concluded that Guideline 10.2.1 which says

*"We must treat matters of politics and public policy with due accuracy and impartiality in news and other output"*

was not engaged. In any event, the Committee considered that, even if (which it did not accept) Guideline 10.2.1 had been engaged, it was satisfied that it would not have been breached in the context of the piece on the basis that the breach of the Guidelines on Accuracy it had identified above in relation to Point E did not relate in substance to a matter of politics and public policy. Rather, the breach related to an accusation by a contributor of alleged bullying and intimidatory behaviour on the complainants' part.

Accordingly, for the reasons given above, the Committee agreed that there was no breach of the requirements of Guideline 10.2.1.

### **Finding: Not Upheld**

**Point P:** The Committee considered the complainants' contention that the Presenter had improperly expressed her personal opinion on current affairs or matters of public policy other than broadcasting or the provision of online services, contrary to Guideline 10.2.2. In the Committee's view, Guideline 10.2.2 applies to the BBC corporately, not to individuals who work for the BBC. The Committee therefore concluded that Guideline 10.2.2 was not engaged.

### **Finding: Not upheld**

**Point Q:** The Committee considered the complainants' contention that the BBC had campaigned and allowed itself to be used to campaign on behalf of the complainants' opponents, contrary to Guideline 10.2.3 which requires that the BBC must not campaign or allow itself to be used to campaign. The Committee noted that, although the views of the complainants' opponents on Sark featured heavily in the piece, the complainants' views were also represented and were given due weight. The Committee also noted that the piece did not contain any call to action. In the Committee's view, this was a factual report for a flagship news programme, not a campaigning or personal view piece. Accordingly, the Committee was satisfied that there was no breach of Guideline 10.2.3.

### **Finding: Not upheld**

**Point R:** The Committee considered the complainants' contention that the Presenter had interviewed Sark politicians without applying the standards and safeguards which would have been employed in the equivalent piece in the UK. As the Committee had previously noted, in its view, the subject matter of the piece was allegations that islanders were being bullied and intimidated by the complainants' representatives in the local newsletter, that the complainants were trying to take control of the island and that democracy on Sark was under threat as a result. Therefore, whereas the complainants saw the subject of the piece as the domination or otherwise of Sark's constitution and government by feudal institutions, the programme makers saw it (correctly, in the Committee's view) as alleged bullying and intimidatory conduct on the part of the complainants and the Newsletter.

In the Committee's view, the mere fact that certain contributors were members of Sark's legislature did not make this story a political one. In any event, the Committee agreed that there was no distinct standard of impartiality applicable to political output: the key question and safeguard is whether the output in question is duly impartial in accordance with the Guidelines on Impartiality. The Committee noted that it had already considered the Presenter's interviews with the Seigneur and the Chair of the Chief Pleas as part of its consideration of Point F above, in respect of which it had not identified a breach of the Guidelines on Impartiality. Accordingly the Committee concluded that this point did not engage the Editorial Guidelines on Politics, Public Policy and Polls.

## **Finding: Not upheld**

### General comments

In conclusion, the Committee wished to stress that it was essential to the achievement of the BBC's public purposes that the BBC should be able to report freely on matters that were within the public interest. The Committee strongly agreed with the position expressed in Guideline 6.4.28, which states:

*... the refusal of an individual or an organisation to make a contribution should not be allowed to act as a veto on the appearance of other contributors holding different views, or on the output itself.*

The Committee did not wish it to be supposed that, by refusing to contribute, individuals or organisations could in effect wield a veto on the BBC output in question. However, in such circumstances, it was incumbent on the BBC — especially in the case of controversial subjects such as this — to ensure that contributors' views were appropriately represented.

# 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.

## Filming on a charity's premises on 21 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 Senior Editorial Strategy Adviser not to uphold his complaint regarding filming by an independent production company for the BBC at a charity's premises on 21 February 2013.

The production company had agreed with the charity how it would carry out the filming and had also agreed what it would do to make sure no-one was in the programme who did not want to be. One area inside the hall was set aside for people who did not want to be filmed.

The complainant did not want to be in the film and did not want any pictures of him stored in case they were used later on without him agreeing. He was unhappy that the BBC had filmed in the building and did not think that, just because the charity consented to the filming, it should have been allowed to take place. He said he sat in an area away from filming but thought he had been filmed anyway and was concerned that he would be in the finished programme.

Following the filming, the complainant wrote to the BBC saying that he did not want to be filmed or included in the programme. He said that some people at the centre might feel bullied into taking part. He said others were vulnerable. The BBC had written to him and explained how the programme would be made. The BBC had said that people who did not want to be in the programme would not be in it, or their pictures would be blurred. The BBC apologised that he had been upset by the filming and said it had worked hard to make sure that everyone spoken to wanted to be in the programme.

The complainant thought the programme had been shown and thought he might have been in it. He said he did not want to be in the programme – not even if the image of him was blurred – and if any picture of him was shown, he should be paid for it. The BBC said it would make sure no pictures of the complainant would appear in the programme.

### The Trust Unit's decision

The Senior Editorial Strategy Adviser (“the Adviser”) said that she had read all the letters that the complainant had written to the BBC and all the replies the BBC had sent. She saw that BBC Scotland agreed with the complainant that he should not have been filmed when he had not wanted to be. BBC Scotland had promised that no pictures of the complainant would be used and had also stated that any pictures of him would be wiped from the camera’s memory.

The Adviser also saw that BBC Scotland had apologised for filming the complainant. She was sure the Trustees would want her to add their apologies too. She knew that when the BBC agreed they had something wrong and apologised, the Trustees normally considered that the matter had been resolved.

The Adviser therefore concluded that the complainant’s appeal should not be put in front of Trustees.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He believed that his privacy had been breached and that the behaviour of the film crew had caused offence. He contended that the BBC forced him to move from a safe area and that he had made a verbal complaint to a camera operative.

### **The Committee’s decision**

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

The Committee noted the complainant’s concern that he may have been filmed without his permission, and that he may have appeared in the finished programme when it was broadcast. The Committee also noted that the complainant had confined himself to an area of the building which had been set aside, as part of the filming agreement between the production company and the charity, for people who did not want to appear in the final programme.

On the day of the filming, the complainant had sat in the area set aside for people who did not want to appear in the finished programme. It appears that a key contributor walked into this area while she was being filmed and the complainant was concerned that the camera was pointing at him. The production company said that it stopped filming and apologised to the complainant. On reviewing the rushes, the production company said that a partial image of the complainant had been filmed. The production company said that this image was deleted from the camera card and was no longer present in any of the rushes and was not shown in the final programme.

The Committee regretted that, despite the wishes of the complainant, who was in a sensitive situation and had not wanted to be filmed, he had been filmed inadvertently and this had caused him distress.

However, the Committee noted that BBC Scotland had agreed with the complainant that he should not have been filmed without his permission, and had apologised to him, promising that no pictures of the complainant would ever be used in any broadcast content. The Committee agreed that it would be likely to conclude that any breach of privacy in the making of the programme would be resolved by the apology from BBC Scotland and the assurance that any footage would be wiped.

The Committee noted that the BBC was clear it had not broadcast footage of the complainant and that the complainant made his complaint because he was concerned that it had been broadcast rather than because he had seen it broadcast. While Trustees had sympathy for the complainant's point of view, the Committee agreed that there was no reasonable prospect of success for an appeal based on the broadcast of footage which had not in fact been broadcast.

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

## ***Watchdog Daily, 13 November 2012, BBC One***

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 an item on *Watchdog Daily* about consumer concern surrounding high fuel prices which he believed breached the BBC's editorial guidelines on Impartiality.

During the report about high fuel prices, the presenter had referred to anxiety among consumers about the cost and had stated: "... which is why Labour MPs tried to get the Government to scrap plans for another three-pence increase in fuel duty in January. Labour failed in that Commons bid".

The complainant considered this demonstrated bias in favour of the Labour Party and breached the BBC Guidelines on Impartiality.

The complainant escalated his concerns to the BBC Trust and made a number of further comments.

First, the complainant stated that he considered the notion of "due" impartiality was highly subjective and he considered the BBC should provide a clear explanation of the distinction it draws between "impartiality" and "due impartiality".

The complainant stated that he considered a defence on the basis of time constraints was not appropriate. He considered that if a report could not be completed within a time limit in a way that was impartial then it should not be carried and he stated that the BBC position appeared to be that bias was acceptable when time was allocated for just one point of view.

With regard to the programme item in question, the complainant considered it to be biased in favour of the Labour Party, depicting Labour as the "selfless champion of poor motorists, acting in alliance with the nice people from Which to oppose an uncaring coalition".

The complainant drew particular attention to the presenter's statement about "why Labour MPs tried to get the Government to scrap plans for another three-pence increase in fuel duty in January". He believed that this statement introduced the question of Labour's motivation and considered that this aspect of his complaint had not been sufficiently addressed by the ECU at Stage 2.

In conclusion to his appeal, the complainant considered that this segment of the programme offered a simplistic approach to a complicated issue and was more suited to party political broadcasting than to a consumer advice programme.

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

The Trust's Senior Editorial Strategy Adviser ("the Adviser") replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and an independent editorial adviser, and she did not 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 the excerpt of the programme which was the subject of the complaint. The item was presented by Rani Price and was accompanied by images on screen referring to the *Which?* report with the headline: "Record number of consumers fear rising fuel price". The presenter stated:

"Despite a slight fall in prices at the pumps over the last month, the average amount we pay for petrol and diesel still falls within four pence of the record prices. It's currently one hundred and thirty eight point nine pence for unleaded, and a hundred and forty three point seven pence for diesel. So it's no wonder that fuel prices were recently found to be the number one consumer concern right now, with eighty five percent of us worrying about the cost of petrol. Which is why last night, Labour MPs tried to get the government to scrap plans for another three pence increase in fuel duty in January. Labour failed in that Commons bid, but there have been hints that the Chancellor is reconsidering the plans anyway. That will come as a relief to drivers in some parts of the UK, where petrol is currently selling for a hundred and forty seven point nine pence per litre and diesel for an eye-watering one hundred and fifty six point nine pence a litre. They're the most expensive prices we've heard about – but if you know of anywhere that's even worse, then please get in touch."

The Trust's Adviser considered whether his complaint engaged the BBC Guidelines on Impartiality. The relevant Guidelines are set out below:

### **4.1 Introduction**

Impartiality lies at the heart of public service and is the core of the BBC's commitment to its audiences. It applies to all our output and services – television, radio, online, and in our international services and commercial magazines. We must be inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected.

The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy. But we go further than that, applying due impartiality to all subjects. However, its requirements will vary.

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.

Due impartiality is often more than a simple matter of 'balance' between opposing viewpoints. Equally, it does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

## 4.2 Principles

4.2.5 - We exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.

## 4.4 Practices

### *Due Weight*

4.4.2 - 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. Instead, we should seek to achieve 'due weight'. For example, minority views should not necessarily be given equal weight to the prevailing consensus.

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

The Adviser noted that the complainant considered there was a lack of clarity regarding the terms "impartiality" and "due impartiality" and was concerned about the degree of subjectivity involved in deciding whether a report was duly impartial.

She noted that the Guidelines state:

"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 noted that the Guidelines meant the same subject could be treated differently by different programmes, yet each could be duly impartial. For example, if a comedy panel show referred to a controversial subject, the requirements for due impartiality would be looser than if the same subject were discussed on news output. The Adviser considered this was broadly understood by audiences.

The Adviser noted that *Watchdog* had been running for more than thirty years and was a very well-established consumer affairs programme. *Watchdog Daily* was a live programme that came under the same banner and had been broadcast from November 2012. She noted the programme's online description stated that it was "live and interactive" and that it "takes on the big household-names, getting

results and showing viewers how they can fight back” and that it “helps consumers fight for their rights on the high street and beyond”. She considered audiences would have been aware of the programme’s remit because of its link with the very well established programme *Watchdog*.

The Adviser noted that the main subject of this report had been high petrol prices and the level of concern among consumers about this. The item also served as a trawl by the programme for viewers to contact them to report the cost of fuel where they lived. The Adviser noted that there was no dispute that the subject was a suitable one for *Watchdog Daily* to cover, and that, with the *Which?* report and a desire to find out about petrol prices across Britain, there was an editorial justification for the item.

In terms of whether there was an editorial justification for referring to the debate in the House of Commons, the Adviser noted the response sent by the Complaints Manager of 26 March 2013, which stated:

“I note your interpretation of this as promoting the Labour Party as consumer champions, but it would seem abstruse to me not to have attributed the tabling of the motion, as documented in Hansard on 12 November, to Labour. ... [Watchdog is] a magazine-style consumer affairs show that includes a number of reports of varying lengths, some, as this one, very brief. It seems to me that there was an editorial justification in attributing the action to Labour, in that this was one of the key facts of a story that was current and relevant and therefore warranted a mention. I also feel that the story was reported in a manner that was compatible with the general audience expectations of the programme.”

The Adviser noted that the issue of petrol prices was a significant one for consumers. She noted that the Labour Party had used an opposition day debate to table a vote on whether the scheduled fuel increase should be delayed – which it had lost. She noted that the Treasury subsequently announced that it would not go ahead with the increase in the fuel levy. She noted the relevant section of the script referred both to the vote tabled by Labour and also to indications that the Conservative Chancellor of the Exchequer was considering the issue of fuel price rises, in that it stated:

“Which is why last night, Labour MPs tried to get the government to scrap plans for another three pence increase in fuel duty in January. Labour failed in that Commons bid, but there have been hints that the Chancellor is reconsidering the plans anyway.”

The Adviser noted that, in his appeal, the complainant had stated that the broadcast item could “sit quite comfortably within a soft-sell party political broadcast on behalf of the Labour Party. It would be difficult for a PR company commissioned by the Opposition to improve upon the way it depicts the Party as the selfless champion of poor motorists, acting in alliance with the nice people from *Which* to oppose an uncaring coalition”.

The Adviser noted that on 3 December, 2012, BBC Complaints had written to the

complainant and stated: "This was simply stating a fact that was widely reported at the time, and not an attempt to 'embarrass' the government as you suggest." The complainant had disagreed with this analysis and considered that the programme had been speculating on Labour's motivation in tabling the motion in a way that was helpful to the Labour party and which therefore created bias.

The Adviser considered Trustees were likely to conclude that it was reasonable of the programme to have referred to a vote in the House of Commons that would have had implications for a subject that was significant to its audience. In terms of whether the comment implied a motive in a way that was beneficial to Labour, she noted the complainant's interpretation – that Labour might be perceived as "the selfless champion of poor motorists". She agreed that that was a possible inference that could be drawn; however, she also considered that it was possible for a different conclusion to be reached, and that other viewers might have considered Labour had made a cynical political manoeuvre in an attempt to reap the benefit of genuine consumer concerns. She considered that by referring to the fact that "there have been hints that the Chancellor is reconsidering the plans anyway" the programme had made clear that concern about fuel prices was shared by the Government. She considered that Trustees would be likely to conclude this met the requirement for due impartiality and this point of the appeal did not have a reasonable prospect of success.

In terms of the complainant's view that "a defence on the basis of time constraints was not appropriate", the Adviser hoped to reassure the complainant that, according to the Editorial Guidelines as set out above, the brevity of a report did not mean it did not have to meet the requirements under the Guidelines for due impartiality.

Reading the correspondence, the Adviser noted that, in particular, time had been referred to as an issue in relation to whether or not the report should have included more information about the fuel escalator, which the complainant stated had been introduced by a Labour government.

The Complaints Manager had written:

"In a one minute report there clearly wasn't time to go into detail about background issues such as the history of the fuel price escalator, but the report did also highlight that while the motion was defeated on the night, the government were thought to be reconsidering the impending increase."

She noted that the fuel escalator's history had not been straightforward; that it had been introduced initially in 1993 under a Conservative administration and retained but subsequently dropped by a Labour government; and then a separate escalator had been introduced by Labour, which had been retained by the coalition government. The Adviser agreed with the Complaints Manager that the requirement for due impartiality did not mean that the report should have included a history of the fuel price escalator and considered Trustees would conclude that this was not required for the report to meet the Guidelines for due impartiality.

The Adviser noted the final comments of the appeal, namely that the complainant

considered this was a “curious, untypical segment of a programme that mostly spends its time outlining consumer problems ... its simplistic approach to a complicated issue was more suited to party political broadcasting”.

The Adviser noted that *Watchdog* had a well-established history of consumer journalism and considered the programme remit was well known to its audience. On a subject that was clearly of interest to its viewers, the Adviser considered Trustees would be likely to conclude that it was reasonable for the programme to refer to a vote in the House of Commons where the outcome would have had a significant impact on consumers. Overall, she considered Trustees would be likely to conclude the item met the Guideline requirements for due impartiality and fell within audience expectations of a programme brand that had been established over many years. She considered the appeal did not therefore 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 his appeal. He said that the main points of his argument were:

1. There was a substantial discrepancy in how the broadcast words about which he complained had been quoted by different BBC employees. He was sure Trustees would want to establish for themselves what was actually said during the programme before making judgements about impartiality.
2. His request for information relating to how the disputed programme segment was created had been ignored. He said that it appeared to have been constructed in two parts: one before the day of broadcast and the other live, or just before it was aired. He believed that the relevant part of the script had probably been created for the most part before the parliamentary debate took place, which had an important bearing on the validity of some of the reasoning used to exonerate the production team. He asked why this matter had not been clarified.
3. The summation and judgement by the Senior Editorial Strategy Adviser ignored the coverage of Labour’s position provided by *The Daily Politics* wherein several commentators considered that Labour’s main motivation was to cause the coalition embarrassment in a fairly cynical manner.
4. The central feature of his complaint related to the phrase “Which is why last night, Labour MPs etc.” had not been explicitly dealt with. He asked whether the BBC regarded that statement within the context of its sentence to have been a simple statement of fact. If it was an opinion (relating to Labour’s motivation in calling for a debate), the complainant asked who benefited from that simplistic view of Labour’s motives. The complainant said that he had specifically requested that the BBC clarified its view of this specific matter on several occasions but no such clarification had been forthcoming. He believed that indicated deliberate evasion.

5. Other elements of the Trust's response to his appeal lacked conviction. He said that the extensive coverage of the issue of 'impartiality' and 'due impartiality' continued to lack meaningful definition with the generalisations, leaving considerable room for almost any interpretation. He also felt that the mention of appropriateness for audience and 'audience expectation' seemed to be an attempt to excuse a lack of balance. He asked whether the BBC was implying that the *Watchdog* audience was politically unaware and that slacker standards were acceptable than for *The Daily Politics*.

The complainant also made a number of other points:

6. He had not objected to the mention of parliamentary debate, but considered that if the producer chose to go into that level of party political detail then great caution was required for that type of consumer-focused programme.
7. He had never advocated going into a detailed history of the fuel escalator but a phrase or sentence acknowledging Labour's responsibility for the legislation would have provided much-needed balance, without taking any appreciable time.
8. The Opposition was seeking to "embarrass" the government and its statements should not be treated uncritically.

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

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

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

The Committee noted that, although the wording complained of had not been consistently set out throughout correspondence with the complainant, it was accurately and fully captured in the letter from the Trust Unit, on page 2 of the Annex. The wording in question was:

"Despite a slight fall in prices at the pumps over the last month, the average amount we pay for petrol and diesel still falls within four pence of the record prices. It's currently one hundred and thirty eight point nine pence for unleaded, and a hundred and forty three point seven pence for diesel. So it's no wonder that fuel prices were recently found to be the number one consumer concern right now, with eighty five per cent of us

worrying about the cost of petrol. Which is why last night, Labour MPs tried to get the government to scrap plans for another three pence increase in fuel duty in January. Labour failed in that Commons bid, but there have been hints that the Chancellor is reconsidering the plans anyway. That will come as a relief to drivers in some parts of the UK, where petrol is currently selling for a hundred and forty seven point nine pence per litre and diesel for an eye-watering one hundred and fifty six point nine pence a litre. They're the most expensive prices we've heard about – but if you know of anywhere that's even worse, then please get in touch."

The Committee noted that the complainant had not received a response to his request for information on how the disputed programme segment was created and that he considered clarification on that point was needed to establish whether a substantial part of the script had been created before the parliamentary debate on fuel prices had taken place. He believed this had an important bearing on the validity of some of the reasoning used in the response to his complaint. In the Committee's view the way the script was prepared was not relevant to the question of whether the material as broadcast was duly impartial. The Committee appreciated that the complainant cared deeply about this subject, considered it was relevant and was concerned that he had not received a reply. But the Committee was of the view that, given the number of queries the BBC received a year, the BBC could not investigate every issue that complainants raised. It was necessary for the BBC to focus on the programme as broadcast and whether it met editorial standards.

The Committee noted that the complainant considered the central feature of his complaint to relate to the sentence which began "Which is why last night, Labour MPs...". He said he had not received adequate clarification of whether the BBC regarded that statement within the context of its sentence to have been a statement of fact, or an opinion. The Committee also noted that he had pointed to *The Daily Politics* where, he had said, commentators considered that Labour's main motivation was to cause the coalition embarrassment in a fairly cynical manner.

The Committee noted that the Senior Editorial Strategy Adviser had explained to the complainant that, under the Editorial Guidelines, 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 expectations and any signposting that may influence that expectation.

The Committee noted that the complainant was not happy with the way the Editorial Guidelines had been drafted and felt that the mention of 'appropriate' and 'audience expectation' in this context suggested an attempt to excuse a lack of balance. However, the Committee also noted that the Editorial Guidelines had been approved by the Trust in 2010 after consultation and after audience research (available on the Trust website) on the way the due impartiality section had been drafted. The Committee considered that the Senior Editorial Strategy Adviser had explained that the political comment that would be included in a programme like *The Daily Politics* was clearly different from what one might expect from a consumer programme such as *Watchdog Daily*. This example illustrated why

audience expectations were relevant to the approach taken by the BBC to achieving due impartiality and why different programmes must achieve impartiality in a way that is appropriate for the output.

The Committee was of the view that it would be likely to conclude that it was reasonable for a consumer affairs programme, during a report on high fuel prices, to refer to a vote in the House of Commons, the outcome of which would have considerable impact on consumers. The Committee also noted that it would be likely to conclude that mentioning that a political party had espoused a course of action that was popular with consumers and attributing that as a motivation was relatively unexceptionable whether this was perceived as fact or opinion by the audience. Political parties did try and adopt popular policies. The Committee considered that it would be unlikely to conclude that such a reference implied that the BBC was stating that the party was a champion of the consumer. The Committee agreed that this brief reference left open to interpretation by the audience what other political motivations might have been at work, including the suggestion from the complainant that it was an attempt to embarrass the government. The Committee agreed that it was not necessary to examine this further to achieve due impartiality in the context of the broadcast in question.

The Committee noted that the decision about what to omit from a programme was not a matter for the Trust unless an omission would lead to a failure to meet due impartiality. The Committee agreed with the Senior Editorial Strategy Adviser that it was unlikely to conclude that the inclusion of a reference to the introduction of the fuel escalator by Labour was necessary to achieve due impartiality in the context of a reference on a consumer programme to the current price of fuel and the political reaction to consumer concerns.

The Committee agreed that it would be likely to conclude that this was a factually accurate and duly impartial piece on the latest political developments in relation to fuel prices.

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

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

## ***Brain of Britain, 25 February 2013, Radio 4***

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 Acting Controller of Audio & Music Production not to uphold his complaint questioning the eligibility of a contestant to take part in an edition of *Brain of Britain* broadcast on 25 February 2013.

The complainant considered the contestant to be a 'de facto employee' of the BBC and a professional games show contestant.

The complainant appealed to the BBC Trust, saying that his complaint related very much to fairness. He made the following points about the responses he had received at Stages 1 and 2 from the Head of Audio & Music Production and the Acting Controller of Radio & Music Production, BBC Radio, respectively:

- At Stage 1 he was told that the contestant's application to take part in *Brain of Britain* had been the subject of some debate.
- At Stage 2 he was told that there were "really only two rules: the person must not have won the competition before and contestants can't reapply within five years". Yet he contended that the contestant had appeared on the programme twice since 2008.
- At Stage 1 he was told that, despite the contestant's previous appearances on another quiz show, he was "not yet a recognized professional because he is a relative newcomer to that other show". However, the complainant noted that the contestant had featured on that programme for more than half of its years in existence and that he had been told by the Head of Audio & Music Production that the present year might be the last in which he would be eligible to apply.
- In the Stage 2 response the complainant felt that the Acting Controller of Audio & Music had misrepresented his views by implying that he had said people who had been on quiz shows before should not be allowed to take part in *Brain of Britain*. He accepted that there were bound to be contestants who had taken part in quiz shows before, but felt the present case was different because of the amount of previous experience that this particular contestant had had.
- The complainant did not think the Acting Controller of Radio & Music Production had answered his point about whether BBC employees could take part in quiz shows. He argued that, although the contestant worked on another

BBC quiz show for an independent production company, he was a 'de facto' BBC employee.

- The complainant said that although the Acting Controller of Radio & Music Production had responded at Stage 2 that there had not been any complaints from the other contestants about this particular contestant taking part in *Brain of Britain*, this did not mean they were happy about it. He believed that it would have been fairer to proactively ask the other contestants for their views.

### **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 she did not consider that the appeal had a reasonable prospect of success.

The Adviser concluded that there was no evidence that Editorial Guidelines had been broken, given that there was no rule saying that contestants in other quizzes could not participate in *Brain of Britain*.

However, the Adviser considered whether one element of the complaint engaged the Guidelines on Accuracy and should be placed before Trustees as a possible breach of editorial standards. She noted that the Guidelines state:

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

The Adviser considered whether the contestant's contribution to *Brain of Britain* had been misleading to the audience. She noted that the contestant had been described by reference to his former occupation and that no reference had been made to his previous appearances on quiz shows.

The Adviser noted that the Acting Controller of Radio & Music Production had acknowledged that despite disagreeing with the majority of the complainant's points, she did consider that in her own view "it would have been better" if the introduction to the contestant had mentioned that he may be familiar to viewers from another BBC quiz show. She added:

"If this issue should arise again for another contestant I shall recommend to the team that they are as transparent as possible, not least because of the suggestions made by correspondents such as yourself."

The Adviser believed the Trustees were likely to consider that the matter was not so serious that further action should be taken, especially as the BBC Executive had acknowledged that the matter could have been handled more transparently.

Although the complainant was unhappy not to have received a specific answer with regard to his query about whether members of BBC staff were allowed to take part in BBC programmes, the Adviser considered that Trustees would be

likely to conclude the contestant's appearances on another BBC quiz show did not make him a 'de facto employee' of the BBC.

Upon making further enquiries, the Adviser was told by the Executive that, according to the programme files, the contestant had featured on *Brain of Britain* three times since 2000.

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. She also noted that "The operational management of the BBC" was specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that was the responsibility of the Executive Board and, again, was one in which the Trust did not usually get involved.

Decisions relating to programme contestants fell within the category of editorial and operational decisions that were the responsibility of the BBC Executive. The Adviser considered that Trustees would be likely to conclude that it was therefore not appropriate for them to consider the majority of the points raised by the complainant in his appeal to the Trust.

The Trust's Adviser considered that this appeal had no reasonable prospect of success and should not proceed further.

Notwithstanding this, however, the Adviser considered Trustees would wish her to thank the complainant for bringing his very thoughtful appeal to the Trust. She understood from the Executive that it did now intend to revisit the rules around appearing on *Brain of Britain* with a view to making them clearer and she hoped this information would give some reassurance to the complainant.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that having been informed by the Acting Controller of Radio & Music Production that there were only two rules regarding entry to *Brain of Britain*, the implication was that the contestant in question had fulfilled those conditions of entry. The complainant said that it now appeared that the contestant had not fulfilled those conditions. He wondered whether this fact was known at the time the programme was recorded, and if it was not known, whether the Acting Controller of Radio & Music Production would have taken a different attitude. He said the complaints system made this impossible to find out.

The complainant disputed the point made in the Trust's response to his appeal that his complaint concerned a "relatively minor issue" and said it raised wider issues of fairness and trust at the BBC.

## **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 concerns regarding the eligibility of a contestant to take part in an edition of *Brain of Britain* broadcast on 25 February 2013, and that he considered that the matter raised wider issues of fairness and trust at the BBC.

The Committee agreed that the issue for it to consider was whether there was a reasonable prospect that it would find a breach of editorial standards if this case came to it on appeal.

Trustees appreciated that this issue mattered a great deal to the complainant who felt that this was about fairness and trust. However, Trustees considered that there was nothing to suggest that Editorial Guidelines had been broken given there was no rule saying that contestants in other quizzes could not participate in *Brain of Britain*. They noted that the complainant felt this contestant was 'de facto' a BBC employee but noted that he was not in fact a BBC employee. The Committee also noted that the BBC Executive had already acknowledged that the matter could have been handled more transparently and felt this response was appropriate.

The Committee noted that the complainant had said the contestant had appeared on the show twice since 2008 and thus this broke the five-year rule the BBC had set for contestants to participate again. It also noted that according to the BBC's programme files, the contestant had appeared in the series *Brain of Britain 2000*, *2008* and *2013*.

The Committee agreed that these rules were set by the BBC and were operational and not matters that should be tested against the Editorial Guidelines, and so an appeal based on this issue stood no reasonable prospect of success.

The Committee extended its thanks to the complainant for bringing the matter to the attention of the Trust, but in light of the response of the BBC Executive, the Committee considered an appeal stood no reasonable prospect of success.

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

## **“Israel condemns Zionism comments by Turkey’s PM Erdogan”, BBC News Online, 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 News Online report about the international condemnation of comments made about Zionism by the Turkish Prime Minister. The Prime Minister, Recep Tayyip Erdogan, had drawn a parallel between Zionism and anti-Semitism and fascism, and said Zionism was “a crime against humanity”. The article carried criticisms of the comments from Israel, America and the UN.

The complainant stated in his appeal that he was concerned about two specific sentences in the article:

“Zionism is an ideology or movement that asserts that the Jewish people have a right to a national home or state in what was the Biblical ‘Land of Israel’.”

“For Palestinians, the success of Zionism has meant the frustration of their national aspirations and life under occupation.”

He said the first sentence gave a misleading impression of what Zionism is. Arguing that Zionism began as a response to European anti-Semitism and that its purpose was to provide the Jewish people with a secure refuge from oppression, he added that “the right of the Jewish people to a national home in Palestine was established in international law in the League of Nations Mandate Resolution in 1925, which was underpinned by the Treaty of Sevres”.

The complainant said it was a “huge exaggeration to say that all those that believe that Israel, the Jewish state, has a right to exist are Zionists”, and that, “a Zionist is now somebody who thinks that Israel should be a secure refuge for Jews and who wish [*sic*] Israel to survive”.

The complainant said the second sentence suggested that the success of Zionism had meant the frustration of Palestinian aspirations and life under occupation:

“Most would not read that sentence as meaning that it was just a perception; they would read it as a statement of fact.”

He said this was not the case and that Israel had always wanted to live in peace beside a Palestinian Arab state. The complainant stated in his appeal and in correspondence at Stage 1 his reasons for asserting that Zionism had not been the cause of any frustration of the Palestinians’ national aspirations and life under

occupation, recalling the history of the conflict and the peace initiatives of the past 60 years. The complainant concluded his appeal:

“It is certainly not the case that the success of Zionism has meant the frustration of Palestinian national aspirations and life under occupation... Israel would be more secure, and therefore Zionism more successful, with peace and so the sentence was misleading to the reader for several reasons. The reason that it is serious is that it makes it appear that Israelis want the Palestinians to be denied a state, and nothing could be further from the truth. The Jewish community of Palestine in 1947 celebrated when the UN voted for partition of Palestine into a Jewish and an Arab state and they still want to live in peace with an Arab Palestinian state. The Palestinian Arabs rejected Resolution 181 and even now most Palestinians say ... it is essential that Palestinian the homeland [*sic*] should include all of what was British Mandate Palestine from 1922-1948. That is what has caused their life under occupation – not Zionism.”

### **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 also considered the article in question. The Adviser 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 complaint against the guidelines on Impartiality and Accuracy and in particular noted the requirement that content should be duly accurate and duly impartial. She noted in particular the following qualifications:

- 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 Adviser also considered the following clauses from the Accuracy guideline:

#### **Principles**

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

The Adviser noted that the focus of the news item was the widespread international condemnation of remarks about Zionism which had been made by the Turkish Prime Minister at a UN forum in Vienna. At the meeting Recep Tayyip Erdogan was quoted as saying that Zionism was a "crime against humanity" and had likened it to both anti-Semitism and fascism.

The Adviser noted that the sentences from the article which were the subject of this appeal appeared towards the end of the article and were intended to give some context for the audience to understand why Mr Erdogan's remarks had caused such a furore.

The Adviser considered first the following sentence from the article:

"Zionism is an ideology or movement that asserts that the Jewish people have a right to a national home or state in what was the Biblical 'Land of Israel'."

The Adviser noted the complainant's contention that:

"A Zionist is now somebody who thinks that Israel should be a secure refuge for Jews and who wish [*sic*] Israel to thrive."

As a comparison, the Adviser noted the definition of Zionism given in the Online Oxford English Dictionary, which stated that it was:

1) a movement for (originally) the re-establishment and (now) the development and protection of a Jewish nation in what is now Israel. It was established as a political organization in 1897 under Theodor Herzl, and was later led by Chaim Weizmann.

Whilst the Adviser accepted that Zionism could be defined more widely than the sentence in the article, she considered that the additional definition provided by the complainant did not contradict the explanation in the article, nor were the two mutually exclusive. She also noted the definition in the article was broadly in line with that carried in the online dictionary.

The Adviser considered that a movement that was founded to establish a home for the Jewish people could be assumed, given that the initial aim had been achieved, to intend that homeland would be both secure and viable. She concluded that the characterisation of Zionism in the article clearly allowed for that.

The Adviser noted the complainant's contention that the article implied "that all those that believe that Israel has a right to exist (as a Jewish state) are Zionists" and that the complainant considered this was a "huge exaggeration". The Adviser did not agree with the complainant that this interpretation could be put on the article, as it was stated neither implicitly nor explicitly that only Zionists supported the existence of the state of Israel.

The Adviser noted and agreed with the Stage 2 response of 15 May from the ECU

Complaints Director which stated:

"...I cannot say that I agree with you that the definition given on this page would have materially misled the audience. It seems to me that it was sufficiently broad to embrace different historical and contemporary approaches to Zionism – and that in the context of this story such a definition was appropriate. I note that it explicitly acknowledged that there was no agreement between Zionists on the question of borders, which suggests a belief which encompasses many different perspectives.

"I certainly don't agree that it amounted to a statement that 'all those that believe that Israel, the Jewish state, has a right to exist are Zionists' and I don't think that follows from what was said. A reference to a belief of Zionists does not preclude the possibility that others may hold similar beliefs."

The Adviser also noted that the array of international figures quoted in the article condemning Mr Erdogan's comments (the UN Secretary General, the US National Security spokesman and the US Secretary of State) further contradict this interpretation. The Adviser considered that the article reflected the international consensus which supported the right of Israel to exist, thus explaining the outcry over the Turkish Prime Minister's comments.

The Adviser noted the history of the Zionist movement, and the complainant's contention that a range of other geographical locations for a Jewish homeland were considered in the early years of Zionism. She noted the complainant's view that it was therefore inaccurate to state in a definition of Zionism that the Jewish people asserted their right for their homeland to be located within the boundaries of the biblical land of Israel. The Adviser considered that a contemporary interpretation of what Zionism stood for was the relevant context here, not its historical origins. The Adviser was not aware of any current mainstream Zionist thought which asserted that the Jewish homeland should be moved to a location other than the current state of Israel. She further considered that in an article where the main focus was the reporting of a breaking news story, there would be neither the requirement nor audience expectation to go into any greater detail as to the history of Zionism. The Adviser considered that Trustees would be likely to conclude the reference to Zionism was duly accurate and impartial and that the appeal did not have a reasonable prospect of success on this point. Therefore she did not propose to put it before Trustees.

Turning to the second sentence highlighted by the complainant:

"For Palestinians, the success of Zionism has meant the frustration of their national aspirations and life under occupation."

The Adviser noted the complainant's contention that the wording of the sentence made it appear that Israelis want Palestinians to be denied a state:

"It is far from a success of Zionism that the Palestinians don't have their own state. Israel and the pre-state Jewish community in Palestine has

always wanted a Jewish state to live in peace alongside a Palestinian Arab state. The Jewish community of Palestine celebrated when the UN voted for that in 1947.”

The Adviser considered the article had not made any comment as to whether Zionists within Israel or elsewhere believed in a two-state solution. She considered the article had been attempting to summarise what Palestinians considered to be the factual outcome of the establishment of the state of Israel.

The Adviser noted and agreed with the response of the ECU Complaints Director of 15 May on this point which stated:

“I don’t take [the phrase in question] to mean that the statelessness of the Palestinians was an aim of Zionism or Zionists, or something which they set out to achieve. Rather it seems to me that it is being claimed that the Palestinians believe that what followed from their success (the state of Israel) served to make Palestinian claims to statehood less, rather than more likely, and gave rise to occupation. The passage attributes this perspective to the Palestinians and it does not seem to me to amount to a misrepresentation of their position.”

The Adviser acknowledged that if events had turned out differently and Jordan had retained control of the West Bank, for example, then the sentence would not be duly accurate. But that was not the case and the position at present was that the Palestinian view was that their “Nakba” (catastrophe) was the success of the Zionist aim of establishing a state of Israel. That other parties might hold other views was not relevant, as the sentence clearly attributed the sentiment to Palestinians.

The Adviser also noted the complainant’s contention that Israel had always wanted to live in peace alongside a Palestinian Arab state and that the article gave the impression that Israelis want the Palestinians to be denied a state. She considered that the article made no comment on the Israeli view, assuming even there was a settled consensus.

The Adviser considered that Trustees would be likely to conclude that the second phrase that was the subject of the complaint was also duly accurate and impartial and the appeal did not have a reasonable prospect of success on this point. Therefore the Adviser did not propose to put either element of the appeal before Trustees.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He referred to earlier arguments he had made during the course of his complaint.

He said that two sentences in the article were inaccurate and lacked impartiality.

The first sentence complained of was:

“Zionism is an ideology or movement that asserts that the Jewish people have a right to a national home or state in what was the Biblical ‘Land of Israel’.”

He said that the sentence “implies that people who are not Zionists deny the right of the Jewish people to a national home or state in what was the Biblical ‘Land of Israel’” and “also implied that that right is not established in international law”.

He questioned the definition of Zionism referred to by the Trust Unit which he believed was a definition that those opposed to Zionism would agree with. He considered it implies that the right to a Jewish home is not established in law and that it includes many people who are not Zionists. He again referred to the Online OED definition of Zionism, which he preferred.

The complainant then referred to the second sentence he had complained about:

“For Palestinians, the success of Zionism has meant the frustration of their national aspirations and life under occupation.”

He said that most people would not read that sentence as meaning that it was just a perception of Palestinians that Zionism had frustrated their national aspirations and resulted in a life under occupation; they would read it as a statement of fact by the BBC that the success of Zionism had undoubtedly had these consequences.

The complainant added that he would not have complained in the former case, although he would still have considered the sentence inaccurate. He said that what the Palestinian political leaders considered to be the case and what they actually said was the case were two very different matters. He said the sentence was misleading and the reason it was a serious matter was because it made it appear that Israelis wanted the Palestinians to be denied a state, when nothing could be further from the truth.

The complainant requested the Committee consider his complaint with regard to the accuracy and impartiality of both sentences.

### **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 a copy of the article.

The Committee noted the complainant’s concerns about two specific sentences in the online article with regard to accuracy and impartiality.

With regard to the first sentence, the Committee agreed with the Trust’s Senior Editorial Complaints Adviser that, although Zionism could be defined more widely than the sentence suggested, the additional definition provided by the

complainant did not contradict the explanation in the article, nor were the two mutually exclusive.

With regard to the second specified sentence, the Committee noted that the complainant believed that most people would not read that sentence as just a perception; they would read it as a statement of fact. The Committee noted he said the reason it was a serious matter was because it made it appear that Israelis wanted the Palestinians to be denied a state.

Although the Committee agreed that the second sentence might have been expressed more clearly, it did not consider that evidence had been presented which would lead it to conclude that the sentence was inaccurate or lacked impartiality, or would lead it to disagree with the ECU Complaints Director's response at Stage 2:

"I don't take [the phrase in question] to mean that the statelessness of the Palestinians was an aim of Zionism or Zionists, or something which they set out to achieve. Rather it seems to me that it is being claimed that the Palestinians believe that what followed from their success (the state of Israel) served to make Palestinian claims to statehood less, rather than more likely, and gave rise to occupation. The passage attributes this perspective to the Palestinians and it does not seem to me to amount to a misrepresentation of their position."

With regard to the complainant's view that the sentence made it appear that Israelis wanted the Palestinians to be denied a state, the Committee did not consider this to be the case and agreed with the Trust's Adviser that the article "made no comment on the Israeli view, assuming even there was a settled consensus".

The Committee concluded that there would be no reasonable prospect of success for an appeal against the BBC Editorial Guidelines on Accuracy and Impartiality.

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

## Report on study into the effects of acidification of the Pacific Ocean, 21 July 2012, BBC News Channel

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

### Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about a report on the BBC News Channel about the effects of acidification of the Pacific Ocean. He referred the Trust to his previous correspondence with the Complaints Director, ECU, and in particular to his own letter of 6 May 2013, which he felt stated his points very well:

"The report failed to mention that the increased acidity and CO<sub>2</sub> levels in the sea off British Columbia are due to the burning of fossil fuels and that this has serious implication for all the World's seas and oceans with catastrophic effects on ecosystems and human food sources. Essentially the report told a story and failed to mention why it is happening and why it is relevant to the viewer."

In the complainant's view, the Complaints Director had failed to address his points of complaint. In summary:

- The news report had omitted a material fact and had therefore failed to state the truth (contrary to Editorial Guideline 3.1, which the complainant quoted).
- The report could also be considered biased, as certain groups were seeking to suppress the omitted fact.
- The report also failed to serve the public interest, as it had failed to competently inform the public of an issue that would have a significant future impact on them.
- The excuse that the report was not long enough to provide a comprehensive report was nonsense, as another broadcaster had managed to make all the relevant points in a very similar report.

### The Trust Unit's decision

The Head of Editorial Standards, BBC Trust, replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit, and an Independent Editorial Adviser had read the transcript of the report in question, and the Head of Editorial Standards did not consider that the appeal had a reasonable prospect of success. She did not propose to put the appeal to the

Editorial Standards Committee.

The Head of Editorial Standards considered this complaint against the Editorial Guidelines on the BBC's Editorial Values (section 1), Accuracy (section 3) and Impartiality (section 4). The Editorial Guidelines can be found online at <http://www.bbc.co.uk/editorialguidelines/guidelines>.

The Head of Editorial Standards noted that the Introduction to the Editorial Guidelines on Accuracy states:

The BBC is committed to achieving due accuracy. ...

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

Therefore, we do all we can to achieve due accuracy in all our output, though its requirements may vary. The due accuracy required of, for example, drama, entertainment and comedy, will not usually be the same as for factual content.

The requirements may even vary within a genre, so the due accuracy required of factual content may differ depending on whether it is, for example, factual entertainment, historical documentary, current affairs or news.

The Head of Editorial Standards also noted that the Introduction to the Editorial Guidelines on Impartiality states:

The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy. But we go further than that, applying due impartiality to all subjects. However, its requirements will vary.

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.

Due impartiality is often more than a simple matter of 'balance' between opposing viewpoints. Equally, it does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

In the Head of Editorial Standards' view, the effect of these provisions was that the standard of accuracy and/or impartiality to be required of any given item of the BBC's output varied according to the nature of the output in question. For example, an investigative documentary on a given subject should be held to a higher standard of accuracy and/or impartiality than, say, a chat show in which

the same subject was discussed.

In considering whether the programme was duly accurate and/or duly impartial, the Head of Editorial Standards took the following factors into account:

- the subject and nature of the content
- the likely audience expectation
- any signposting that might have influenced that expectation.

With regard to the content, the Head of Editorial Standards noted that the subject of the report was a Canadian scientific study of the effects – as distinct from the causes – of the growing acidity of the Pacific Ocean. In the Head of Editorial Standards' view, the causes and effects of such growth were separate subjects that, while clearly related, should not be conflated.

With regard to the likely audience expectation, the Head of Editorial Standards noted that the report was aimed at a general audience with no specialist knowledge of scientific matters. The Head of Editorial Standards took the view that such an audience would not have expected the report to provide a comprehensive account of background and contextual issues.

With regard to the signposting that might have influenced that expectation, the Head of Editorial Standards noted that the opening lines of the report stated:

“Canadian scientists are warning that growing acidity in the Pacific Ocean is threatening the future of sea life around British Columbia. Researchers on Vancouver Island say the changes are happening at a much faster rate than expected.”

In the Head of Editorial Standards' opinion, this would have led the audience to expect a report concerning the researchers' findings in relation to the effects of, and pace of growth in, ocean acidity with regard to the Pacific Ocean around British Columbia.

With regard to the nature of the content the Head of Editorial Standards noted that this was a brief news report concerning a particular piece of scientific research, and that it was broadcast on a rolling news channel. In the Head of Editorial Standards' view, such a report must provide a duly accurate and duly impartial yet pithy account of its subject. The Head of Editorial Standards noted the complainant's argument that a Reuters report on the same subject had made “the appropriate facts” clear in an item of similar length. In the Head of Editorial Standards' view, while the Reuters report might arguably have offered a fuller account than the BBC report, and while BBC viewers might arguably have found a fuller account more helpful, it did not necessarily follow that the BBC report was inaccurate, misleading or biased.

With regard to the complainant's argument that the report “failed to state a material fact”, the Head of Editorial Standards noted that the complainant had

argued before the Editorial Complaints Unit:

- that the report had omitted the material fact that the acidification of the ocean was attributable to carbon dioxide emissions, which in turn were attributable to the burning of fossil fuels; and
- that this had serious implications for all the world's seas and oceans (i.e., not just the waters around British Columbia), with catastrophic effects on ecosystems and human food sources.

Before addressing the complainant's arguments in detail, the Head of Editorial Standards noted that Article 9 of the BBC's Royal Charter draws a distinction between the roles of the Trust and the Executive Board (the latter of which had operational responsibility) and states that the Trust must not exercise or seek to exercise the functions of the Executive Board. In the Head of Editorial Standards' view, editorial decisions about what material to include in – and, conversely, to exclude from – items such as the report in question were operational matters with which the Trust would not ordinarily concern itself, unless they raised potential breaches of the Editorial Guidelines.

The Head of Editorial Standards then considered the proper approach to allegations of inaccuracy by omission. It seemed to her that the omission of facts that were not material to a given report could not, as a matter of principle, give rise to a finding of inaccuracy under the Editorial Guidelines. In her view, three questions should be considered:

- Were the facts omitted, as alleged?
- If so, were the omitted facts material to the report?
- If so, did the omission of those facts create an inaccurate and/or misleading impression?

With regard to the complainant's first argument, the Head of Editorial Standards noted that the report stated:

“Scientists near Bamfield Marine Research station are pumping carbon dioxide into artificial pools to test how different species react to rising water acidity, which they say is threatening sea life.”

In the Head of Editorial Standards' view, the audience was likely to have inferred from this comment that there was a causal relationship between carbon dioxide and water acidity. Noting that the report had not mentioned any other possible cause, the Head of Editorial Standards could not agree with the complainant's contention that the report had failed to acknowledge the role of carbon dioxide in oceanic acidification – although she accepted that viewers might have found it helpful if this had been stated more explicitly.

With regard to the remainder of the complainant's first argument, having previously concluded that the report was concerned with the effects and not the

causes of oceanic acidification, the Head of Editorial Standards concluded that the role of human activity (including the burning of fossil fuels) in relation to carbon dioxide levels, was not within the scope of the report. The Head of Editorial Standards could not therefore agree that this was a material fact, or that its omission had rendered the report inaccurate or misleading.

With regard to the complainant's second argument, the Head of Editorial Standards could find no suggestion or implication in the report that the problem of oceanic acidification was peculiar to the waters around British Columbia. She could not therefore agree that the report was inaccurate or misleading in this regard.

For the above reasons, the Head of Editorial Standards concluded that there was no evidence of any breach of the Accuracy guidelines. The Head of Editorial Standards therefore decided that there was no reasonable prospect that this point of appeal would be upheld as amounting to a breach of the Editorial Guidelines. Nor did she consider it appropriate, proportionate or cost-effective for the Trust's Editorial Standards Committee to consider this point of appeal.

Having previously decided that matters relating to carbon dioxide levels and human activity lay beyond the scope of the report, the Head of Editorial Standards concluded that it was not necessary for her to decide whether it was a "controversial subject" within the meaning of Editorial Guideline 4.4.5.

In the Head of Editorial Standards' view, given that the report was concerned with the effects and not the causes of oceanic acidification, there was no requirement for the report to give an account of the competing views in relation to those causes. Noting that the report's account of the researchers' findings did not contain any contentious issues, the Head of Editorial Standards concluded that there was no requirement to present a range of viewpoints on the effects of oceanic acidification and no evidence that the report was biased. The Head of Editorial Standards therefore decided that there was no reasonable prospect that this point of appeal would be upheld as amounting to a breach of the Editorial Guidelines. Neither did the Head of Editorial Standards consider it appropriate, proportionate or cost-effective for the ESC to consider this point of appeal.

With regard to the complainant's argument that the report did not serve the public interest, the Head of Editorial Standards noted that Editorial Guideline 1.2.6 stated:

We seek to report stories of significance to our audiences. We will be rigorous in establishing the truth of the story and well informed when explaining it. Our specialist expertise will bring authority and analysis to the complex world in which we live. We will ask searching questions of those who hold public office and others who are accountable, and provide a comprehensive forum for public debate.

The Head of Editorial Standards could not agree that this guideline required the BBC to serve the public interest by referring in a short news report to matters that were beyond the report's scope. She agreed with the Complaints Director that section 1 of the Editorial Guidelines was an expression of the BBC's overall

purposes rather than a standard to be applied to each and every item of BBC output. The Head of Editorial Standards therefore decided that there was no reasonable prospect that this point of appeal would be upheld as amounting to a breach of the Editorial Guidelines. Neither did she consider it appropriate, proportionate or cost-effective for the ESC to consider this point of appeal.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said it was in the interests of all licence fee payers in general. He said that his letters of 10 February, 6 May and 16 June 2013 summarised the substance of his complaint quite well and he would like all three letters to be made available to the Trustees as part of the review.

The grounds on which the complainant requested a review were, as stated by the complainant:

1. Looking at the argument of the Head of Editorial Standards in a generic context, she was saying that where a material fact was claimed to be omitted, it limited the scope of the report; because it limited the scope of the report, the report was therefore not material. The result would be that any claim of a material fact being omitted would automatically fail, which, the complainant said, could not be correct.
2. The Head of Editorial Standards had noted that manmade CO<sub>2</sub> emissions were a 'cause' and not an 'effect' of ocean acidification and she had stated that the two subjects should not be combined. The complainant believed her to be wrong in that respect. He said that if an 'effect' was discussed, it was natural to link it to the 'cause'; to discuss one without the other was to miss a material part of the story.
3. Referring to the BBC Guidelines on Accuracy, the complainant noted the requirement for "all relevant facts" to be reported. He said that because the fact was not referred to in the title, it did not mean the fact was not relevant. He said that titles, by their nature, were highly abbreviated and one could not conclude that a fact was not material just because the title did not specifically refer to that fact.
4. The complainant believed that any report should answer fundamental questions of what, where, why and how, as it related to the event and any significant implications of that event. The report in question failed to explain why the acidification was occurring and ignored the wider implications which were extremely serious. In the complainant's view, these were material facts which were ignored in the report.

5. The complainant did not consider that the BBC had complied with the Editorial Guidelines which stated that:

We seek to report stories of significance to our audience. We will be rigorous in establishing the truth of the story and well informed when explaining it. Our specialist expertise will bring authority and analysis to the complex world in which we live. We will ask searching questions of those who hold public office and others who are accountable, and provide a comprehensive forum for public debate.

The complainant did not consider that matters of significance such as the effects of manmade CO<sub>2</sub> emissions, and the massive ecological and human impact of increasing acidity in the world's oceans, had been included in the report; neither was the truth of the situation established; and searching questions were not asked.

6. The complainant said that the scope of the report should be dictated by the definition of public interest, and the causes and impacts of increasing acidity were material parts of the story. He said that by concluding that the causes of increasing acidity were non-material to the report, the Head of Editorial Standards went on to dismiss his allegation that the report was not impartial. He felt he had provided ample arguments as to why the omission of the link to manmade CO<sub>2</sub> emissions was a material omission and as such his complaint regarding impartiality should be considered.

In conclusion, the complainant said that the Head of Editorial Standards had only considered the omission of the facts on manmade CO<sub>2</sub> emissions and had not considered the facts of the wider implications relating to catastrophic effects on ecosystems and human food sources.

He said that his complaint had therefore not been properly considered.

### **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 news report in question.

Although the Committee appreciated the strength of the complainant's concern that relevant and material facts had been omitted from the report, particularly with regard to why acidification was occurring and the wider implications, the Committee considered that the complainant had received a full and reasoned response to his concerns and was satisfied that the Head of Editorial Standards had applied the Editorial Guidelines correctly in her decision.

In particular the Committee did not agree that a report on the effects of acidification would have to report on the causes. Neither did it think setting the scope of the report in this way was to exclude a material fact. It had to be the case that reporters could use editorial judgement to approach different angles in a

wider story without having to give the full context every time or to include all matters of potential significance relating to the story.

The Committee agreed that there was no reasonable prospect of it concluding that the programme had breached the Editorial Guidelines on Accuracy and Impartiality, or contravened Editorial Values with regard to Public Service.

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

## ***Desert Island Discs*, 10 February 2013, BBC Radio 4**

The complainants asked the Editorial Standards Committee to review the decision of the Trust Unit that their 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 (ECU) not to uphold their complaints regarding an edition of *Desert Island Discs* broadcast on 10 February 2013, which featured the journalist Julie Burchill.

All three complainants stated that the BBC had shown bias in playing 'The Exodus Song' by Andy Williams (chosen by Ms Burchill as one of her eight 'desert island' records) whilst in 2010 BBC Radio 1Xtra had broadcast a performance by Mic Righteous in which the lyrics 'Free Palestine' has been edited by adding a sound effect over them. The complainants saw a contradiction in the BBC's approach to these two programmes, and stated that this contradiction demonstrated a lack of impartiality (which some complainants also felt had been demonstrated by a lack of a "balancing programme" to the *Desert Island Discs* programme, which would have represented the opposing view). The complainants also stated that the BBC showed bias in playing the Israeli national anthem, which was another of Ms Burchill's chosen records.

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

The Head of Editorial Standards, BBC Trust, replied to each of the complainants in the same terms, explaining that the relevant correspondence and this edition of *Desert Island Discs* had been reviewed by the Trust Unit and an independent editorial adviser. The BBC Trust received a large number of appeals regarding this edition of *Desert Island Discs*, and the Trust's Head of Editorial Standards considered their respective merits individually in deciding whether each qualified for consideration by the Trust.

The Head of Editorial Standards did not consider that any of the appeals had a reasonable prospect of success. She did not propose to proceed in putting any of the appeals to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards noted the two musical choices which were at the root of this complaint:

Presenter: What's next?

Ms Burchill: It's *Exodus*, the *Exodus* theme by Andy Williams, who's got a wonderful voice. I love this song. It's from a film about the birth of Israel. I have been fascinated by the Jews since I was a child. I don't know why I got no Jewish blood and when I hear this song oh dear I'm going to cry. *Exodus* by Andy

Williams:

This land is mine, God gave this land to me  
This brave and ancient land to me  
And when the morning sun reveals her hills and plains  
Then I see a land where children can run free  
So take my hand and walk this land with me  
And walk this lovely land with me  
Though I am just a man, when you are by my side  
With the help of God, I know I can be strong

The following words of the song were not played:

To make this land our home  
If I must fight, I'll fight to make this land our own  
Until I die, this land is mine

And later in the programme:

Presenter: We're on your seventh disc Julie Burchill what are we going to hear?

Ms Burchill: *Ha Tikvah*, the Israeli national anthem. I've never liked the English National anthem. I'm not a monarchist and it annoys me. I remember going to see *Born Free* the film about lions where they used to play the national anthem at the end and I remember my mum saying "get up, get up!" and I wouldn't get up for it. So to hear a national anthem that I adore and can stand up for and I can even sing a little bit of it.

[TRANSLATION]

As long as the Jewish spirit is yearning deep in the heart,  
With eyes turned toward the East, looking toward Zion,  
Then our hope - the two-thousand-year-old hope - will not be lost:  
To be a free people in our land,  
The land of Zion and Jerusalem.

And later when Ms Burchill was asked to pick just one disc for her desert island:

"I would pick *HaTikvah*, the Israeli national anthem. I would lie on the beach, reading my friend's book, getting drunk on this cocktail, and I'd listen to the Israeli national anthem and I would think about this beautiful country so far away from me and I would be happy."

The Head of Editorial Standards noted the BBC's guidelines on due impartiality which state:

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 noted that the Mic Righteous track was played on BBC Radio 1Xtra when sound effects were used to mask the shout "Free Palestine".

She noted the ESC's decision on this issue on appeal (page 54 at this web link: [http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/dec.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/dec.pdf)) and noted that the Committee said that:

"The Committee agreed that it is for the Executive to decide what to include and what not to include in a broadcast, provided the result does not lead to a breach of the BBC's Editorial Guidelines. The Committee agreed that its duty was to assess whether the material as broadcast was likely to have been in breach of the BBC's Editorial Guidelines, in this case those relating to impartiality. The Committee therefore considered the material as broadcast and not the reasoning provided by the Executive for the decision to edit out the reference to Palestine.

"The view of the Committee was that, while the BBC's treatment of the matter had perhaps been overcautious, the effect of removing the word 'Palestine' did not render the material which was broadcast biased. The Committee noted that the Executive had acknowledged that it was looking to learn from the way the matter had been handled and that the BBC had said the song would be likely to be played in full, with contextualisation, in the future."<sup>12</sup>

She noted that *Desert Island Discs* was a well established format of over seventy years in which contributors made their own music selections and that part of the appeal of the programme was that listeners were able to reach their own conclusions about the music choices and the light they shed upon the character and experience of each 'castaway'.

The Head of Editorial Standards concluded that, taking account of the nature of the content and the likely audience expectation, the two cases were very different. Each should be judged on its own merits. In her view the complaints, whilst clearly very strongly felt, did not suggest there had been a breach in editorial standards, and so an appeal to the Trust in respect of each complaint did not have a reasonable prospect of success.

The Head of Editorial Standards noted the Agreement accompanying the BBC Charter, which 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".

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<sup>12</sup> The track had already been played in full on Radio 1Xtra on 9 July and 12 August 2011.

She noted that:

“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.”

She noted that the BBC’s Editorial Guidelines on Harm and Offence refer to challenging material as follows:

“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.”

She noted that listeners to BBC Radio 4 would be aware that *Desert Island Discs* was a very well-established format and Julie Burchill was well known for having strong views. She noted that Ms Burchill gave her reasons for choosing the two pieces of music, which did not include matters of current political debate. 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 Harm & Offence would have no reasonable prospect of success. It was also her view that Trustees would be likely to agree with the response of the Editorial Complaints Unit that the achievement of due impartiality would not include the requirement to try to balance the song choices of one guest with the choices of a subsequent guest, or any requirement to try to balance the range of contributors in the manner suggested. Therefore, an appeal to the Trust on the grounds of a breach of the BBC’s Editorial Guidelines on Impartiality would similarly have no reasonable prospect of success.

The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC’s editorial and creative output” was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC’s editorial standards which did not apply in this case. Decisions relating to which tracks should have been played and which guests invited to appear on *Desert Island Discs* fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

### **Request for review by Trustees**

The three complainants each requested that the Trustees review the decision not to proceed with their appeals. They raised the following points:

Complainant 1 noted the large number of appeals on this issue. The complainant said that for the ECU to see nothing “inherently offensive in songs such as the

Israeli national anthem or Exodus" meant that the situation of the Palestinian people had not been understood by the BBC. The complainant suggested that the BBC should review what it considered to be "generally accepted standards" where Israel-Palestine was concerned, saying that "attitudes and viewpoints have changed as information has become more available and the general public more educated and astute".

Complainant 1 said that, from a Palestinian viewpoint, Ms Burchill's choice of music was clearly offensive and contained "strong language, violence, humiliation (of a displaced people), distress, violation of human dignity and discriminatory treatment or language". The Israeli national anthem and Exodus were, in the complainant's view, inherently offensive. The complainant believed that the occupation of Palestine and the treatment of Palestinians by Israel will be regarded as totally unacceptable. She described the "beautiful country" referred to by Ms Burchill as, in reality, a "prison camp for Israeli Palestinians".

Complainant 2 said that it was "offensive to those who had been ethnically cleansed from the land that became Israel, and their families, to hear the words of the Israeli national anthem being played on the BBC"; it was also "offensive to Palestinian citizens of Israel, who live there as second class citizens". Calling Israel a "beautiful country" or playing Exodus about the birth of Israel was "offensive to those who suffered through its creation, and those who continue to suffer". The complainant said that the BBC had yet to explain how racist lyrics which allocated the land according to race and religion were not offensive.

Complainant 3 said that the Exodus song and the Israeli national anthem were "racist", "glorified the apartheid nature of Israel" and were "the mirror image of anti-semitic, white supremacist music, representing only the Jewish population of Israel and ignoring "the history and values of the Palestinians who make up one fifth of that country's population".

Compared with the BBC Radio 1Xtra broadcast in December 2010 of the Mic Righteous rap song, which had the words "Free Palestine" edited out because the BBC felt they were controversial, complainant 3 suggested that it was much more controversial to play "a song that in the context of Israel talks only about the longing of the Jewish spirit". The complainant said that at the very least the songs should have been set into context on *Desert Island Discs*, or a word of warning given that some listeners might find them offensive.

With regard to the Guidelines on Impartiality, complainant 1 said that by not exploring Julie Burchill's political viewpoint on the programme, the BBC was complicit in her one-sided viewpoint. The complainant said that it was still possible to download Julie Burchill's choice of music together with the *Desert Island Discs* interview whereas, she argued, the Mic Righteous song had never been played in full by the BBC and was still awaiting "suitable contextualisation" in terms of being broadcast or put in the BBC archives to download. The complainant believed this showed that the BBC was "quite happy to let Ms Burchill's viewpoint go unchallenged". With regard to the Mic Righteous song, the complainant asked why the Committee had only assessed "whether 'the material as broadcast' was likely to have been in breach of the BBC Editorial Guidelines on Impartiality, when the

so-called offensive material had already been edited out?”

### **The Committee’s decision**

The Committee was provided with the three appeals, the 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. It considered whether any of the three appeals being considered together raised a matter of substance that should be considered on appeal.

The Committee noted the complaint that the programme had failed to apply generally accepted standards and therefore breached the Editorial Guidelines on Harm and Offence.

These 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. The Guidelines specify that applying generally accepted standards is a matter of judgement, taking into account the content, the context in which it appears and editorial justification.

The Committee noted the points made by the complainants regarding the potential for offence in the broadcasting of the Israeli National Anthem and the Exodus song and in calling Israel a “beautiful country”. The Committee recognised the offence the complainants had undoubtedly felt at the inclusion of these personal musical choices in the programme, but reiterated the BBC’s right to broadcast challenging content as long as it complied with the Editorial Guidelines.

The Committee agreed with the points made by the Head of Editorial Standards that:

“listeners to BBC Radio 4 would be aware that *Desert Island Discs* was a very well-established format and Julie Burchill was well known for having strong views.

And that:

“Ms Burchill gave her reasons for choosing the two pieces of music, which did not include matters of current political debate.”

The Committee also noted the Guidelines on Impartiality and the points raised by the complainants. One complainant said that by not exploring Julie Burchill’s political viewpoint on the programme, the BBC was complicit in her one-sided viewpoint.

The Committee agreed that it would be likely to conclude that the achievement of due impartiality would not include the requirement to explore political viewpoints in the context of a programme featuring personal musical choices, especially as Julie Burchill, as previously noted by the Head of Editorial Standards, had given reasons for her choices which did not include matters of current political debate.

Complainants also commented on the decision to edit out the line “Free Palestine” from a programme broadcast on Radio 1Xtra in 2010. They considered that editing out those words showed a lack of impartiality when compared with the decision to broadcast the Israeli National Anthem and the Exodus Song as two of Julie Burchill’s musical choices on *Desert Island Discs*. The Committee did not consider that the Mic Righteous rap song broadcast on Radio 1Xtra had a bearing on the current appeals under review, and noted the ESC finding on that issue:

“The view of the Committee was that, while the BBC’s treatment of the matter had perhaps been overcautious, the effect of removing the word ‘Palestine’ did not render the material which was broadcast biased. The Committee noted that the Executive had acknowledged that it was looking to learn from the way the matter had been handled and that the BBC had said the song would be likely to be played in full, with contextualisation, in the future.”

The Committee was aware that the Mic Righteous track had been played in full on Radio 1Xtra on 9 July and 12 August 2011.

The Committee concluded that there was no reasonable prospect of success for the appeals in relation to the Editorial Guidelines on Harm and Offence or Impartiality.

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

## ***Prank Patrol Down Under, 'Doll Magic', BBC One, 29 November 2012***

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

### **Background**

*Prank Patrol* is a BBC format for children. *Prank Patrol Down Under* is made in Australia and then played on the BBC. This episode involved a child playing a "prank" on her friend where it appeared she was using "magic" to control people.

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

Part of the original complaint to the BBC concerned a section of the programme which was set in a shop which sold crystal/essential oils. The complainant said that several things such as the alleged skills of clairvoyants, properties of certain crystals and essential oils, and alleged characteristics of star signs were presented as if they were true, in an uncritical way, when there was no scientific basis for such claims.

As a result of her complaint, the programme was later amended to exclude the claims.

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold her complaint regarding *Prank Patrol Down Under*.

The complainant said that she felt it was "inappropriate that the BBC should be instrumental in playing a prank on a child. The BBC is a powerful adult organisation and there should be no case in which the BBC puts any child in a situation where they are deceived".

In her appeal, the complainant said that she had not received an adequate response to her question about what procedures were in place to ensure that children were not exposed to "unscientific and superstitious beliefs" without a qualifying voice to show that the beliefs were questionable.

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

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

The Adviser noted that the programme-makers had responded to the complainant's concerns and had edited the content of the programme to remove

the shop owner's comments about the efficacy of essential oils, crystals and dream-catchers.

In response to the complainant's query regarding the procedures which were in place, the Adviser considered that the complaint had engaged the guidelines on Harm and Offence in relation to exorcism, the occult and the paranormal which state:

#### 5.4.55

We must act responsibly when including material looking at any aspect of exorcism, the occult, the paranormal, divination or any related practices.

Demonstrations which purport to be real must not be shown before the watershed or on radio when children are particularly likely to be in our audience, or in online content likely to appeal to a significant proportion of children.

Paranormal practices for entertainment purposes (not including drama, film or comedy) must not be broadcast when significant numbers of children may be expected to be watching or are particularly likely to be in our radio audience or using our online content.

#### 5.4.56

At any time, demonstrations of exorcism, the occult, the paranormal, divination or any related practices in factual programmes must be treated with objectivity appropriate to the output. In entertainment programmes they must be clearly labelled. In all our output, such demonstrations must not contain advice about health, finance, employment or relationships which encourages people to make life-changing decisions.

The Adviser noted that the guidelines on Harm and Offence applied to the section of the programme which had since been edited out, in which the shopkeeper was talking unquestioningly about the mystical properties of the goods for sale, and that was not challenged by the programme presenter.

The Adviser was able to confirm that the edited version of *Prank Patrol: Doll Magic* had not been scheduled and there were currently no plans to retransmit the programme.

She had been informed that the BBC acquired this series from Active TV (an independent production company) but had approval on the scripts and all rough cuts were viewed for compliance during the editing process. The final version was delivered to and viewed by the BBC before its first CBBC transmission in July 2012. The CBBC version of the programme was transmitted three times. The last transmission was 29 November 2012 and was the transmission which prompted the complaint. When the complaint was received, the Development Producer had reassured the complainant that changes would be made to the programme before any further broadcast. Having further reviewed the programme the BBC agreed

that the shopkeeper's comments about essential oils and about fortune telling might be misconstrued by younger viewers.

The Adviser believed that the Trustees would consider that the aspect of the complaint relating to the guidelines on the occult and the paranormal had been resolved by the changes which the BBC made voluntarily as soon as the complainant raised the issue. The Adviser was sure Trustees would wish her to extend thanks to the complainant for raising these concerns with the BBC and noted that the Complaints Director in the Editorial Complaints Unit had noted in his Stage 2 response that he thought she had raised a genuine concern about the way that the efficacy of essential oils and crystals was presented in the programme.

The Adviser noted that although the complainant was pleased that the references to these matters had been taken out of the programme as a result of her complaint, she considered that her question about the BBC's procedures in relation to the content of children's programmes had not been adequately answered, and also felt that it was "inappropriate that the BBC should be instrumental in playing a prank on a child".

The Adviser considered the element of the complaint relating to the appropriateness of playing pranks on unsuspecting children. She noted that the format of *Prank Patrol* required a youngster to nominate a friend to play a prank on and that the prank is clearly labelled to the audience.

In terms of whether it is appropriate ever to produce programme content which plays pranks on unsuspecting children, the Adviser considered the complaint against the guidelines on Harm and Offence and noted the response of the Complaints Director at Stage 2:

"The Editorial Guidelines say that the BBC should apply generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. They also say that we will not broadcast material that might seriously impair the physical, mental or moral development of children and that we must balance our responsibility to protect children from unsuitable content with their rights to freedom of expression and freedom to receive information."

He had argued that:

"The pranking was all fairly gentle and non-traumatic – though obviously a bit bewildering for the victim until all was revealed. The subject of spells and magic is not something that children of that age are unfamiliar with, particularly given the popularity of children's fantasy fiction such as the *Harry Potter* novels. If there was any sense in which the victim might have believed that the magic spells were actually working she was disabused of this when told that the whole thing had been staged with actors. And the fact that the child's best friend was also ostensibly involved in the experience meant that the victim would not feel isolated. I think it is also important to recognise that playing jokes on friends is very much part of

childhood and friendship and in noting this, I have in mind the guidelines requirement that we apply 'generally accepted standards' in deciding what might be considered harmful or offensive. I have to say that I do not believe that this kind of pranking would fall outside such standards."

The Adviser considered Trustees would be likely to agree with this response and conclude that there was no evidence that the programme had breached the guideline requirement for "generally accepted standards" in relation to the playing of the prank. The Adviser did not consider that this element of the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

### **Request for review by Trustees**

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

- No child should be deceived by an adult organisation in the name of entertainment.
- It should not be the responsibility of the viewer to screen children's TV for inappropriate material.
- This screening should be done before broadcast and the complainant saw no answer to her question about what procedures were in place to ensure that this was carried out correctly.

The complainant also made reference to the "tragic consequences" of a recent high-profile example of a prank (in which the victim was also an adult). She concluded that it was neither fun nor acceptable for adults to play pranks on children.

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

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

The Committee noted the complainant's concerns regarding *Prank Patrol* which she felt deceived children in the name of entertainment.

The Committee also noted the complainant's query about the current procedures in place for the compliance of children's programmes.

The Committee noted the complainant's point of concern that the viewer should not be responsible for screening children's television and noted that all pre-recorded BBC content is subject to the BBC's compliance procedures which require all pre-recorded programmes to be viewed for compliance before broadcast. There is published general guidance on compliance which can be found online at:

<http://www.bbc.co.uk/commissioning/tv/compliance-and-policy/what-do-i-need-to-do.shtml>

With regard to compliance procedures for *Prank Patrol* specifically, the Committee noted that the Trust's Senior Editorial Complaints Adviser had set out the compliance procedures in place for the series, and also for this programme in particular in the period following the complaint:

"the BBC acquired this series from Active TV (an independent production company) but had approval on the scripts and all rough cuts were viewed for compliance during the editing process. The final version was delivered and viewed by the BBC before its first CBBC transmission in July 2012. The CBBC version of the programme was transmitted three times. The last transmission was 29 November 2012 and was the transmission which prompted the complaint. When the complaint was received, the Development Producer had reassured the complainant that changes would be made to the programme before any further broadcast. Having further reviewed the programme the BBC agreed that the shopkeeper's comments about essential oils and about fortune telling might be misconstrued by younger viewers."

The Committee regretted that the compliance process had not picked up the issues with this programme that the complainant had noted.

With regard to the issue of the appropriateness of playing pranks on unsuspecting children, the Committee noted that the Editorial Guidelines on Harm and Offence required 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 Committee noted that prank programmes were well established in children's television. It noted too that pranks of this nature were not repeatable by children on their own and that pranks were fully planned and took place with the informed agreement of families or carers. The Committee considered that this prank was quite gentle in its nature and did not expose the child to ridicule and it would expect this of other prank programmes. The Committee agreed that it was likely to conclude, if it took this issue on appeal, that the type of pranks played in *Prank Patrol* did not fall outside the guideline requirement for "generally accepted standards".

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

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

## **“Why have the white British left London?” 20 February 2013, BBC News website**

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 BBC News website article: “Why have the white British left London?”

The complainant raised three elements for consideration at appeal. These were:

- Complaints handling: the ECU had not dealt properly with the complainant’s case because it had not answered the points he had raised and had not been impartial or fair.
- The BBC had failed to provide any evidence to back the following assertion by the article: “Why have the white British left London? ... It is a story of aspiration. It is a story of success.” The complainant considered that this had breached Accuracy and Impartiality guidelines.
- Accuracy and Impartiality guidelines had also been breached in relation to the opening two paragraphs of the article. The complainant contended that the article was inaccurate because it implied that white British people were in a minority in London only because 620,000 had moved out. The article had failed to mention, said the complainant, that “the number of ethnics increased by 1,471,000. This fact must have been deliberately omitted and the article was therefore not impartial”.

### **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 they also read the article in question. She did not consider that the appeal had a reasonable prospect of success. She did not propose to put the appeal to the Editorial Standards Committee of the Trust.

The Adviser decided that the first two elements of the complainant’s appeal did not have a reasonable prospect of success, but that the third element should be considered by the Trustees. She took into account all the relevant Editorial Guidelines (<http://www.bbc.co.uk/guidelines/editorialguidelines>).

Her reasoning on the individual points is set out below:

#### **Point 1**

On complaints handling, the Senior Editorial Strategy Adviser had regard to the guideline on Accountability, in particular 19.4 Feedback and Complaints, which includes the following:

#### 19.4.1

Audiences are at the heart of everything the BBC does...Our commitment to our audiences is to ensure that complaints and enquiries are dealt with quickly, courteously and with respect.

The Adviser also had regard to the Complaints Framework, which lays out practices for complaints handling ([http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/complaints\\_framework\\_work\\_ed\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_framework_work_ed_complaints.pdf)).

She noted that the complainant had not offered any particular examples of where the Complaints Director had displayed bias or breached his duties. She appreciated that the complainant had not received the outcome from the ECU he had been hoping for, and on Point 3 there appeared to be a further point to explore in relation to the complainant's concern.

Nevertheless, the Adviser did not consider the Trustees would be likely to agree that the ECU had breached the Accountability guideline or the Complaints Framework in any respect. Indeed, she thought they would be likely to conclude that the Complaints Director had responded particularly courteously and with diligence, even if the complainant disagreed with the substance of the Complaint Director's responses.

It seemed to her that the Complaints Director had considered the complaint at some length, had put effort into researching material for his responses, and had been flexible in meeting requests concerning the way in which his findings should be presented. None of this suggested to her that he would be found in breach of the Accountability guideline.

For these reasons, the Adviser considered there was no reasonable prospect of success for this element of the complaint and that it should not, therefore, be put before the Trustees.

#### Point 2

On the complainant's second point, that the BBC had failed to provide any evidence to back the following assertion by the article: "Why have the white British left London?...It is a story of aspiration. It is a story of success", the Adviser noted that the complainant considered this had breached Accuracy and Impartiality guidelines.

On Accuracy, the Adviser had particular regard to the following aspects of the guideline:

### **3.1 Introduction**

The BBC is committed to achieving due accuracy ... The term "due" means that the accuracy must be adequate and appropriate to the output ... Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered.

On Impartiality, the Senior Editorial Strategy Adviser had particular regard to the following aspects of the guideline:

## **4.2 Principles**

### 4.2.1

We must do all we can to ensure that "controversial subjects" are treated with due impartiality in all our output.

## **4.4 Practices**

### News, Current Affairs and Factual Output

#### 4.4.13

Presenters, reporters and correspondents are the public face and voice of the BBC – they can have a significant impact on perceptions of whether due impartiality has been achieved. Our audiences should not be able to tell from BBC output the personal prejudices of our journalists...on "controversial" subjects... They may provide professional judgements, rooted in evidence, but may not express personal views in BBC output, including online, on such matters.

The Adviser looked carefully at the complainant's arguments on this point; she considered the following statement in his appeal letter summarised his view:

"The BBC have failed to provide any evidence to back their claim 'Why have the white British left London?...It is a story of aspiration. It is a story of success'. I have seen no evidence provided that shows that White British are leaving London because for [*sic*] reasons of aspiration and success... It is not evidence to say that someone believes that there is no white flight, evidence is required by some detailed study from which we know the reasons why people have moved. The BBC have been unable to provide any such evidence."

The Adviser did not agree with the complainant in two particular respects: first, that the article had said what he alleged it had said and, second, that there was no evidence in the article to support the hypothesis put forward in the piece. She thought it was likely that the Trustees would come to a similar view.

She pointed to the following parts of the article:

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

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

“But there is also a story here of white working class families that escaped from the slums and bombed-out East End in the middle of the last century...”

In the view of the Adviser, Mark Easton, the author of the article had clearly stated that “white flight” might be part of the story: that there had been “significant cultural change in London” which had transformed some neighbourhoods, which may have caused some white British people to move. It did not seem to her that he had denied any element of “white flight” or suggested that all white British people who left London did so for aspirational reasons, as she considered the complainant was implying.

The context of the report, in the Adviser’s view, was set out in the article – this was that “the movement of the white British is often characterised as white flight...” Looking at some press coverage at the time (see, for example, <http://www.dailymail.co.uk/news/article-2281941/600-000-decade-white-flight-London-White-Britons-minority-capital.html>, <http://www.telegraph.co.uk/news/uknews/immigration/9831912/I-feel-like-a-stranger-where-I-live.html>) and online comment, it seemed to her to have been true that, indeed, this movement was often characterised in such a way. Mr Easton had made it clear, she thought, that, on this occasion, he wanted to look at the issue in a different way, going behind the figures to see if there were other factors also at work.

As far as evidence to support Mr Easton’s hypothesis was concerned, the Adviser’s view was that the article had supplied a great deal in the way of figures, maps and so on, as already set out by the ECU, to support the view that aspiration (as well, perhaps, as “white flight”, not as a possible exclusive alternative to it) might be at play here. To recap on this evidence, she pointed to the following examples:

- The article looked in detail at where the white British population had fallen and where it had increased (with the caveat that it was not necessarily the case that residents had moved between these areas)
- It detailed what appeared to be the “dream of escaping to the country”, by mapping the largely rural areas that had seen increases in white British populations
- The article gave a history of white working class migration from the inner city slums to better housing and jobs in outer London, with the example of Barking and Dagenham

- The article discussed the subsequent increase in house prices in outer London and reduction in jobs, and the move further out as some people “cashed in their assets and bought themselves that little cottage in the countryside or by the sea”
- The article gave some personalised examples from Mr Easton’s interviews in Barking and Dagenham.

In the Adviser’s view, the Trustees would be likely to consider that the evidence here was sufficient to ensure the article was duly accurate, according to the terms of the Guidelines, and that there had been no breach. She thought this would be the conclusion even before any consideration of the further research cited by the ECU.

The Adviser noted that the complainant had also said that Mr Easton had breached the Impartiality as well as the Accuracy guidelines in relation to this point of the appeal and that he had done this by putting forward a personal view that was not rooted in professional judgement.

As the Adviser had set out above, she did not consider that Mr Easton had put forward the view that the complainant had supposed (namely, that “white flight” had been excluded as a reason for the fall in white British population in London). She had also set out, above, what she considered to be the evidence to support Mr Easton’s hypothesis that aspiration might form part of the story to explain population change. She thought it likely that the Trustees would come to the same conclusion and, for these reasons, would conclude that Mr Easton had offered a professional view rooted in evidence.

The Adviser therefore considered there was no reasonable prospect of success for this element of the complaint and that it should not be put before the Trustees.

In summary, therefore, the Adviser did not consider Points 1 and 2 should progress, on the grounds that they stood no reasonable prospect of success. She considered Point 3 should progress and should be put before the Trustees.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with points 1 and 2 of his appeal. The complainant responded as follows:

#### Point 1

The complainant disputed the assertion that he had not provided “any particular examples of where the complaints director had displayed bias or breached his duties”. He said that he had given examples in his appeal of how the ECU had been unable to provide any evidence to back up the BBC story.

#### Point 2

With regard to the evidence presented by the Trust's Adviser in her decision letter, the complainant said that he saw no evidence there which showed why white British people were leaving London in the past decade.

Furthermore, the complainant stated that he did not believe that those at the Trust responsible for examining his complaint were doing so in a fair and impartial manner. He requested the Trust's Adviser to explain more clearly what the evidence was, as in his view there appeared to be no evidence. He also requested more information about who was dealing with his appeal as he did not consider that this had been clearly explained in the letter. He stated that he wished to make a formal complaint about the Adviser's assessment of his complaint.

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

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy 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 that although the Trust's Adviser had decided there was no reasonable prospect of success for the first two points of appeal raised by the complainant, a third point relating to a breach of the Guidelines on Accuracy and Impartiality had gone forward to be considered by the Committee at a future date.

The Committee noted that the complainant did not believe that the Trust Unit was examining his complaint in a fair and impartial manner. It noted that there had been an error in the correspondence which had led to his confusion as to who was replying to him but that an apology had been made and this error had been explained to the complainant. It further noted that the complainant had received a response from the Director of the BBC Trust in relation to his handling complaint against the Adviser, in accordance with the BBC's handling complaints procedure, and that the Director had decided that this aspect of the complainant's complaint required no further investigation.

With regard to Point 1, the Committee noted that the complainant disputed the assertion that he had not provided "any particular examples of where the complaints director had displayed bias or breached his duties" and said that he had done so at the point in his appeal where he gave his complaints about the ECU being unable to provide any evidence to back up the BBC story.

However, the Committee did not consider evidence had been presented which would be likely to lead them to conclude that the ECU had breached the Accountability guideline or the Complaints Framework. The Committee agreed with the view of the Trust's Adviser that the ECU's Complaints Director

"had considered the complaint at some length, had put effort into researching material for his responses, and had been flexible in meeting requests concerning the way in which his findings should be presented".

With regard to Point 2, the Committee noted the complainant's request for a

clearer explanation of the evidence cited by the Trust's Adviser in response to his complaint that the BBC had breached Guidelines on Accuracy and Impartiality by asserting in their article "Why have the white British left London?....It is a story of aspiration. It is a story of success."

The Committee noted that the complainant had received a detailed response on this issue and that, as stated by the Trust's Adviser, the article itself had

"supplied a great deal in the way of figures, maps and so on, as already set out by the ECU, to support the view that aspiration (as well, perhaps, as 'white flight', not as a possible exclusive alternative to it) might be at play here".

The Committee further noted that the Adviser had then given examples of how that view had been supported.

Having reviewed the evidence, the Committee was of the view that it would be likely to conclude that the article was duly accurate and impartial, according to the terms of the Guidelines, and that there was no reasonable prospect of success for points 1 and 2 of the complainant's appeal. Point 3 had been taken forward and would be considered by the Committee as previously notified to him.

**The Committee therefore decided that points 1 and 2 of the appeal did not qualify to proceed for consideration.**

## Decision of BBC Audience Services not to respond further to a complaint about the use of the words 'militant' and 'terrorist' in news output

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

### Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of BBC Audience Services not to respond further to his complaint about what he believed to be the selective application of the words "terrorist" and "militant" to describe individuals or groups in news output.

The complainant appealed to the Trust on the substance of his complaint, which was that the BBC displayed a lack of impartiality when reporting on politically motivated violence in the context of the Israel/Palestine dispute. The complainant considered that this was evidenced by an apparent lack of consistency in the way the BBC used the words "terrorist" and "militant" to describe the perpetrators of politically motivated violence in its output.

The complainant stated that:

"Terrorists are those who intentionally attack civilians for political purposes. [...] Hamas do intentionally attack civilians for political purposes yet you not only don't refer to them as terrorists, when an Israeli spokesman says 'Hamas terrorists fired rockets at Sderot' the BBC usually says 'the Israeli spokesman said Hamas militants fired rockets at Hamas', which is NOT what Israeli spokesmen say.

"[...] In fact they should use the word terrorist to apply to Hamas anyway, because what they do fits the definition of terrorist activity."

The complainant compared the BBC's treatment of Hamas with its coverage of the death of British Army soldier Lee Rigby, in which, according to the complainant, the BBC did not place the word *terrorist* in quotation marks or substitute it for the word *militant*.

In addition, the complainant referred to the use of quotation marks in on-line news reporting, and quoted the BBC College of Journalism style guide:

Beware of paraphrasing and selective quotation, e.g.: "The Israeli prime minister said that while 'terrorist' attacks continued he would not back down." Putting the single word 'terrorist' in quotes may give the impression that the BBC is sceptical about the prime minister's assessment of the nature of the attacks.

The complainant then listed some examples in support of his belief that the BBC always puts the word "terrorist" into quotes when used in the context of the Israel/Palestine dispute, but not when the word is used in the context of politically motivated acts of violence within the UK.

The complainant stated in his appeal that in his phone call complaint to Audience Services at stage 1 he had referred to the web page where the Woolwich suspects were referred to as terrorists as a specific example of his general concerns.

## 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. She noted that BBC Audience Services had ceased handling this complaint at stage 1 and that the complaint had not gone to stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

In reviewing the correspondence, the Adviser considered that Trustees would be of the view that the BBC had given a reasonable explanation about the use of the word 'terrorist' in the reporting of the Woolwich murder of an off-duty soldier. Audience Services, in their response of 8 June 2013 had explained that:

"The BBC has specific guidelines on this that do not proscribe use of the term but advise editors to consider the particular circumstances. It has never been outlawed by the whole of BBC News and so there's little we can usefully add to your comparison, which involves citing one specific story in comparison with the BBC's Middle East coverage more generally, despite their clear differences, in your belief that our approach is inconsistent.

"We can only reiterate that there is no general approach and decisions are taken on a case-by-case basis."

The Adviser noted that the BBC recognised that terrorism is an emotive subject and its Guidelines made clear the need for sensitivity in all its reporting, at home and abroad. The BBC's full guidance on the use of language in the reporting of terrorism can be found at: <http://www.bbc.co.uk/editorialguidelines/page/guidance-reporting-terrorism-full>.

With regard to the comments made by the complainant in his appeal to the Trust on 29 June 2013 about the use of quotation marks in written reports which referred to 'terrorists', the Adviser noted that this did not appear to have been part of the original complaint submitted to the BBC. The Adviser appreciated that the content of the phone calls had been summarised by Audience Services to create a record of the complaint, but she considered that on the evidence provided both by the complainant and by the summary of the phone calls taken by Audience Services, it did not appear that any reference had been made by the complainant to the use of quotation marks.

That being the case, the Adviser considered that it was not a point Audience Services could have been expected to refer to in their response. The Adviser considered that Trustees would consider it an inappropriate use of the licence fee to attempt further investigation regarding this point of complaint handling.

The Adviser appreciated that the complainant felt strongly about the issues he had raised, but decided that in its responses to the complainant at stage 1, Trustees would be likely to conclude that the BBC had responded reasonably in saying that they had nothing further to add and did not propose to progress the complaint further within the BBC's complaint system.

The Adviser also noted that decisions relating to the editorial content of news reports were matters for the BBC Executive. 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. The Adviser did not consider that Trustees would be likely to conclude that there had been a lapse of editorial standards in this case.

The Adviser considered that Trustees would be of the view that Audience Services had provided a reasoned response to the complainant's concerns, and she considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. Referring to his substantive complaint, he said that with regard to the issue about the use of quotation marks, it had not simply been an "add on" element in his appeal. He said it was a way of effectively illustrating the point he was making in the first place, which was that the use of quotation marks implied scepticism of the spokesman's assessment of the attacks in question and that the BBC had not used quotation marks when referring to the Woolwich suspects or attributed the word to a third party. Although he had not actually used the words "quotation marks" in his original telephone complaint, the complainant said he had referred to examples where the term 'terrorist' was used when quoting others. He felt that his meaning had been clear and that this aspect of his appeal on the substantive complaint should be considered.

He repeated the examples previously given in his appeal because he felt they illustrated his point extremely well.

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

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

The Committee noted that the complainant felt it was incorrect to regard his complaint about the selective use of quotation marks when using the terms 'terrorist' or 'militant' as an 'add-on' to his appeal, and that he felt this element of his substantive complaint should be considered. However, whilst appreciating the strength of the complainant's feelings, the Committee agreed that, on the basis of the evidence presented to the Trust, the issue of quotation marks had not formed part of the original complaint and it was therefore not appropriate for it to be considered as part of this appeal.

The Committee noted that the complainant's substantive point of appeal was that he believed the BBC was inconsistently using the words 'militant' and 'terrorist' (with or without quotation marks) and by doing so was breaching editorial guidelines on impartiality.

The Committee noted that decisions relating to the editorial content of news reports were the responsibility of the BBC Executive and were not matters in which the Trust would normally get involved unless they related to a breach of the BBC's editorial standards. The Committee agreed that it would be unlikely to find that there had been a lapse of editorial

standards in this case, but would be likely to conclude that a reasoned response had been supplied by Audience Services who had stated:

“The BBC has specific guidelines on this that do not proscribe use of the term but advise editors to consider the particular circumstances. It has never been outlawed by the whole of BBC News and so there’s little we can usefully add to your comparison, which involves citing one specific story in comparison with the BBC’s Middle East coverage more generally, despite their clear differences, in your belief that our approach is inconsistent.

We can only reiterate that there is no general approach and decisions are taken on a case-by-case basis.”

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