Editorial Standards

Findings

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

June & July 2014, issued September 2014
Remit of the Editorial Standards Committee

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

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

The Committee comprises six Trustees: Alison Hastings (Chairman), Sonita Alleyne, Richard Ayre, David Liddiment, Bill Matthews and Nicholas Prettejohn. 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 explains that:

5.10 The Trust will only consider an appeal if it raises “a matter of substance”. 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. 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.

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.

2 Under the Charter and Agreement, the Trust has a role as final arbiter in appropriate cases, and must provide a right of appeal in cases that raise a matter of substance.
3 For example, if an appeal raises a relatively minor issue that would be complicated, time-consuming or expensive to resolve, the Trust may decide that the appeal does not raise a matter of substance, and decline to consider it.
Where an appeal or part of an appeal qualifies for consideration, the Committee will aim to provide the complainant with its final decision within 80 working days of accepting the request for an appeal.

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

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

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

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

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

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

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

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

The Nolan Show, BBC Northern Ireland & BBC Radio Ulster, 9, 10 & 11 October 2013

Summary of finding

Three complainants contacted the BBC because they felt that this series of three linked programmes, one on BBC One Northern Ireland, the other two on BBC Radio Ulster, lacked accuracy and impartiality. They felt the programmes and presenter did not deal evenly with those who were in support of Northern Ireland’s current policy on abortion and those who were seeking its amendment in the event of fatal foetal abnormality.

The specific case highlighted in these programmes was that of Sarah Ewart whose baby was diagnosed with anencephaly at the 20-week scan. Her family felt strongly that Sarah Ewart should not have to travel to England for an abortion because the law in Northern Ireland does not permit termination of pregnancy for foetal abnormality, unless the mental or physical health of the mother is likely to be seriously threatened. The family wanted this specific part of the law changed to allow termination in the event of fatal foetal abnormality. The Nolan Show filmed Sarah Ewart going to the London abortion clinic and interviewed her.

Most foetuses with anencephaly abort spontaneously. Almost all the babies born alive with this condition survive for just a few hours at most, but there have been three reported cases of anencephalic babies living for much longer than that (two in the USA, one in Brazil). The longest lived nearly four years.

The Committee concluded that:

- in referring in one of the radio programmes to Sarah Ewart being alone on her trip to London, there had been no intention to mislead the audience. However, the script as broadcast was not precise and so not accurate. Consequently, the programme was not duly accurate. There was a breach of the guidelines on Accuracy.

- this did not apply to the television programme on the same evening on this point.

- the inaccurate statements from the radio broadcast concerning Sarah Ewart travelling alone would have made little difference to the sympathy with which both sides of the debate addressed Sarah Ewart’s predicament on air nor to the likely effect of her story on the viewers and listeners. There was no breach of the guidelines on Impartiality on this point.

- the robust questioning of those opposed to abortion, such as Bernadette Smyth of Precious Life, was what the audience would expect in the circumstances and appropriate scrutiny of contributors was permitted under the Impartiality guidelines.

- Ms Smyth was given enough time and opportunity to speak, and when she was pressed to answer specific questions it was justified.
- the pivot of the programmes was Sarah Ewart’s predicament – not the wider issue of abortion – and those who opposed any change of the law were questioned with due impartiality in the circumstances and had opportunity to make their points while being appropriately scrutinised. There was no breach of the guidelines on Impartiality on this point.

- impartiality is not arrived at by having equal numbers of people with opposing opinions, especially on a subject like this one, where it was not a theoretical debate but the examination of the plight of individuals and how the law should treat them. This was a nuanced argument with powerful voices. It was not about minutes and seconds allotted to differing viewpoints. There was no breach of the guidelines on Impartiality on this point.

- The Nolan Show was using the long-established technique of human-interest journalism to show the plight of someone who has suffered and to ask searching and challenging questions. The presenter repeatedly emphasised that there were legitimate views on either side, and a broad range of views was given ample expression by the various participants who came from a wide spectrum of opinion. There was no breach of the guidelines on Impartiality on this point.

- although the programmes complained about did not include a contribution from a woman who had carried her anencephalic baby to term, such contributions featured in subsequent output and fulfilled the BBC's duty to give due weight and prominence to a wide range of significant views and perspectives.

- the decision not to include such a parent in the programmes which were complained of was a matter of editorial judgement and was the prerogative of the BBC team producing the programme. A programme’s impartiality had to be assessed in terms of what was actually broadcast. It is not helpful or appropriate to try to consider how output might have differed if other guests had been featured.

- this was the robust debate that the audience for The Nolan Show might expect to hear. While it was regrettable that a contributor, Interviewee [A], had repeated a general threat to hit anyone who spoke to her daughter in a certain way, she had not incited violence.

- it was not a breach of the Editorial Guidelines to invite Interviewee [A] on for a second occasion.

- the impartiality of a programme or series needed to be adequate and appropriate to the output and should take into account the subject and nature of the content, the likely audience expectation, and any signposting that might influence that expectation. Where a subject is controversial, a wide range of significant views and perspectives should be given due weight and prominence, but the Editorial Guidelines note that due impartiality is often more than a simple matter of ‘balance’ between opposing viewpoints. For this reason, and the reasons above, the Committee was satisfied the programmes had been duly impartial in this case.

The Trustees found a breach of accuracy in relation to the 9 October radio programme but did not separately uphold complaints relating to other accuracy issues and impartiality in relation to the three programmes.
Summary of finding

The complainant contacted the BBC to complain that Richard Spendlove was not equipped to deal with contributors who were phoning in to his radio show to talk about sensitive issues, specifically the sentencing of a Royal Marine convicted of murder in Afghanistan. The complainant alleged that Richard Spendlove made plain his own views on those issues. In addition, the complainant felt that her points were not dealt with seriously or respectfully when she phoned in to the show. The complainant believed the issues she raised, and the complaints process itself, were subsequently derided on the Spendlove and South show.

The Committee concluded that:

- Richard Spendlove was inaccurate in saying he understood the insurgent (later killed by the marine) to be armed. Mr Spendlove then compounded the inaccuracy by agreeing with a caller who suggested that, if the insurgent had been taken for medical treatment, he would have made use of the grenade the caller believed him to be holding.

- Mr Spendlove did not deal appropriately with the caller who said that the marine had helped the insurgent by killing him. Mr Spendlove had encouraged the caller to expand on his views and so potentially cause further offence, while failing to put forward any effective challenge. He failed to distance the BBC from the caller’s position or offer an apology to listeners who might have been offended.

- Mr Spendlove made some potentially offensive assumptions that everyone listening would subscribe to a Judeo-Christian viewpoint

- Mr Spendlove’s comments, his tone and his language, taken together, would have led his audience to believe that he considered the sentence passed on the marine to have been too harsh.

- It was wholly inappropriate of Mr Spendlove to encourage listeners of the programme who felt strongly about the sentence the marine had received, to write to their MPs.

- There had been clear breach of standards of impartiality in relation to the phone-in. In addition, there had been a breach of the guidelines on phone-in programmes. The presenter had acted as though he had been unaware that he should not have been using the programme as a vehicle for his own opinions and had not taken the appropriate action in relation to a potentially offensive caller.

- Mr Spendlove reportedly had a loyal audience and was arguably well connected to the views of a significant section of his listeners. These were positive traits, the
Committee emphasised, because it was important that the BBC gave a voice to all of its listeners, within the law and the BBC’s editorial standards.

- a presenter should air the views of listeners and challenge them where necessary, not give his own views. In the Committee’s opinion, in order to encourage a full range of views, it was important that the presenter of a phone-in programme remain neutral and be in a position to challenge and provide balance where appropriate, particularly in relation to controversial subjects. It concluded that there had been serious failings in this respect in the programme.

- Mr Spendlove had not dealt respectfully with the complainant when she phoned in to his show. This was a breach of the Editorial Guidelines on Fairness, Contributors and Consent.

- it was ambiguous whether the complainant was the person being referred to during Spendlove and South, and in any event, listeners would not have recognised any comment on that show as relating to the complainant personally. This did not suggest a breach of the Editorial Guidelines.

- the failings throughout the show of 7 December 2013 were of such seriousness as to suggest that there had been inadequate editorial supervision of the output. The Committee noted BBC Cambridgeshire had already acknowledged the issues of concern. The Committee also required the BBC Executive to confirm that such supervision was now in place.

- some of the breaches in this programme had been unequivocally clear. Trustees regretted it had been necessary for the complainant to go through every stage of the appeals process to establish what should have been conceded by the BBC earlier.

**The complaint was upheld in relation to Impartiality and Phone-in Programmes and partially upheld in relation to Fairness, Contributors and Consent.**

For the finding in full see pages 25 to 30.

**The Report, Radio 4, 14 November 2013**

**Summary of finding**

The complainant contacted the BBC to complain that a programme about Birmingham Children’s Services Department contained a number of inaccuracies in relation to events whilst he was Director. He also complained that the programme was unfair to him in not informing him in advance about areas of questioning, and criticising him without giving him the opportunity to respond.

The Committee concluded that:

- an error in the chronology had led to the restructuring introduced by the complainant being wrongly linked to another event: the Ofsted inspection and its “withering assessment”.

The complaint was upheld in relation to Impartiality and Phone-in Programmes and partially upheld in relation to Fairness, Contributors and Consent.
the role of Ofsted was a key theme running throughout the programme and therefore an understanding of the Children’s Services Department’s failures in relation to Ofsted constituted a material point.

in omitting to include those aspects of the Ofsted report which spoke positively of the “step change” under the complainant’s directorship and the fact that the programme suggested no other reason for the department failing the Ofsted inspection, the audience would have placed considerable weight on it being as a result of a restructuring introduced by the complainant. The impression that it was the complainant’s restructuring that had led to the Ofsted failure would have been reinforced by the commentary noting “there was a definite sense of progress” (under the previous director). This increased the likelihood the audience would assume the complainant bore the majority responsibility. There had been a breach of the Editorial Guidelines on Accuracy.

while the section on the death of a two-year-old boy was factually correct, the way it was framed had connected two unconnected events (the death and the complainant’s departure from his post), planting the idea with the audience that there was something suspicious. As this was a radio programme and not written content, programme makers were reliant on the audience’s ability to retain a detailed memory of the chronology in order to reach an informed understanding that the complainant’s departure from Birmingham and the death of the boy could not be related. As the references to the dates of the boy’s death had been some eight minutes earlier, the programme was placing too great a reliance on the audience’s recall.

the section in which the complainant’s “urgent departure” and the court’s verdict on the boy’s death was discussed left the impression that the public was not being allowed to know the true facts surrounding the complainant’s tenure and the terms and reasons for his departure.

the commentary’s juxtaposition of the timing of the complainant’s departure with the court’s verdict in the case of the death of the boy had implied an association between the two and had therefore led to a breach of the Editorial Guidelines on Accuracy and Fairness.

in the exchange of emails between the complainant and the producer prior to the interview there was scope on both sides to believe the outcome of the conversation was clear regarding the complainant’s freedom to talk about Birmingham. It later became apparent that the programme’s intention throughout was to put the questions about his departure to the complainant, even though it was aware he would not answer them. However, on the balance of probabilities the complainant had not understood this, and therefore he had been put at a disadvantage.

The complainant could not be expected to be familiar with legitimate editorial techniques, such as using the non-answering of a question as a dramatic device to illustrate an area of investigation for the programme. The question of whether the approach was editorially justified was not the issue. Rather, the issue was that the complainant had not been in a position to give his informed consent.

had the complainant known of the programme’s intention to put the questions and then use them in the way they did, it was likely he would not have agreed to participate in the interview. Even after the interview, the complainant was likely
to have believed that the exchanges in which he did not answer the questions would not be broadcast.

- if the programme had evidence against the complainant relating to his departure from his post it should have been produced and put to him, and in the absence of it, it was not fair for the programme to proceed in the way it had.

- the complainant had not been placed in a position to provide his informed consent and therefore there had been a breach of the Editorial Guidelines on Fairness, Contributors and Consent.

- the allegations laid against the complainant in the programme constituted the “strong and damaging critique of an individual” for which the Editorial Guidelines mandate a right of reply. The fact the complainant had previously stated he could not comment on his time in Birmingham did not excuse the programme’s decision not to put any of the specific allegations to him, which contravened the Editorial Guidelines.

- it was unfortunate the programme had chosen to ignore the complainant’s suggestion that the reporter refer to the positive comments about the complainant in the Ofsted Report which would have provided some mitigation of the programme’s failure to afford him a right of reply.

- there had been a breach of the Editorial Guidelines on Fairness, Contributors and Consent in respect of the programme’s failure to give the complainant a fair opportunity to respond to the allegations.

- the content be removed from iPlayer and re-edited before any reuse.

- although the matter had been serious, it did not meet the threshold required for an on-air apology.

**The complaint was upheld in relation to Accuracy and Fairness, Contributors and Consent.**

For the finding in full see pages 31 to 51.

**Horrible Histories, Florence Nightingale and Mary Seacole, BBC Learning Zone**

This appeal came before the Editorial Standards Committee at its July 2014 meeting. The Committee decided that some elements of the appeal qualified for consideration. These elements are reflected below. The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found under Rejected Appeals.

**Summary of finding**

The complainant contacted the BBC with regard to a sketch about Florence Nightingale and Mary Seacole on *Horrible Histories*. The complainant stated that the clip included a number of inaccuracies and that its content was “insulting to Nightingale” while “giving achievements and attributes to Seacole which she never had, nor ever claimed”.
The Committee concluded that:

- material hosted in the Learning Zone, which was signposted as “designed to provide inspiration for the classroom and beyond” should be essentially accurate in its relaying of historical facts.

- the change in context from broadcast to online educational resource could materially affect the audience’s likely expectation of the clip’s accuracy, in that viewers would be likely to expect a higher standard of accuracy of an educational resource than of a comedy sketch.

- it was not relevant that the clip was labelled as a literacy resource as, in its view, an equivalent standard of accuracy applied to both biography and history.

- the appearances of Rattus Rattus did not imply that the content of the remainder of the sketch was all untrue.

- in short sketches such as this, dramatic economy often required the use of elision, conflation and omission. In the Committee’s view, these were legitimate dramatic devices, provided they did not result in any material inaccuracy.

- the target audience (largely children) was unlikely to regard the Seacole and Nightingale characters as representing anyone other than their historical counterparts. The Committee believed that viewers would therefore have inferred from the dialogue that Seacole’s request to join the nursing corps was rejected four times by Nightingale herself.

- given the programme could be interpreted as suggesting that Seacole was rejected on the grounds of race and this was a serious allegation, the programme should have done more to make it clear that it was not Nightingale herself who rejected Seacole in order to achieve due accuracy. The Committee concluded that, given the subject and nature of the content, and the likely audience expectation, conflating Nightingale with others had been materially inaccurate in this case, and was therefore in breach of the Editorial Guidelines on Accuracy.

- in principle, the exchange of conflicting views by the Nightingale and Seacole characters, in the form of a dramatic dialogue, was an effective way of dramatising the controversy concerning the reasons for Seacole’s rejection, provided that both sides of the argument were accurately represented.

- it followed from its finding on the previous point of appeal that children within the target audience would be likely to perceive the Florence Nightingale character’s statement as an accurate representation of the views of her historical counterpart.

- given the programme could be interpreted as suggesting that Seacole was rejected on the grounds of race and this was a serious allegation, the Committee considered the programme should have done more to make it clear that it was not Nightingale herself who had said the nursing corps was “for British girls”.

- given the subject and nature of the content, and the likely audience expectation, the Florence Nightingale character’s line was materially inaccurate.

- the audience would be likely to regard Seacole’s riposte that her father was a Scottish soldier as effectively demolishing Nightingale’s invocation of Seacole’s nationality as the reason for her historical counterpart’s rejection, and as implying
that this was merely a ‘fig leaf’ excuse. The Committee believed that the audience would be likely to draw the inference that Seacole’s race, not her nationality, was the real reason for her exclusion from Nightingale’s nursing corps.

• as Seacole’s statement went unchallenged, the audience would be likely to regard it as carrying more weight than Nightingale’s. The Committee concluded that the audience would be likely to regard the implied allegation of racial discrimination as established historical fact.

• viewers would be likely to regard the imputation of racial discrimination as attaching to Florence Nightingale herself, rather than to those acting (or purporting to act) on her behalf. Given that there was no evidence (apart from Mary Seacole’s own suspicions) that Seacole was rejected because of her race, and given that Florence Nightingale played no part in Seacole’s rejection, the Committee concluded that, given the seriousness of the allegation, the subject and nature of the content, and the likely audience expectation - this exchange was materially inaccurate and was therefore in breach of the Editorial Guidelines on Accuracy.

• viewers would recognize and appreciate the physical altercation between the Nightingale and Seacole characters as a dramatisation of the characters’ jostling for reputational precedence, which formed part of the comic premise of the sketch. The Committee could not therefore agree with the complainant’s argument that viewers would regard Nightingale’s concluding push as a white nurse elbowing aside a black nurse for reasons of racism. The Committee did not uphold on this aspect of the appeal.

• viewers of the clip would be likely to receive the overall impression that Florence Nightingale had acted towards Mary Seacole in a racially discriminatory manner.

• there was no evidence before it about Florence Nightingale to suggest that she had acted in a racially discriminatory manner.

• given the seriousness of any imputation of racism, the relative recency of Nightingale’s life – she died in 1910 – the immensity of Nightingale’s contribution to modern nursing and her significant stature in modern British history, the Committee felt it was incumbent on the programme makers to ensure that there was sound evidence upon which to base any suggestion that she had acted in a racially discriminatory manner in a Learning Zone clip. It appeared to the Committee that an allegation of such gravity against a person such as Nightingale required compelling proof. In the Committee’s view, the programme makers had provided no such evidence.

• the clip’s depiction of Florence Nightingale in relation to racial issues was materially inaccurate. The Committee upheld on this aspect of the appeal. The Committee wished to emphasise that it supported the aim of _Horrible Histories_ to engage a young audience in history by way of comedy. The Committee did not wish in any way to suggest a limitation in the range of comedic or dramatic devices used in the production of historical content for children. However, in this very specific instance, making a charge of racism was very serious. The Committee felt in considering this particular clip and this issue, especially given that it appeared in the Learning Zone, it was important for a clear and rigorous adherence to fact, even within the context of the audience expectations for the format of _Horrible Histories._
The complaint was partially upheld on Accuracy.

For the finding in full see pages 52 to 63.

Blue Peter, BBC One, 19 December 2013

Summary of finding

The complainant contacted the BBC about a report on food banks broadcast on Blue Peter. The report claimed that “3.5 million children sometimes go hungry”. The complainant stated that his youngest child was distressed by this statistic. He questioned the accuracy of the statistic and the impartiality of the item, contending it misled viewers into thinking that food banks were a necessity because welfare spending was not high enough.

The Committee concluded that:

- there did not appear to be any evidence to support the specific claim that 3.5 million children sometimes went hungry.

- the 3.5 million statistic quoted by the programme measured relative poverty rather than actual needs such as food deprivation.

- the script was not duly accurate. It was not based on sound evidence and was not presented in clear precise language. There was a breach of the Editorial Guidelines on Accuracy.

- nothing in the programme would have led viewers to conclude that 3.5 million children sometimes went hungry as a result of changes to, or shortfalls in, welfare spending. In this respect, there was no breach of the Editorial Guidelines on Impartiality.

- publication of the Committee's findings was an appropriate remedy and an on-air correction would be disproportionate.

The complaint was upheld on Accuracy, not upheld on Impartiality.

For the finding in full see pages 64-67.
Appeal Findings

The Nolan Show, BBC Northern Ireland & BBC Radio Ulster, 9, 10 & 11 October 2013

Background

These three programmes (two on the radio and one on the television) covered a single topic which focused on a young woman, Sarah Ewart, who, at 20 weeks pregnant, had her foetus diagnosed with anencephaly.

Anencephaly is an incurable condition, related to spina bifida, where the skull and brain fail to develop. It occurs in approximately 1 in 1,000 pregnancies – many of these will spontaneously miscarry so the live birth rate is very much lower. According to the (American) National Institute for Neurological Disorders, infants with this disorder are born without a forebrain (the front part of the brain) and a cerebrum (the thinking and coordinating part of the brain). A baby born with anencephaly is usually blind, deaf, unconscious, and unable to feel pain.

Although almost all the babies born alive with this condition survive for just a few hours at most, there have been three reported cases of anencephalic babies living for much longer than that (two in the USA, one in Brazil). The longest lived nearly four years.

Sarah Ewart had approached The Nolan Show when she found out that she would not be offered an abortion in Northern Ireland because the law there does not permit the termination of pregnancy for foetal abnormality (as opposed to the law in the rest of the UK, which does), unless the health of the mother is seriously endangered. She wanted to use her experience to campaign for the law and guidelines concerning abortion to be changed. Stephen Nolan (and a film crew) accompanied her to London for an abortion, which she had arranged to take place there.

The complaints

Stages 1 & 2

There were three separate complainants who all raised similar issues at Stage 1. The complainants said that:

- Having three programmes on the same topic over two days amounted to “saturation coverage” of the issue.

- The presenter treated the woman with the anencephalic foetus much more sympathetically than he had Bernadette Smyth, the founder and Director of Precious Life (who was a contributor on two of the three programmes). That lacked impartiality. This was in order to influence the public.

- There was a disproportionately high number of pro-choice guests on the shows.

- Important issues around abortion were not aired, nor was a mother of an anencephalic foetus who chose to keep her baby, and contacted BBC NI to contribute to the discussion on one of the radio programmes, allowed onto the programmes.
• Sarah Ewart’s journey to London for an abortion was misrepresented on the television programme as being alone and friendless whereas in fact her mother and husband were with her.

• The programmes did not treat a controversial subject with due impartiality, in that they promoted one particular agenda – pro-choice.

• The programmes were misleading in that they did not explain that some children live for years after being born with anencephaly.

The complaints were not upheld at Stage 1, as BBC NI said the programmes were “fair and balanced”. The interviewing had been “robust” but had been duly impartial. A woman who had taken her anencephalic baby to term had been interviewed in a later programme.

The complaints were not upheld at Stage 2 by the Editorial Complaints Unit (ECU). The ECU noted this was a “controversial subject” under the BBC’s impartiality guidelines. The ECU found that a range of views had been broadcast, including several which were anti-abortion. It said that those holding anti-abortion views were given adequate space to express those views. The ECU findings did not conclude that the presenter was unduly robust with proponents of one side of the question. The ECU noted that those with a given point of view might expect more rigorous treatment than members of the public and that the presenter did make the anti-abortionists’ case to callers on more than one occasion.

**Appeal to the Trust**

All three complainants appealed to the Trust.

One said his primary concern was not the issue of abortion itself but the way in which Stephen Nolan had treated Bernadette Smyth of Precious Life. This was raised as a fairness complaint because the complainant said Bernadette Smyth was a contributor who had not been treated with respect. (The complainant was unaware that, according to the BBC’s Editorial Complaints and Appeals Procedure ([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)) a fairness complaint cannot be made by a third party/member of the public.)

The complainants felt that the spokespeople for different groups and opinions had not been treated impartially.

This point was raised in relation to the accuracy of these programmes:

• Point (A): It was inaccurate to show Sarah Ewart going to the abortion clinic in London and then to refer to her being alone, when her husband and mother were with her.

These points were raised in relation to the impartiality of these programmes:

• Point (B): It was not impartial to show Sarah Ewart alone in London for her abortion, and to refer to her being alone, when her husband and mother were with her.

• Point (C): The presenter did not treat contributors impartially in that he was generally much more robust with those opposed to abortion, in these
circumstances, than to those who supported it. Specifically, he was lacking in impartiality in his treatment of Bernadette Smyth of Precious Life.

- **Point (D):** The absolute number of contributors on either side of the argument – more pro-choice than pro-life – particularly on the TV programme, where the complainants say it was five to two, demonstrates the BBC did not attain impartiality.

- **Point (E):** The presenter was not impartial about the subject as a whole: he was lobbying for a change in the law, not merely reporting that others were lobbying for this.

- **Point (F):** The programmes made space for a contributor to verbally threaten Ms Smyth more than once, but did not include a contribution – which was offered – from a woman who had chosen to carry her anencephalic baby to term.

**Applicable Editorial Guidelines**

The sections of the BBC Editorial Guidelines relating to Accuracy, Impartiality and Interacting with the Audience are applicable to this case. The full guidelines are at www.bbc.co.uk/editorialguidelines

**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 Northern Ireland and the complainants. The Committee had listened to and watched the programmes and had transcripts of the programmes.

The Committee took into account that the arguments about this issue were not binary, in that the debate on the programmes was not about abortion itself and whether the law in Northern Ireland should be more like the rest of the UK. In these programmes, the Committee noted, the argument was about specific circumstances where a woman carrying a foetus with an extreme abnormality, not generally compatible with more than a few hours of life after birth, might want an abortion, but be unable, under the law, to get one in Northern Ireland.

The Committee began its deliberations by considering whether this was a “controversial subject” under Impartiality guideline 4.4.5. It agreed that it was a controversial subject in Northern Ireland but that it was not a major matter under Impartiality guideline 4.4.9.

**Accuracy**

**Point (A):** The Committee considered whether the Accuracy guideline had been breached regarding the allegation that it was inaccurate to show Sarah Ewart going to the abortion clinic in London and then to refer to her as being alone, when in reality her husband and mother were with her.

The Committee noted that the programme originated when the mother of Sarah Ewart approached The Nolan Show at BBC Northern Ireland because her daughter’s baby had been diagnosed with anencephaly at the 20-week scan. The family felt strongly that Sarah
Ewart should not have to travel to England for an abortion because the law in Northern Ireland does not permit termination of pregnancy for foetal abnormality, unless the mental or physical health of the mother is likely to be seriously threatened. The family wanted this specific part of the law changed (not the whole abortion legislation). The Nolan Show filmed Sarah Ewart going to the London abortion clinic and interviewed her.

The Committee noted that it was alleged that it was inaccurate:

- to say Sarah Ewart went to London alone, when her mother and husband were pictured in some shots.
- for the TV film to show Sarah Ewart going off for her abortion from a bed & breakfast in London, pulling her suitcase on her own, as if she was going through the whole process alone, when in fact her mother and husband were with her.

The Committee noted the BBC response. The BBC said that Stephen Nolan had referred several times, on 9 October 2013 to the fact that Sarah Ewart travelled to London where she did not have the support of local clinicians, and the health care professionals who had looked after her so well up to that point. This was also mentioned in Sarah Ewart’s interview. The response continued:

“As is evident from the film package which was shown on the Nolan television programme on 09 October and the BBC network television news report, Sarah Ewart was accompanied in London by her mother and husband. Stephen’s references to Sarah getting ‘on a plane on her own’ c9.26 13 and that ‘she had to travel alone to London…’ c10.06 52 on 09 October were inaccurate. There was no intention to mislead (what actually happened is self-evident in the film footage). His ostensible/wider point was that Sarah was unable to have a termination in Northern Ireland and some of the issues (financial, medical, psychological) associated with having to travel outside the region.”

The Committee noted that the film script in the TV show did say at one point “Sarah has travelled to London with her husband...” There was also a shot of her with her husband and mother.

The Committee was aware that these complaints covered three programmes – two of them on the radio. The complainants’ allegations regarding a breach of the Accuracy guideline related to the portrayal, on the television programme, of Sarah Ewart’s journey to London and her visit to the abortion clinic. The complainants had not raised at stages 1 and 2, equivalent allegations about a breach of the Accuracy guideline in respect of the radio programmes. The Committee exercised their discretion and investigated whether there had been a breach of the Accuracy guideline on the radio programmes as well as the television programme.

The remarks about travelling alone were made in the first radio programme, before the video footage had been aired. The Committee noted that the BBC conceded that there were inaccuracies in the radio programme on 9 October.

The Committee noted the relevant lines on the morning of 9 October 2013 were:

Interviewer
She had to get on a plane on her own, she had to travel to a strange place, in London, sit in a bed and breakfast and after the abortion was done, and she was discharged from the clinic, had something gone wrong, she’s sitting in London at night time and she’d just have to go to the local hospital. She’s no familiarity around her.

And the law in Northern Ireland prevented her from having an abortion, so she had to get a suitcase, she had to find thousands of pounds, she had to travel alone to London.

The Committee accepted there was no intention to mislead the audience (as the shots in the television programme showed). However, even if the BBC had meant “alone” as in the sense of not having her familiar medical practitioners around her, the script, as broadcast, was not precise and so not accurate.

The Committee concluded that the statements set out above from the radio programme on 9 October were not duly accurate.

The Committee did not find that this applied to the TV programme on the same evening, where both the pictures and the script demonstrated that Sarah Ewart was not alone, even if she was seen leaving the bed & breakfast alone to travel to the abortion clinic.

Finding: breach of accuracy in relation to the 9 October radio programme

Impartiality

Point (B): Because the Committee had decided that these statements were in breach of the Accuracy guidelines, it went on to consider whether that inaccuracy amounted to a breach of the Impartiality guidelines also.

It considered whether saying that Sarah Ewart was alone in London (which the BBC conceded was inaccurate but contested was not material) meant that she was seen in a more favourable light and her desire for a change in the law made to look more positive, meaning that the BBC had not been fair and open-minded when examining evidence and weighing material facts, under Impartiality guideline 4.4.1.

The Committee concluded that the inaccurate statements from the radio broadcast about her being alone in London would have made little difference to the sympathy with which both sides of the debate addressed her predicament on air nor to the likely effect of her story on the viewers and listeners. The Committee concluded that the inaccuracies had not led to a breach of the impartiality guidelines.

Finding: not upheld on impartiality

Point (C): The Committee noted the allegation that output was not impartial because the presenter was generally much more robust with those opposed to abortion, in these circumstances (such as Bernadette Smyth of Precious Life), than to those who supported it.

The Committee noted the concern about the questioning of Ms Smyth regarding a particular incident where individuals outside the Family Planning Association had approached Sarah Ewart.

Sarah Ewart described her experience on the radio programme as follows:
“We had this protestor in our faces, shouting everything about how I was doing the wrong thing, I will never forget it and ruining a child’s body and all sorts of abuse and I mean she literally followed us to the car we were getting into, shouting.”

It was alleged that it was not impartial to continue to invite Bernadette Smyth to condemn the individuals and the incident as Bernadette Smyth was not present during the events and it was not certain that the individuals referred to by Sarah Ewart were from Precious Life. The Committee noted the allegation that it was particularly lacking in impartiality to challenge Bernadette Smyth about this, forcefully, at the instigation of a guest from the Family Planning Association.

The Committee noted the BBC response as to whether the presenter treated all the contributors in an appropriate and impartial manner, particularly in reference to the contributor from Precious Life, Bernadette Smyth:

“Stephen Nolan’s questioning of Bernie Smyth about Sarah’s experiences outside the FPA clinic was robust [Sarah’s experience] was referenced by the Health Minister in his interview with Stephen Nolan on 10 October and in the following terms ‘...What happened when she left the clinic was completely and totally wrong ... no one should be shouting into anyone’s face when they don’t understand the circumstances of what people are going through...’ c09.33. Stephen also responded to claims of bias against the BBC from [several parties]... In all other respects, we think that Stephen gave people with differing views an opportunity to make their voices heard, albeit with some corrective interventions when issues of potential defamation may have arisen or as a counterpoint to some over-stated claims and assertions. Such interventions need to be carefully judged so as not to foreclose on debate or the airing of different, difficult and maybe even disagreeable opinions – depending on your point of view. In a programme like this, presenter challenges or interventions need to be assessed in the round and having regard to what’s being said, whether someone is appearing as a spokesperson etc. And many of the people who are being interviewed on our airwaves will have appeared previously, talking about similar or related issues and will have a known style or approach.”

The Committee noted that the Nolan shows are programmes with considerable interaction between the presenter and the guests and the presenter and callers/tweeters. The Committee noted that Stephen Nolan’s programmes are known throughout Northern Ireland for their vigorous presentation style and that the audience expects robust debate and searching questioning on these programmes, on both radio and television.

Members of the Committee had heard the 9 October radio programme and noted particularly the interviews with the Family Planning Association and Precious Life, and seen the TV programme, including the interview with Bernadette Smyth, and also the 10 October programme interviews with the British Pregnancy Advisory Service and Society for the Protection of the Unborn Child.

The Committee noted that none of the complainants said it was wrong to treat members of the public, such as Sarah Ewart and her family and the parents of anencephalic twins, who featured on the radio programme on 10 October, with sympathy and in a sensitive fashion.

The Committee noted that it is a frequent feature of *The Nolan Show* to look at an issue through the lens of an individual, and sometimes the plight of an individual. None of the participants expressed anything other than sympathy for the mother concerned, and
Stephen Nolan certainly treated her and her mother with sensitivity which was appropriate in the circumstances. He expressed sympathy for her plight but did not indicate sympathy for the legislative or regulatory change which she and her mother proposed.

The Committee decided that the robust questioning of Bernadette Smyth was what the audience would expect in these circumstances, and that appropriate scrutiny of contributors was permitted under Impartiality guideline 4.4.23. The Committee concluded that Ms Smyth was given enough time and opportunity to speak. The presenter did press Ms Smyth to answer specific questions where her initial answers were not clear, but that was justified.

The Trustees thought that the pivot of the programmes was Sarah Ewart’s predicament – not the wider issue of abortion. The Committee considered that speakers who opposed any change of the law were questioned with due impartiality in the circumstances and had opportunity to make their points while being appropriately scrutinised.

**Finding: not upheld on impartiality**

**Point (D):** The Committee noted that a complainant alleged that the absolute number of contributors on either side of the argument – more pro-choice than pro-life – particularly on the TV programme, where the complainants say it was five to two, demonstrated the BBC did not attain impartiality. The Committee considered whether the Impartiality guideline had been breached.

The Committee noted that one complainant said, in response to the ECU finding, that the actual number of speakers on either side does not make a case for a lack of impartiality, but that it demonstrates that the BBC was not trying to maintain impartiality, even in the number of speakers.

The Committee noted that BBC NI said, in its response, that it had made every effort to ensure that a very wide range of views was aired in a complex debate’ and that there were many nuanced views across the spectrum on abortion:

“We took considerable care to ensure that this story was handled with sensitivity to the young woman involved and taking account of the diverse views which exist about this subject, not all of which can be defined in binary terms – something which is evident from Sarah’s interview and many other contributions to the programme. We gave prominence and significant airtime to those ‘pro-life’ contributors who remain opposed to any change in the current abortion legislation and guidance in Northern Ireland and elsewhere acknowledged their views (something which is described in reasonable detail in [BBC staff member’s] ECU reply). We did not seek to portray this issue in simple, or reductive, terms and repeatedly referred to differing opinions and the debate which all of this had engendered. It is clear that limited political support exists for the extension of the 1967 Abortion Act to Northern Ireland, but the relative weight of opinion in relation to what should happen in the event of fatal foetal abnormality is less readily apparent – a Belfast Telegraph poll in 2012 suggested that 45% of those questioned were in favour of legalising abortion in cases of foetal abnormality, incest or rape.”

The Committee considered that the Editorial Guidelines (for example, guideline 4.1) make it clear that impartiality cannot usually be judged through numerical equivalence, either in terms of the amount of time given to each side of a debate, or of the number of speakers heard from each side of the argument. The Committee noted that the requirement in the
Editorial Guidelines is for a wide range of significant views and perspectives to be given due weight and prominence when a subject is controversial.

The Committee noted there was a large range of guests on these three programmes including politicians, medical experts and groups such as Precious Life as well as members of the public. The Committee noted that there were more speakers across the three programmes who were in favour of there being some change to the law or guidelines in this specific case, on a simple count. The Committee agreed that the simple delineation of pro-life and pro-choice was not wholly apposite in this case, where most of those who said the law ought to be amended to deal better with cases such as Sarah Ewart’s, (including Sarah Ewart herself, who said she would not have had an abortion in the case of a child with a disability) were not in favour of any further liberalisation. The Committee agreed numbers were not determinative, and noted that people from a wide range of gradated opinions across the whole spectrum, including those who agreed with the complainants, were given air time during these programmes.

The Committee concluded that impartiality is not arrived at by having equal numbers of people with opposing opinions, especially on a subject like this one, where it was not a theoretical debate but the examination of the plight of individuals and how the law should treat them. This was a nuanced argument with powerful voices. It was not about minutes and seconds allotted to differing viewpoints. The Committee considered that the requirement under Impartiality guideline 4.4.7 to give due weight and prominence to a wide range of significant views and perspectives had been met.

Finding: not upheld on impartiality

Point (E): The Committee noted the complainants alleged the presenter and the BBC were not impartial about the subject as a whole: that the presenter was lobbying for a change in the law, not merely reporting that others were lobbying for this.

The Committee noted that this issue did receive a high level of coverage including the two complained-about radio programmes, an hour’s TV show, coverage on Good Morning Ulster and about three-quarters of the Nolan radio show on Friday 11 October 2013. The story was still running throughout the following week. The Committee noted that, according to BBC NI, this issue also generated more response from the audience than other recent issues.

The Committee noted that all the complainants said the programmes and presenter went beyond just reporting that affected members of the public were calling for legislative change to the Abortion Law in Northern Ireland and were actually part of the campaign. The Committee noted that they said this was shown by the sheer amount of attention/air-time given to the matter, as well as the selection of contributors and the way in which the programmes were presented. One complainant said that the presenter allowed a phone-in to become a vehicle for his own views.

The Committee noted BBC NI’s response:

“Stephen Nolan’s programme will often focus on a particular story or theme and across several days. Other recent examples include the flag dispute at Belfast City Hall and care home provision for the elderly - which also drew on individual stories. Whether, when and to what extent this happens will depend on the newsworthiness of a story, audience and political reaction, new or emerging details etc. In this particular instance, Sarah’s story prompted volume calls (reflecting differing views), statements from two Executive Ministers and (later)
the Director of Public Prosecutions. We felt that all of this required adequate time and an extended opportunity for debate.”

And that in a later response, the programme editor said this was not a unique level of coverage:

“April 25 and 26, 2013 & May 2 and 3 2013: care home coverage – this was the only issue in successive programmes in two successive weeks. It’s the most directly comparable to abortion story – coverage also had massive impact on policy debate in NI”

The Committee noted that BBC NI said that, although Sarah Ewart and her family had brought the issue to The Nolan Show because they did want to lobby for a change in the law – or at least a clarification of the guidelines, this did not mean the programme was campaigning:

“Sarah Ewart’s mother contacted the programme because she wanted us to describe, and make others aware of, her daughter’s experiences. She (and Sarah) also wanted to make a case for a change in the law so as to permit abortion in the event of fatal foetal abnormality. Sarah’s case also highlighted felt-ambiguities in the Department of Health’s guidance on the application of relevant legislation in Northern Ireland – something which became the focus of debate in the days/weeks following this broadcast. We knew that Sarah had an opinion, based on her particular circumstances, on the ways in which the law might be amended and for the benefit of others. We wanted to provide her with an opportunity to talk about her situation (as a human interest story) and to facilitate a broadly based, and inclusive, debate about its implications for legislators, health care professionals and the wider community. In all of this, we were concerned to acknowledge, and reflect, diverse and sometimes divergent views on abortion – this was referenced repeatedly by the presenter in the RU programmes on 09/10/11 October (and subsequently). Sarah had a story and opinions to share and wanted to make the case for (very limited) legislative change. It seems something of an over-statement to describe this as a campaign.”

The Committee noted that BBC NI had given many examples of where it said the presenter made every effort to maintain due impartiality and to demonstrate that he was no part of any campaign and expressed no opinion on the matter. These included:

**09 October – BBC Radio Ulster**

“...the dilemma and the debating point for all of us...” c09.16am

“...there’s so much to discuss here, as to whether that Abortion Act should be extended to Northern Ireland, or actually whether it’s right that it shouldn’t and also these protestors right in the face, shouting at that young lady...” c09.18 30

“there are arguments on both sides, like there really are” c09.32 17

“... an issue with a dilemma in the middle of it” c09.35 53

“...many people may support the Minister’s position, but many people may not...” c09.36 15
“...there is significant support coming through this programme this morning for Minister Poots' position...but there is [sic] also a lot of people saying do we not need to look at all of this again...?” c09.54

“...it is a very emotive subject, there are valid arguments on either side of the subject” 10.04 52

“...there's a very clear anti-abortion majority at Stormont…” c10.20

“...she's entitled to her views, and she's entitled to protect what she considers to be unborn children...” c10.29 30

And again, on **10 October - BBC Radio Ulster**

“...is there a right or wrong answer? There is a division of opinion, as you know, around abortion and when a lady should, or should not ever have the right ever to an abortion in Northern Ireland...there's been a huge debate...do we need to look again at what the law says and what the guidelines say...? ...we're going to provide you and those stakeholders with a platform to have your say..” c.09.03 50

“...I can't support Sarah, because it is inappropriate for me to do so, I've got to remain impartial. What I can do is support her in having a voice and having a platform and I can also support those people that are pro-life in having a platform...” c09.30

“..reaction to the current guidelines in Northern Ireland, the situation with Sarah, and also, of course, those people that have a right in this democracy to say that abortion is always wrong…” c09.35

“...politicians will say that they are representing a strong groundswell of people in Northern Ireland who are anti-abortion...” c09.42 40

“...this programme, what it is designed to do, is to help and deal with real life situations and we're right in the middle of one right now..” c10.05 10

The Committee noted that BBC NI responded, on the question of whether the “phone-in had become a vehicle for the opinions of the presenter”:

“Stephen Nolan, like all of the callers and contributors to these programmes, was affected by the story of Sarah's particular circumstances – something which the Minister on 10 October described as ‘awful’ and ‘...absolutely tragic’ (c09 10). SN's role was to facilitate Sarah in sharing her story at a time of personal distress and upset and to manage a wide-ranging, and sometimes heated, series of discussions. He was explicit in his referencing of differing opinions (see above) and also that he was not advocating any particular viewpoint (also above at c09.30 on 10 October).”

The Committee considered whether the several occasions in which the presenter said he was not taking any particular position in the debate (cited by BBC NI above), meant that he was not indeed doing so. It took into account the decisions it made concerning other points raised, in considering this. It acknowledged that this was a largely subjective matter, and noted that arithmetical considerations of absolute numbers of contributors or
stop-watching minutes of coverage were not critical factors in adjudicating on Impartiality.

The Committee concluded that the programme did not campaign. There was empathy shown for Sarah Ewart, and others like her and their plight, but this was appropriate, and remained independent of any campaign. The programme did not become a vehicle for the opinions of the presenter.

The Committee said that it was a long-established technique of human-interest journalism to show the plight of someone who has suffered and to ask searching and challenging questions about whether and how the law might be changed to help such people in the future and whether such changes might entail undesirable consequences. The Committee concluded that this was what The Nolan Show did. The Committee agreed that the presenter repeatedly emphasised that there were legitimate views on either side, and a broad range of views were given ample expression by the various participants who came from a wide spectrum of opinion.

**Finding: not upheld on impartiality**

**Point (F):** The Committee noted the allegation that the programmes made space for a contributor to verbally threaten Ms Smyth more than once, but did not include a contribution — which was offered — from a woman who had chosen to carry her anencephalic baby to term.

The Committee noted that, in the approximately four hours of coverage which is the subject of this complaint, some interviewees appeared more than once: Bernadette Smyth of Precious Life; a caller who supported the availability of abortion in these circumstances [A]; and a caller who was opposed to the availability of abortion in these circumstances [B]. The Committee noted that there was, indeed, no contribution in these programmes from anyone who had carried an anencephalic baby to term.

The Committee noted that the complainants said it demonstrated a lack of impartiality to have [A] — who they alleged was quite abusive about Bernadette Smyth — on twice (once on the first radio programme and once on the television programme), when a mother of an anencephalic baby had contacted the programme and had been more than willing to appear, but had not had the opportunity to do so.

The Committee noted the BBC's response concerning the rationale for not having someone who had made a different decision in similar circumstances:

“On 11 October, the programme heard from a caller who went through the same situation as Sarah Ewart — c10.23.20. This caller [name] took her baby to term. Her son lived for 25 minutes, and she mentioned the funeral service that was held for him. She explained that she did not regret this and said that decisions in such circumstances should be a matter for the woman, rather than the law. Another interviewee, [name], who had been scheduled to appear on the programme, was interviewed as part of a protest outside Broadcasting House, Belfast on 17.10.13. She talked about her daughter, who had lived for 33 days and described the importance of having a birth certificate and memory box. She also said that The Nolan Show on 09.10.13 had given more of a platform to those in favour of changing the law on abortion in Northern Ireland. And Good Morning Ulster (which reflected on this developing story) included an interview with a couple who had taken a child with anencephaly to full-term, explaining why they felt this had been the right decision for them in the circumstances.”
The Committee noted that, regarding [A] being invited back onto the programme, the
BBC responded that she and [B] had put interesting and divergent points of view, strongly
argued, on the radio show:

“We did not know that [A] was going to make a comment to the effect that if her
daughter had been confronted in the terms described that she would ‘punch their
bloody lights out’. She wouldn’t have been put to air if we had known, or would
have been told not to use such language in her contribution. There doesn’t appear
to have been any pre-meditation on [A]’s part in terms of what she said in respect
of the protestor/counsellor’s alleged behaviour outside the FPA and her remarks
were immediately, and unequivocally, disavowed by the presenter. They were not
the substantive part of her contribution – much of which was about her opposition
to ‘pro-life’ views and campaigning and it was on this basis that she was invited to
take part in the television programme.”

The Committee noted that a woman who had given birth to an anencephalic baby who
had lived for 25 minutes, was indeed on *The Nolan Show* for one minute towards the end
of the programme on Friday 11 October (not a programme subject to these complaints).
She said she did not regret going to term as she had been able to give her baby a
funeral, but was of the opinion that any woman in this situation should be able to choose
for herself whether to have a termination or not. The Committee also noted the
contribution of another mother of an anencephalic baby, which occurred a week later.

The Committee considered that both contributions went towards the BBC’s duty to give
due weight and prominence to a wide range of significant views and perspectives under
Impartiality guideline 4.4.7.

The Committee concluded that the decision not to include such a parent in the
programmes which were complained of was a matter of editorial judgement and was the
prerogative of the BBC team producing the programme.

It then turned to the concerns about the decision to include interviewee [A].

The Committee noted that [A], who contributed twice, was first heard on the Radio
programme on 9 October. Among other remarks, she said:

**[A]**
Well, well, okay she [Ms Smyth] didn’t know about it but they, they have a…you
set the horrors on my daughter, I’m going to be terrible here. I’d have punched
their bloody lights out. If anybody had screamed at my daughter.

**Interviewer**
Right, well obviously we can't condone that...

The Committee noted that the same evening, [A] was invited back onto the TV
programme:

**[A]**
Well these pro-lifers, especially Bernie, in the first place Bernie it is none of your
business what this girl does. It’s her choice and I don’t see why you should
interfere. And do you see the woman who screamed into that woman and her
daughter’s face? If it had’ve been me and one of my daughters I would have
decked her. [LAUGHTER] [CLAPPING]
Stephen Nolan
There is a. There is no way, er; I can do anything other than to absolutely completely tell you, you should not have decked her. [LAUGHTER]. Bernie Smyth. Do you wanna reply to [A]?

Bernie Smyth
Well I don’t think that would be very loving to deck anyone. I think as a pro life movement we care. We would care. We would be caring.

Stephen Nolan
It wouldn’t be, it wouldn’t be reaching out Bernie would it? [LAUGHTER] [CLAPPING]. It wouldn’t, wouldn’t be.

The Committee considered that the BBC should indeed have been aware that it was possible that [A] would repeat what she had said on radio and could have taken steps to warn her of the risks of doing so. They noted, however, that [A]’s comments were not directed specifically at anybody and were dealt with effectively by Ms Smyth on the TV programme and by the presenter on both programmes.

The Committee concluded that this was the robust debate that the audience for The Nolan Show might expect to hear. While it was regrettable that [A] had repeated a general threat to hit anyone who spoke to her daughter in that way, the Committee did not believe she had incited violence – she was speaking hypothetically and her comments were handled appropriately. It was not a breach of the Editorial Guidelines to invite her on for a second occasion.

The Committee considered that a programme’s impartiality had to be assessed in terms of what was actually broadcast. It did not consider it was helpful or appropriate to try to consider how output might have differed if other guests had been featured. The impartiality of a programme or series needed to be adequate and appropriate to the output and should take into account the subject and nature of the content, the likely audience expectation, and any signposting that might influence that expectation. Where a subject is controversial, a wide range of significant views and perspectives should be given due weight and prominence, but the Editorial Guidelines note that due impartiality is often more than a simple matter of ‘balance’ between opposing viewpoints. For this reason, and the reasons above, the Committee was satisfied the programmes had been duly impartial in this case.

Finding: not upheld on impartiality
Richard Spendlove, BBC Radio Cambridgeshire, 7 December 2013; Spendlove and South, BBC Radio Cambridgeshire, 5 January 2014

The complaint

The complaint related to the conduct of a phone-in on a BBC Radio Cambridgeshire programme, Richard Spendlove, on 7 December 2013, and to remarks made on a further programme, Spendlove and South, on 5 January 2014.

The complainant said that Richard Spendlove, the presenter of the phone-in on 7 December 2013, was not equipped to deal with contributors who rang to talk about controversial issues, and that he had made plain his own views on those issues.

The complainant also stated that when she, herself, phoned the show to take part in the discussion, her points were not dealt with seriously or respectfully, and that on a further programme, Spendlove and South, a month later, in which Richard Spendlove again featured, her complaint about the 7 December 2013 phone-in, as well as the BBC's complaints process itself, had been derided.

Stages 1 and 2

A range of arguments was raised during Stage 1 and Stage 2 correspondence, during which responses were made by the BBC. The BBC's Editorial Complaints Unit (ECU) did not uphold the allegations it examined relating to the editorial standards of the broadcast material.

Background

Richard Spendlove invited listeners to phone the 7 December 2013 show to give their views about the sentencing to a minimum of 10 years in prison (later reduced on appeal to a minimum of eight years) of a Royal Marine, Sergeant Alexander Blackman, who had been convicted of murder in Afghanistan. In sentencing Sgt Blackman, the judge's remarks included the following:

"On 15 September 2011, while on patrol near CP Omar in Helmand Province, you shot an unknown Afghan insurgent in the chest and killed him. He had been seriously wounded having been engaged lawfully by an Apache Helicopter and when you found him he was no longer a threat. Having removed his AK47, magazines and a grenade, you caused him to be moved to a place where you wanted to be out of sight of your operational Headquarters at Shazad so that, to quote what you said: 'PGSS can't see what we're doing to him'. He was handled in a robust manner by those under your command, clearly causing him additional pain, and you did nothing to stop them from treating him in that way. When out of view of the PGSS (Persistent Ground Surveillance System) you failed to ensure he was given appropriate medical treatment quickly and then ordered those giving some first aid to stop. When you were sure the Apache Helicopter was out of sight you calmly discharged a 9mm round into his chest from close range. Your suggestion that you thought the insurgent was dead when you discharged the firearm lacks any credibility and was clearly made up after you had been charged with murder in an effort to concoct a defence. It was rejected by the Board.

"Although the insurgent may have died from his wounds sustained in the engagement by the Apache, you gave him no chance of survival. You intended to
kill him and that shot certainly hastened his death. You then told your patrol they were not to say anything about what had just happened and you acknowledged what you had done by saying that you had just broken the Geneva Convention. The tone and calmness of your voice as you commented after you had shot him were matter of fact and in that respect they were chilling.

“That Afghan man, as an injured enemy combatant, was entitled to be treated with dignity, respect and humanity. Some commentators and members of the public have said that you should not have been prosecuted and that you have not committed a crime because it was killing within a conflict. Some also suggest it is legitimate to kill wounded enemy combatants because, as you said after you shot the insurgent, it is nothing they wouldn’t do to British casualties. Those commentators are very wrong: if the British Armed Forces are not assiduous in complying with the laws of armed conflict and international humanitarian law they would become no better than the insurgents and terrorists they are fighting...”

Discussion about Sgt Blackman’s prison sentence formed a major part of the Richard Spendlove phone-in on 7 December 2013.

**Appeal to the BBC Trust**

The complainant appealed to the Editorial Standards Committee of the Trust requesting that it review the ECU’s decision not to uphold her complaint. The complainant made the following allegations in relation to the conduct of the phone-in, and to the handling of her complaint during the phone-in and, subsequently, on the Spendlove and South show:

Point (A) The presenter was not equipped to deal with contributors who were phoning in to talk about controversial issues.

Point (B) The presenter made plain his own views on controversial issues.

Point (C) The complainant’s points were not dealt with seriously or respectfully when she phoned in to Richard Spendlove’s show on 7 December 2013, or subsequently, on the Spendlove and South show of 5 January 2014.

**Applicable Editorial Guidelines**

The sections of the BBC Editorial Guidelines applicable in this case relate to: Interacting with Our Audiences (supplemented by Guidance on Live Output); Accountability; Accuracy; Impartiality; and Harm and Offence. The full guidelines are at http://www.bbc.co.uk/editorialguidelines/

**The Committee’s decision**

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

Point (A) the presenter was not equipped to deal with contributors who were phoning in to talk about controversial issues.

Point (B) the presenter made plain his own views on controversial issues.
The Committee noted the relevant guideline was 17.4.36. This explains that the BBC should be ready to deal with contributions that may cause widespread offence and be careful not to allow phone-ins to become a vehicle for the opinions of the presenter. It describes certain practices to minimise risk including:

- A breadth and diversity of views should be sought and the requirements of due impartiality should be met
- Presenters must be adequately briefed on the editorial guidelines and the law and should be able to extricate the programme from tricky situations with alacrity and courtesy.

The Committee considered issues relating to inaccuracies, offence and impartiality in turn in relation to the programme of 7 December 2013.

The Committee began by noting the circumstances of the killing of the insurgent, as described by the judge in his sentencing of Sgt Blackman, and that the judge had specifically stated that the insurgent was “no longer a threat,” at the point when he had been shot in the chest at close range, since his AK47, magazines and a grenade had been removed from him.

The Committee examined what Mr Spendlove had said during the course of hosting the phone-in about the circumstances of the killing. It noted that a caller had put forward the view that these things happened in war and that the insurgent was wounded and could not, at that point, have been trusted. Mr Spendlove responded with the following:

“The situation as I understand it … what I would say only is this: apparently the terrorist in question had a hand grenade and an AK47 rifle, neither of which are terribly safe to have around.”

It noted that what Mr Spendlove had said was inaccurate (since the insurgent had been unarmed when shot), with the potential for materially misleading the audience. This had been compounded, in the Committee’s view, by Mr Spendlove agreeing with a further caller who had said the insurgent had still been armed at the point when he had been shot, and that if the insurgent had been taken for medical treatment “the minute he got surrounded to be searched, the pin would have been pulled on that grenade”.

The Committee looked at other calls on the Sgt Blackman case during the phone-in and noted that the comments of one caller had had the potential to cause great offence. The caller had said that he could not understand what all the fuss was about, and that Sgt Blackman had helped the insurgent by killing him and referred to his understanding of the Koran and the afterlife whereby the insurgent would be rewarded in the afterlife.

In the Committee’s view, Mr Spendlove had not dealt appropriately with the caller, encouraging him to expand on his views and so potentially causing further offence, while failing to put forward any effective challenge and doing nothing to distance the BBC from the caller’s position or offering an apology to listeners who might have been offended.

Additionally, in relation to this particular caller, the Committee’s view was that Mr Spendlove had made some potentially offensive assumptions that everyone listening would subscribe to a Judeo-Christian viewpoint when he had said to the caller:

“Well, all right, fair enough. It is – they have certain assurances in their religion and we have certain assurances in ours. One of the assurances in ours, incidentally, is thou shalt not kill. But I know what you mean.”
The Committee examined whether there were points during the programme when Mr Spendlove clearly stated his own opinions on controversial issues. The Committee noted, for example, in relation to the presence of troops in Afghanistan, that Mr Spendlove had said the following to a caller:

“Well, this, you see, is a situation, as I see it anyway, is that there is no reason for us to be there. We shouldn’t be there in the first place. That is only my view. But the powers that be will find reasons to have us there and then when something like this happens, then somebody takes the can back and it is, as always, nobody at the top.”

The Committee noted that Mr Spendlove had repeated his views on the subject again in the programme when he said to another caller:

“And this, for what it may be worth, is my view: we shouldn’t be there in the first place. That’s where I stand on it. And if that’d been the case, it wouldn’t have happened, would it?”

In the Committee’s judgement, Mr Spendlove’s comments, his tone and his language, taken together, would have led his audience to believe that he considered the sentence passed on Sgt Blackman to have been too harsh.

The Committee noted that Mr Spendlove had urged listeners to the programme who felt strongly about the sentence Sgt Blackman had received to write to their MPs. This, in the Committee’s view, was wholly inappropriate for the presenter of a phone-in.

It also noted that while urging listeners to write to their MPs, Mr Spendlove had, at the same time, told listeners that writing to MPs would not do any good, that “we haven’t had a respectable government in this country for years,” and that “nothing would change” if there were a general election the following day. He concluded with the following:

“...as I’ve said so many times before, you vote one lot of wasters out and another lot of wasters in...”

In the Committee’s view, there had been clear breaches of standards of impartiality (guideline 4.1 – due impartiality) in relation to the phone-in. In addition there had been a breach of guideline 17.4.36 (phone-in programmes). The presenter had acted as though he had been unaware that he should not have been using the programme as a vehicle for his own opinions. In addition the presenter had not taken the appropriate action in relation to a potentially offensive caller.

In relation to both Point (A) and Point (B), the Committee appreciated that Mr Spendlove reportedly had a loyal audience and noted that he was arguably well connected to the views of a significant section of his listeners. These were positive traits, the Committee emphasised, because it was important that the BBC gave a voice to all of its listeners, within the law and the BBC’s editorial standards.

However, the Committee observed that it was for a presenter to air the views of listeners and challenge them where necessary, not give his own views. In the Committee’s opinion, in order to encourage a full range of views, it was important that the presenter of a phone-in programme remain neutral and be in a position to challenge and provide balance where appropriate, particularly in relation to controversial subjects. It concluded that there had been serious failings in this respect in the programme.
Point (C) The complainant’s points were not dealt with seriously or respectfully when she phoned in to Richard Spendlove’s show on 7 December 2013, or subsequently on the Spendlove and South show of 5 January 2014.

The Committee noted that the complainant had, herself, phoned in to the 7 December 2013 show, to say on air that she strongly disagreed with what other contributors had said about the Sgt Blackman case and that she had been shocked to hear some of the views that had been voiced. It noted she drew particular attention to the comment that had been made about Muslim beliefs, which she said had left her “almost speechless … that people with views like that have phoned in and aired them, and that they’ve been given a forum to air these views”.

The Committee noted that an exchange followed about whether or not Mr Spendlove had expressed his views on Sgt Blackman’s sentence (he said he had not, while the complainant said he had made his own views plain). Following that, the Committee noted that Mr Spendlove read out various emails and took calls criticising the complainant, and he then said the following:

“…the number of letters, emails, presents, cards and everything else that I get year after year and have done for 25 years from people who enjoy the show means that when I get one caller like that, my eyes glaze over, I get tired [laughs].”

The Committee reviewed this section of the programme and came to the view that Mr Spendlove had not dealt respectfully with the complainant, in contravention of Guideline 6.4.1, which states “we should treat our contributors honestly and with respect”. It decided, therefore, that this aspect of Point (C) should be upheld against Guideline 6.4.1.

As far as the Spendlove and South show on 5 January 2014 was concerned, the Committee noted that the show included a running gag about a “woman from the BBC” who had been sent to check up on what they were saying. It was pretended that this woman was taking notes in the corner, reading her newspaper, or dozing off to sleep, and that she should not be woken up by any loud talking. The Committee also noted Mr Spendlove’s views, as expressed on the show, about “political correctness” and the damage he thought it could do to increase racial hatred. It noted that he had said the following:

“…If you think about the whole gamut of this political correctness, every week, even on this radio station, on the programmes that we do, there are less things that we can say…

“I’ve always said if you isolate political correctness from perceived racialism, if you isolate the two, I have always said on my programme and I’ll say on this programme now, that the people who have done more to incite racial hatred in this country are the people who are preaching against it to such a huge extent in little ways … it causes people who otherwise didn’t really care one way or the other … suddenly find themselves restricted by it…”

The Committee agreed with the Head of Region, BBC East, when he wrote the following to the complainant:

“It felt to me like they [Spendlove and South] were satirising BBC sensitivity to audience complaints rather than poking fun at your complaint or your decision to complain. The joke was on the BBC and its management.”
The Committee thought it was ambiguous as to whether or not the complainant herself was the person being referred to during the show and it thought that, in any event, listeners would not have recognised any comment on that show as relating to the complainant personally. The Committee thought that, on balance, this aspect of the Spendlove and South show of 5 January 2014 did not suggest a breach of the Editorial Guidelines.

**Further action**

In relation to the complaint overall, the Committee noted that the Editor of BBC Cambridgeshire had already agreed that there had been issues of concern in relation to Points (A) and (B), and a verbal reprimand had been given to Mr Spendlove.

The Committee noted the failings throughout the show of 7 December 2013 and it was concerned that they were of such seriousness as to suggest that there had been inadequate editorial supervision of the output. It noted BBC Cambridgeshire had already acknowledged the issues and required the BBC Executive to confirm that such supervision was now in place.

The Committee considered that some of the breaches in this programme had been unequivocally clear. Trustees regretted it had been necessary for the complainant to go through every stage of the appeals process to establish what should have been conceded by the BBC earlier.

**Finding: upheld in relation to Impartiality and Phone-in Programmes and partially upheld in relation to Fairness, Contributors and Consent.**
The Report, Radio 4, 14 November 2013

The complaint

This is an appeal by a first-party complainant who complained that a programme about Birmingham Children’s Services Department contained a number of inaccuracies in relation to events whilst he was Director. He also complained that the programme was unfair to him in not informing him in advance about areas of questioning, and criticising him without giving him the opportunity to respond.

Background

This is the programme billing from the BBC website:

“Last month, a serious case review into the death of two year old Keanu Williams concluded that there were a number of significant opportunities to save him from being beaten to death by his mother. It’s the latest in a series of horrific child deaths that have shocked Birmingham and exposed shortcomings which have led to the city’s children’s services department repeatedly failing inspections and the city being branded a ‘national disgrace’ by the head of the watchdog, Ofsted. Simon Cox investigates what is wrong with social services at Britain's largest local authority and asks whether its reputation is justified.”

The programme began with a lengthy section about the Keanu Williams case and went on to examine the reasons for the wider crisis in Birmingham Children’s Services. Interviewees included social work academics, a former and present Director of Birmingham Children’s Services and other professionals from the social work sector.

The complainant in this appeal was also a contributor to the programme, as a former director of Children’s Services at Birmingham City Council. He left the department by mutual agreement in July 2013. A confidentiality agreement which he signed at the time prohibited him from disclosing to a third party any detail regarding his tenure or the terms of his departure. He informed the producer of The Report when he was first invited to appear that these conditions would apply to any interview he gave.

The complainant said that when he agreed to give the interview he had not been informed that the programme would contain any criticism of him personally. He also said that a number of inaccuracies about specific events added to the negative impression and resulted in serious unfairness to him.

Stages 1 and 2

The complainant wrote to the programme producer on 14 November 2013, following the broadcast, saying he was “surprised and disappointed by the inaccuracies and the imbalance” in relation to his time at Birmingham.

He made the following points:

- the reference in the programme to him “arriving with a big restructuring plan” was inaccurate; it was linked in the commentary to the Ofsted report yet the plans for restructure were not even discussed until well after the Ofsted inspection.
- the programme referred to the “withering” Ofsted report but failed to mention that same report had commended his performance and the step-change he had introduced thus far.
• the rhetorical suggestion that his departure was in some way connected with the death of Keanu Williams was without any foundation as Keanu had died 15 months before the complainant had arrived in Birmingham.

The producer responded with the following points:

• the interviewer would have liked to discuss other areas but had been prevented from doing so because of the agreement the complainant had with the council.
• the programme had asked if it could use a clip where the complainant talked about Ofsted’s comments about him but he had requested that they did not do so.
• the section about the complainant’s departure did mention it happened soon after the Keanu Williams verdict but also that the council said it was unconnected; it was clear from the rest of the programme that the complainant was not in charge at the time of Keanu Williams’ death.

The complainant wrote to the Head of Radio Current Affairs on 18 November 2013 saying the programme had misrepresented the chronology, the facts, his role and the complexity of the situation. The letter included additional detail which he said supported his view.

A subsequent email from the complainant requested that the BBC refrain from any further broadcasts of the programme and remove it from iPlayer to avoid “compounding the damage”.

The Head of Radio Current Affairs responded on 20 November 2013 saying the programme had acted at all times in good faith. She made the following key points in relation to the points which have been raised in this appeal:

• It had been a mistake to say that the complainant had arrived with a new restructuring plan, for which the programme apologised.
• With hindsight the programme should have mentioned where the Ofsted report had been positive about aspects of the complainant’s leadership; but it is clear the Ofsted report refers to the department under two leaders and the programme also included another former director talking about her disappointment with Ofsted’s assessment.
• it was considered noteworthy to mention the timing of the complainant’s departure coming so shortly after the guilty verdicts; it would not have caused listeners to believe the complainant’s departure was related to Keanu Williams’ death.
• (in including in the programme an exchange with the reporter in which the complainant refused to answer questions about his departure) the programme had not intended to imply, as the complainant stated, that he had deliberately hidden facts about his time in Birmingham. The Head of Radio Current Affairs said:

“The existence of compromise agreements can be enormously frustrating for journalists trying to establish the full facts and the reasons for your leaving your post in Birmingham are a matter of legitimate public interest. What we were trying to do in using the section of your interview where we asked about that was to make it clear to listeners that you were genuinely unable as was your successor – to discuss the reasons for your departure.”

The complainant responded in detail rejecting the explanations he had been given and concluding:
“I do not think you have fully recognised the extent of the damage caused by the picture (the programme) presented of me and therefore it does indeed fail to comply with editorial standards. In view of your acceptance of some of my complaints, could you let me know what action you may take to correct the errors for which you have apologised? I would expect a broadcast correction and apology.”

On 26 November 2013 the complainant escalated his complaint to Stage 2. He outlined once again the grounds on which he was complaining and attached a series of emails documenting the correspondence he had had with the programme prior to his interview. This included an email to the producer, prior to broadcast, bringing his attention to the positive comments about the complainant in the 2012 Ofsted Report which could be used in place of a direct comment from himself. The Editorial Complaints Unit (ECU) responded with its finding on 20 February 2014. None of the complainant’s points were upheld.

The Complaints Director, ECU made a general point about when an inaccuracy might be considered a breach of the Editorial Guidelines:

“It is not sufficient simply for an inaccuracy to be identified for the ECU to uphold a complaint of inaccuracy. For this to be considered a serious breach of editorial standards it must have the potential to seriously mislead the audience on a material point under consideration. An inaccuracy which does not mislead in this way, whilst it might be regrettable, would not amount to a serious breach of standards.”

This is a summary of the key points from the ECU provisional finding on the issues raised by the complainant at Stage 2 and which the complainant asked to be reviewed for this appeal:

**The inaccuracy on the chronology of the complainant’s restructuring plan did not amount to a serious breach of editorial standards:**

“I am afraid I cannot agree that the distinction between having arrived with a plan and implementing restructuring plans some time later is significant if the material point is that the restructuring may have added to the difficulties faced by Children’s Services.”

**The failure to mention, in the context of reporting on a “withering” report from Ofsted, that the Ofsted report had commented positively on the complainant’s leadership:**

“This complaint has force if it can be said that the programme gave an impression that the Ofsted report blamed you for the failures it identified in Birmingham such that the positive comments were a necessary counterweight. I do not think that this is the case. The programme made quite clear that Birmingham’s difficulties were long standing and pre-dated your coming into post by a considerable time. Secondly, it made clear you had only been in post for five months prior to the Ofsted inspection. I do not think, therefore, that it is likely that a listener would have been misled into thinking that you were somehow responsible for the highly critical report from Ofsted.”

**The programme suggested the complainant’s departure from his post as Director may have been connected with the death of Keanu Williams:**
“The timeline in the programme made it clear the dates did not coincide and the programme carried the statement from Birmingham Council denying that the complainant’s departure had anything to do with the case.”

**The programme implied the complainant had something to hide by asking in the interview why he had left when he had already explained that he was not in a position to discuss this because of his confidentiality agreement with the Council.**

“A director had resigned after only a short time in the post in a programme in which the focus was the state of Children’s Services in Birmingham. While the ECU understood the complainant’s frustration, it was a perfectly proper question for the programme to have pursued, and had it not chosen this means by which to do it the information would have had to be provided by the reporter in some form.”

**The complainant had not been afforded the opportunity to respond to damaging allegations:**

“The fact that you had declared from the outset that you were not prepared to discuss anything about your time in Birmingham rather disposes of the point. The programme did attempt to open up a discussion about your tenure in the recorded interview but you declined to engage with the reporter. I do not think it can reasonably be argued that a programme such as this should be restricted in ventilating issues of genuine public concern because a party who might feel they are being criticised is inhibited from responding by a confidentiality agreement which they have freely entered into.”

The complainant responded on 26 February 2014 with a detailed rebuttal of all the ECU’s provisional conclusions.

The ECU addressed the complainant’s rebuttal but did not alter its provisional finding and the decision not to uphold was finalised on 12 March 2014.

**Appeal to the BBC Trust**

The complainant appealed to the BBC Trust on 25 March 2014 attaching the earlier correspondence and reiterating the points he had made at previous stages.

The complainant raised the following points in relation to the accuracy and fairness of this programme:

**Point (A):**

- that the programme wrongly stated that the complainant had arrived with a restructuring plan for Children’s Services and began implementing it immediately; and
- that, arising from this error, the programme wrongly implied that the “withering assessment” from Ofsted, six months after the complainant was appointed, was because of restructuring initiated by him since taking up his appointment.

**Point (B):** that the programme implied an association between the death of Keanu Williams and the complainant’s departure from his post as Director of Birmingham Children’s Services.
Point (C): that the programme failed to comply with the principles of the Fairness guideline such that the complainant was not appropriately informed about the planned nature and context of his contribution.

Point (D): that the programme contained serious criticism of the complainant and that he should have been offered a “right of reply”.

A detailed discussion of the issues in his letter of appeal is in the discussion of the individual points below.

**Applicable Editorial Guidelines**

The Editorial Guidelines on Accuracy and on Fairness, Contributors and Consent are applicable to this appeal. The full text of the Editorial Guidelines is available at [http://www.bbc.co.uk/guidelines/editorialguidelines](http://www.bbc.co.uk/guidelines/editorialguidelines)

**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 submission from the complainant.

**Point (A):**

- regarding the view that the programme wrongly stated that the complainant had arrived with a restructuring plan for Children’s Services and began implementing it immediately; and that

- arising from this error, the programme wrongly implied that the “withering assessment” from Ofsted, six months after the complainant was appointed, was because of restructuring initiated by him since taking up his appointment.

The Committee noted the relevant extract from the programme (key sections highlighted in bold):

**REPORTER (Simon Cox):**

[The complainant’s successor] has a tough job turning around Birmingham where many others before him have failed. Since 2009 children’s social care in the city has been rated as inadequate in every inspection by the regulator Ofsted. But Birmingham’s story isn’t one of constant failure. There have been moments when it looked like it was on the mend. One of these was in the spring of 2012 when [the complainant’s predecessor] finished her term as interim director of Children’s Services.

(VOICED WORDS)

Dear Mike.. (SOUND OF TYPING).. many thanks...

**REPORTER:**

The then Children’s Minister Tim Loughton wrote a letter to the leader of Birmingham Council, which we’ve seen, expressing cautious optimism.
As I said at the time, my overriding impression is that Birmingham is in a different place from when I visited a year ago. Morale seemed to be much better and staff in the new integrated family support teams showed real enthusiasm and commitment to their work.

REPORTER:
Although not a total endorsement, for Birmingham there was a definite sense of progress. A new Director of Children’s Services was appointed, [the complainant], who came with a big restructuring plan. But six months after he arrived, in September 2012, Ofsted staged an unannounced inspection and delivered a withering assessment with a long list of improvements that needed immediate action. Even for Birmingham this was a shock. After the comments from the Children’s Minister that it was on the road to recovery. The council carried on restructuring, getting rid of managers’ posts. But the senior manager we spoke to who was working in children’s social care at the time said this made the job even harder. Once again his words are spoken by an actor.

SENIOR MANAGER:
All of the area manager posts were done away with and a situation was created where you had these massive thirty plus teams with one manager who was going to have oversight of 500 odd cases. That was seen as, like, undoable. That was seen as madness in terms of implementation. I think that [the complainant] was somebody who had a lot of self-confidence and felt he had the ability to personally turn around Children’s Services. But in terms of the actions that were being taken on the part of the troops on the ground as it were, were just seen as sheer folly.

The Committee noted how the complainant framed his concerns in his letter of appeal to the Trust (text in bold reflects the complainant’s highlights):

“It was suggested that I arrived with a big restructuring plan (inaccurate and subsequently accepted as such by the Editor), the programme played ‘a former member of staff’ saying that this plan was ‘pure folly’. The presenter said that Ofsted delivered a ‘withering report’ – the clear message being that my (fictitious) ‘plan’ had failed, spectacularly. The programme did not mention the exclusively positive comments made by Ofsted about my leadership and my positive impact (the Editor subsequently agreed that this comment should have been included). This account demonstrated a lack of fairness, impartiality and truth.

Whilst some restructuring took place and ‘some people’ saw this as contributing to the difficulties, these changes took place after the Ofsted inspection ... The programme communicated a very clear message that my impact had been negative.

“No restructure had taken place and Ofsted did not inspect any aspects of restructuring.”

The Committee noted the complainant’s response to a question from the Editorial Adviser who compiled the background note for the appeal; the complainant was invited to supply additional detail about the nature and the timing of the restructuring implemented by him:
“I started work in Birmingham in April 2012. The Ofsted inspection commenced in September 2012 - five months later. I inherited a restructured organisation and management team. The background to events in Birmingham are covered very clearly in the Ofsted report.

“The structure and approach established by [the complainant’s predecessor] were continued by me between my arrival and the inspection. My actions following the Inspection were focussed on addressing the recommendations of the report. The report highlighted weakness in front-line practice. My actions following the inspection were entirely a response to the issues contained in the report - hence ‘my’ restructure took place in March 2013. It was a response to the Ofsted report, not something commented-upon by Ofsted, as the programme clearly suggested. It was reported that some staff were unhappy with the restructure - but these comments related to increasing transparency and accountability in systems and structure that were put in place in response to Ofsted, not events which took place before the Ofsted inspection.”

The Committee noted what the Ofsted 2012 report4 said about the complainant in the sections entitled “Overall Effectiveness” and “Leadership and Governance”:

“The newly appointed Director of Children’s Services is a key driver in some of the recent changes in taking forward improvements to the service and in starting to work cohesively with partners. Additionally, staff and partners report increased confidence in the senior leadership team to tackle the changes required. Over the last few months, there has been a step change in momentum, with early signs of impact in some areas of practice. For example, clearer reporting mechanisms are now in place to scrutinise performance indicators both at a strategic and operational level. This is supported by a strong focus on improving practice through strengthened quality assurance.”

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“Since his appointment five months ago, the permanent Director of Children’s Services has accelerated the pace of change in driving improvements. However, achievements are from an extremely low base and in some key areas of performance, significant concerns remain in meeting performance targets.”

The Committee noted the response from the Head of Radio Current Affairs at Stage 1, accepting the commentary had been inaccurate:

“We were mistaken to say that you arrived with a new restructuring plan and apologise for that. But we did hear from several people we spoke to that aspects of the plan put forward under [your predecessor] had not been continued by you and we wanted to reflect that in the programme...

“In terms of what the Ofsted report says about you personally, I understand that (the Producer) asked whether we could use a clip of you talking about this but you requested that it wasn’t used. I do accept that the Ofsted report is positive about aspects of your leadership and with hindsight I think the programme should have mentioned this.

4 http://www.ofsted.gov.uk/sites/default/files/documents/local_authority_reports/birmingham/051_Inspection%20of%20local%20authorit y%20arrangements%20for%20the%20protection%20of%20children%20as%20pdf.pdf
“However we make it clear in the programme that the Ofsted report is both contested and refers to Birmingham Children’s Services under two leaders by including a clip of [your predecessor] talking about her disappointment with their assessment.”

The Committee noted the detail of the exchange later in the programme referred to by the Head of Radio Current Affairs:

REPORTER:
(Ofsted’s) last inspection in 2012 was one of the worst the council had received. This was a huge blow for staff who’d thought the department was turning a corner. [The complainant’s predecessor] had already left the city … But she was so furious about Ofsted's judgement on Birmingham that she complained to its Chief Inspector.

[THE COMPLAINANT’S PREDECESSOR]:
I think it was a simplistic judgement. Ofsted will say that they're not interested in the journey, but actually the journey of improvement is critically important. It takes time to turn services round and improve them.

The Committee noted the response from the Head of Radio Current Affairs when she was invited to comment further for this appeal:

“Further research has confirmed that when [the complainant] was appointed, he was told that the Council did not want a new restructuring, and our understanding is that [the complainant] was expected to implement the plans of [his predecessor]. She expressed disappointment to us that he had, in her view, changed her plans; other contributors felt that [the complainant] had brought change; but [the complainant]'s actual restructuring plan was brought in later, after the Ofsted inspection. I thought it right to apologise to [the complainant] for this confusion, because our statement in the programme was not correct, but I don’t believe that it was an inaccuracy which would have significantly misled the audience.

“I don’t believe that the programme suggested that the ‘withering assessment’ from Ofsted was a result of any alleged restructuring plan.

“Although I have acknowledged to [the complainant] that I think, with hindsight, the programme should have mentioned that the Ofsted report did contain positive references to [the complainant]'s tenure thus far, I don’t think that the fact we didn’t do so resulted either in material inaccuracy or unfairness. I do think it would have been a better programme if we had referred to the positive comments. We did offer to use a clip of [the complainant] making the point that Ofsted made positive references to his tenure, but he asked us not to do so … so we instead used another clip of him...”

The Committee noted the view of the ECU at Stage 2:

“I note that you agree that post-Ofsted restructuring did take place, I think it is clear that, even if you did not arrive with a restructuring plan, there was significant restructuring during your time in post which some at least saw as contributing to the difficulties they faced. In the circumstances, I am afraid I cannot agree that the distinction between having arrived with a plan and implementing restructuring plans some time later is significant if the material point is that the restructuring may have added to the difficulties faced by Children’s Services. In the circumstances, whilst the statement that you arrived with a restructuring plan may have been inaccurate I am afraid that I cannot agree that the audience was misled on a material point and that it
amounted to a serious breach of editorial standards. I cannot, therefore uphold this part of your complaint. In my view, the admission and apology offered in the response from (the Head of Radio Current Affairs) is sufficient to dispose of the complaint.”

The Committee noted the ECU’s view about the omission from the programme of positive comments about the complainant which had appeared in the Ofsted Report:

“This complaint has force if it can be said that the programme gave an impression that the Ofsted report blamed you for the failures it identified in Birmingham such that the positive comments were a necessary counterweight. I do not think that this is the case. The programme made quite clear that Birmingham’s difficulties were long standing and pre-dated your coming into post by a considerable time. Secondly, it made clear you had only been in post for five months prior to the Ofsted inspection. I do not think, therefore, that it is likely that a listener would have been misled into thinking that you were somehow responsible for the highly critical report from Ofsted.”

The Committee noted that the BBC had accepted it had been wrong to state that the complainant “came with a big restructuring plan” but that there had not been a breach of the guidelines, because the timing of the restructuring was not a material point. The Committee disagreed, noting again the following sentence:

“A new Director of Children’s Services was appointed, [the complainant], who came with a big restructuring plan. But six months after he arrived, in September 2012, Ofsted staged an unannounced inspection and delivered a withering assessment with a long list of improvements that needed immediate action.”

The Committee concluded that the error in the chronology had led to the restructuring being wrongly linked to another event: the Ofsted inspection and its “withering assessment”. It noted that the role of Ofsted was a key theme running throughout the programme and that therefore an understanding of the Children’s Services Department’s failures in relation to Ofsted constituted a material point in the view of the Committee.

The Committee noted that in omitting to include those aspects of the Ofsted report which spoke positively of the “step change” under the complainant’s directorship and the fact that the programme suggested no other reason for the department failing the Ofsted inspection, the audience would have placed considerable weight on it being as a result of a restructuring introduced by the complainant in the six months between when he took office and the arrival of Ofsted for an unannounced inspection.

The Committee considered also that the impression that it was the complainant’s restructuring that had led to the Ofsted criticism would have been reinforced by the commentary immediately preceding this: listeners were told that the Children’s Minister, on a visit to the department just before the complainant’s arrival, had noted signs of improvement [under the previous director]. In the Committee’s view this increased the likelihood the audience would assume the complainant bore the majority responsibility.

The Committee therefore concluded that the inaccuracy had resulted in a breach of Editorial Guidelines 3.1 and 3.2.1 on Accuracy, which commit the BBC to achieving due accuracy in output. It had also resulted in a breach of the Editorial Guideline on Fairness 6.1 in that material inaccuracies had resulted in unfairness.
**Point (B):** regarding the view that the programme implied an association between the death of Keanu Williams and the complainant’s departure from his post as Director of Birmingham Children’s Services.

The Committee noted the relevant script:

**REPORTER:**
In the middle of this major reorganisation there was another massive jolt for Birmingham when in June this year Rebecca Shuttleworth was convicted of her son Keanu’s murder. Two days after this verdict [the complainant] went on urgent unplanned leave. Several weeks later he stepped down as head of Children’s Services in Birmingham after just over a year in charge. Birmingham Council says this was unconnected to Keanu Williams’ death. So why did he leave? Well we don't know as he signed a compromise agreement.

**REPORTER (IN INTERVIEW):**
Okay let's get some level from you... Why don't you just say your name....

**REPORTER:**
But we did persuade him to talk to us. He'd said he couldn't discuss his time at Birmingham. But we thought we'd try and twist his arm anyway

**THE COMPLAINANT:**
All I can say as I said to your researcher, was that I left Birmingham in the summer by mutual agreement and the conditions of that agreement are confidential

**REPORTER (IN INTERVIEW):**
People will just think it's a bit weird. You're a publicly paid official, they're a big council and we can't talk to either of you about your time in Birmingham

**THE COMPLAINANT:**
I can't add anything further to that I'm afraid

The Committee noted the detail of the issues raised in the complainant's appeal:

‘The programme said that shortly after the publication of a case review about a child-death, I suddenly left Birmingham. The Editor chose to partially qualify this by saying ‘the City Council said his departure was not connected with the child’s death...but why did he leave’. This left a degree of doubt and was in contrast to a section of the programme which referred to a social worker who had left the council - the presenter said that the worker was not connected with the child’s death but the programme reported that Birmingham City Council said that my departure had nothing to do with the case. A statement being made by a reputable BBC reporter as fact carries more weight than simply reporting that ‘the local authority said’. This approach - referring to my departure alongside reference to a child’s death - left a sceptical note in the broadcast, despite the fact that the child’s death occurred before I started work with Birmingham.

“Moreover, it is noteworthy that there were no serious incidents or deaths ‘on my watch’. .... It is my view that any reasonable listener, without the full details of the chronology in front of them, would have thought that my departure was connected with the child death, particularly when the only evidence given for this not being the case was that ‘the Council said’. Whether it was intentional or accidental, I question the impartiality of the Editing/Production.”
The Committee noted the comments from the BBC’s Head of Radio Current Affairs in response to this Appeal:

“I cannot see that the programme could possibly have misled listeners on this point. We were clear about the timeline: [the complainant] joined long after the death of Keanu Williams. He did leave, however, immediately after Keanu murder trial verdict – and Birmingham Council made the statement at the time (quoted in the programme) that [the complainant]’s departure was not connected with Keanu’s death.”

The Committee noted the explanation given by the Head of Radio Current Affairs as to why the programme categorically stated that the social worker referred to by the complainant in his appeal was not involved in the Keanu Williams case: it was not because they intended to suggest that the complainant was involved, but simply because, unlike the complainant, the social worker was employed by the council at the time of Keanu Williams’ death.

The Committee noted the reasoning the ECU gave for concluding that the audience were not misled:

“The narrative as set out throughout the programme is clear: it says that Keanu Williams died in January 2011 and suggests that the abuse he suffered would have occurred between ‘late in 2009’ when he left the mother and baby unit, and January 2011. It then says that you were appointed in 2012. In other words, there is no way that a listener could reasonably have formed the view that you had been in post when the events leading up to his death took place. Furthermore, the programme carries the clear denial from Birmingham Council that your departure had anything to do with the case although the actual reasons were not disclosed either by the Council or yourself because, the programme was told, the compromise agreement between you is confidential.”

The Committee noted the ECU’s view that the manner in which the programme dealt with the social worker’s non-involvement in Keanu Williams’ death did not necessarily mean the way it handled the same issue in relation to the complainant was inadequate.

The Committee noted the two occasions early in the programme when the commentary defined the time period during which Keanu Williams’ abuse and death occurred – i.e. between late 2009 and January 2011 – and then separately noted, eight minutes later, the arrival in 2012 of the complainant.

The Committee accepted that while the relevant section was factually correct, the way it was framed had connected two unconnected events, which could have implied to the audience that there was something suspicious nonetheless. The Committee took the view that as this was a radio programme and not written content, programme makers were reliant on the audience’s ability to retain a detailed memory of the chronology in order to reach an informed understanding that the complainant’s departure from Birmingham and the death of Keanu Williams could not be related. The Committee concluded that as the references to the dates of Keanu Williams’ death had been some eight minutes earlier, the programme was placing too great a reliance on the audience’s recall. Moreover, this section in which the complainant’s “urgent departure” and the Keanu Williams verdict were discussed, was itself within a section of the programme the overall effect of which had been to leave the impression that the public was not being allowed to know the true facts surrounding the complainant’s tenure and the terms and reasons for his departure.
The Committee concluded that the commentary’s juxtaposition of the timing of the complainant’s departure with the verdict in the Keanu Williams case had suggested an association between the two and had therefore led to a failure of accuracy when considered against clauses 3.2.2 of the guideline on Accuracy which requires the use of clear, precise language and the avoidance of unfounded speculation. It had also resulted in a breach of the Editorial Guideline on Fairness 6.1 in that material inaccuracies had resulted in unfairness.

**Point (C):** regarding the view that the programme failed to comply with the principles of the Fairness guideline such that the complainant was not appropriately informed about the planned nature and context of his contribution.

The Committee noted that the issue raised relates to clauses 6.2.2 and 6.4.1 of the Editorial Guidelines on Fairness, Contributors and Consent, which state (emphasis added):

6.2.2
Individuals should normally be appropriately informed about the planned nature and context of their contributions when they are asked to take part in BBC content and give their consent, unless there is an editorial justification for proceeding without their consent.

6.4.1
We should treat our contributors honestly and with respect. Our commitment to fairness is normally achieved by ensuring that people provide ‘informed consent’ before they participate. ‘Informed consent’ means that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content.

Before they participate, contributors should normally know:

- why they are being asked to contribute to BBC content and where it will first appear
- the context of the content
- the nature of their involvement.

The more significant their contribution, the more detail we should provide. However, we should normally expect to explain the following:

- the kind of contribution they are expected to make. *We should tell them in advance about the range of views being represented in the specific content to which they are contributing and, wherever possible, the names of other likely contributors*

The Committee noted that the part of the complaint relating to the section of the programme which discussed the circumstances of the complainant’s departure from his post as Director of Children’s Services in Birmingham:

**REPORTER:**
In the middle of this major reorganisation there was another massive jolt for Birmingham when in June this year Rebecca Shuttleworth was convicted of her son Keanu’s murder. Two days after this verdict [the complainant] went on urgent unplanned leave. Several weeks later he stepped down as head of Children’s Services in Birmingham after just over a year in charge. Birmingham Council says this was
unconnected to Keanu Williams’ death. So why did he leave? Well we don’t know as he signed a compromise agreement.

REPORTER (IN INTERVIEW):
Okay let’s get some level from you... Why don't you just say your name....

REPORTER:
But we did persuade him to talk to us. He'd said he couldn't discuss his time at Birmingham. But we thought we'd try and twist his arm anyway

THE COMPLAINANT:
All I can say as I said to your researcher, was that I left Birmingham in the summer by mutual agreement and the conditions of that agreement are confidential

REPORTER (IN INTERVIEW):
People will just think it's a bit weird. You're a publicly paid official, they're a big council and we can't talk to either of you about your time in Birmingham

THE COMPLAINANT:
I can't add anything further to that I'm afraid

REPORTER (IN INTERVIEW):
Right. It doesn't look very transparent does it?

THE COMPLAINANT:
mmm..

REPORTER (IN INTERVIEW)
You can't say anything to that?

THE COMPLAINANT:
No

REPORTER:
Okay. So nothing on Birmingham. But he could speak more generally about how to improve councils that are struggling

THE COMPLAINANT:
The authorities you know should be focussing on supporting front line staff and they should have a very acute focus on practice. Leaders need to also focus on the performance management of the organisation, checking out workforce issues, making sure we have the systems in place to reward and recognise staff but also helping those staff who aren't suitable to be in the jobs to move on or to help them to improve.

The Committee noted the complainant’s assertion at Stage 1, suggesting a breach of Section 7.3 of the Ofcom Broadcasting Code, specifically the clause which states contributors should normally be informed about areas of questioning. The complainant said the programme implied he had deliberately hidden facts about his time at Birmingham.

The Committee noted the response from the Head of Radio Current Affairs:
“That was certainly not our intention. The existence of compromise agreements can be enormously frustrating for journalists trying to establish full facts and the reasons for your leaving your post in Birmingham are a matter of legitimate public interest.”

The Committee noted the complainant’s response:

“Had it not been your ‘intention’, then you would not have included a recording of me not being able to answer the question. My participation in the programme had been agreed on the basis that I could [NOT] talk about my experience in Birmingham. That was agreed verbally and in writing. The only reason you could have had for recording what had already been agreed previously was to convey questionability. Why else include it other than to put doubt into the minds of listeners?”

The Committee noted the ECU’s response at Stage 2 to the complainant’s view that the programme had implied he was hiding facts even though he had made it clear he could not discuss his time in Birmingham:

“I can see why this is a source of particular frustration for you but I am afraid that I cannot agree that it amounted to a serious breach of editorial standards. The focus of the programme was the state of Children’s Services in Birmingham and when a Director resigns after less than a year in the post, and after a very critical Ofsted inspection, the question inevitably arises as to why that might have happened. That, it seems to me, is a perfectly proper question for the programme to have pursued. Not to have done so would, arguably, have been remiss because it would almost certainly be a question arising in the mind of the listener. The question was resolved, albeit unsatisfactorily, when the audience was told, and heard you say, that you could not discuss it. This was, however, information that would have had to be provided by the reporter in some form even if you had not been asked about it at all in the recorded interview.”

The Committee noted the complainant’s acknowledgement that the question of his departure was a proper subject for the programme to pursue, and his clarification of the basis for his complaint:

“I am complaining that following several discussions with the researcher/producer/editor I felt the way in which this interview was conducted (and) the recording used by the programme lacked integrity.”

The Committee noted the extracts from email exchanges between the complainant and the programme prior to his interview, which formed part of the complainant’s Stage 1 submission.

On 5 November, two days prior to his scheduled interview, the complainant emailed the producer:

“I would appreciate some reassurance that the issues I went over in detail with (the researcher) have been communicated to whoever is doing the interview?

“You will have seen my CV. I have worked in inadequate Councils and outstanding ones. Ofsted (in their most recent report on Birmingham in October 2012) commented on my leadership. I am happy to talk about improvement in children’s service in general, Ofsted etc etc but:

“I will not be saying anything specific about Birmingham
I will not say anything that may appear critical of Birmingham
I do not wish to say anything further to the press release about my departure from BCC

“If those conditions are agreed then we can go ahead. I appreciate the programme is about BCC so I will understand if you feel my contribution may be limited and not able to be included.

“I assume you will understand the reasons for my being very pedantic about this.

“Please let me have your views on the above.”

The Committee noted the producer’s response:

“Thanks for this. I understand you’re restricted about what you can say and by all means feel free to point this out in the interview. I don’t think it will take too long to record something but I think it is worth doing.”

The Committee noted the complainant’s response:

“Thanks. I would ask that the interviewer is made aware of these restrictions before the interview – Could you confirm that please?”

The Committee noted the producer’s response:

“I’ll be with the reporter and will let him know what restrictions you have. We obviously can’t force you to talk about anything you don’t want to or cannot speak about.”

The Committee noted the interview was a remote booking at the BBC’s Lincoln studio and the reporter and producer were elsewhere.

The Committee noted that subsequent to the interview and prior to broadcast, the Producer emailed the complainant to ask for permission to use a section which had been recorded in which the complainant talked about what Ofsted had said about his leadership. The request was considered by the complainant but he said it was given in confidence after the interview and having taken advice and reflected on it further, he could not give permission for its use.

The Committee noted that the post-interview email exchanges were friendly in tone and the complainant did not raise any concerns at that stage about any other aspects of the interview he had given.

The Committee noted the following extract from the original email the complainant received from a BBC researcher on 24 October 2013:

“I am writing to you from The Report at BBC Radio 4 as I’m hoping you can help me with a programme we’re making.

“The Report is a half hour documentary programme that takes a story that is in the news and adds depth, context and analysis.

“The programme on the 14th of November will be about Birmingham Children’s
Services. We would obviously like to talk to you about your time there and the challenges involved in running Britain’s largest children’s services department.

“At this stage we are just looking to speak to people for background research not for interviews. We are looking for people who could potentially take part and you may be able to suggest people. We’re also speaking to the council about how they may like to help us but we’re obviously keen to talk to as many different agencies and individuals involved as possible.”

The Committee noted the information provided by the complainant in response to a question from the Editorial Adviser for further information about the nature of his contacts with the programme; the complainant said he had made clear to the producer and researcher in a series of phone calls, the limitations he would have if he agreed to an interview:

“He acknowledged this and said I would nevertheless be able to make a valuable contribution. I had made it clear that I could not talk about the things I (later) summarised in my email to him but he said I could contribute much in relation to my long experience in Children’s Services. It is now clear that the Producer had not listened to or read the information provided by the Researcher and I believe the Programme was designed to portray me in a negative way rather than using any input I had regarding the problems in Children’s Services…

“As you may be aware the nature of these confidentiality (‘gagging’) clauses usually prevents even the disclosure of the existence of the said agreement and any reference to it. I made this point very clear both to the Researcher and (the producer) by telephone. I pointed out specifically the areas on which I would not comment and said specifically that if I was asked about the confidentiality agreement I would simply have to remain silent. My conversation with him assured me that they were interested in my experience as a long standing Children’s Director with an exemplary track record and much to contribute. The email exchange confirms this understanding.”

The Committee considered the exchange of emails between the complainant and the producer prior to the interview. It took the view that there was scope on both sides to believe the outcome of the conversation was clear: the complainant might have been left with the impression that he would not be asked about Birmingham, and the producer with the understanding that the complainant would be asked but would respond that he could not talk about it.

With the benefit of hindsight and noting how the interview was subsequently conducted and used, the Committee considered the intention of the wording of the producer’s responses became clear: it appeared to have been the programme’s intention throughout to put the questions about his departure to the complainant, even though it was aware he would not answer them. However, the Committee considered that on the balance of probabilities the complainant had not understood this, and therefore he had been put at a disadvantage.

While the Committee recognised the complainant was a senior professional in his field, he could not in its view be expected to be familiar with legitimate editorial techniques, such as using the non-answering of a question as a dramatic device to illustrate an area of investigation for the programme. The question of whether the approach was editorially justified was not, in the Committee’s view, the issue; it acknowledged the editorial purpose could readily be demonstrated. Rather, the issue was that the complainant had not been in a position to give his informed consent.
The Committee placed considerable weight on the content of the complainant’s email correspondence with the programme. It concluded that it was likely, had he known of the programme’s intention to put the questions and then use them in the way they did, he would not have agreed to participate in the interview. Furthermore the Committee took the view from the complainant’s emails post-interview and his submissions for this appeal that, even after the interview, the complainant was likely to have believed that the exchanges in which he did not answer the questions would not be broadcast.

In reaching this conclusion, the Committee noted the considerable effort made by the complainant to establish in advance the ground rules for the interview, even apologising at one point for his pedantry. The Committee understood how he would therefore have felt, having listened to the programme, that “the way in which this interview was conducted (and) the recording used by the programme lacked integrity”.

The Committee noted that in the section of the programme which contained the exchange where the complainant repeatedly declined to answer questions put to him, the reporter insinuated that something was not quite right, suggesting that people would think the circumstances of the complainant’s departure were “a bit weird” and implying that a lack of transparency might be hiding something sinister. The Committee considered that if the programme had evidence against the complainant relating to his sudden departure from his post it should have been produced and put to him, and in the absence of it, it was not fair for the programme to proceed in the way it had.

The Committee noted that the purpose of the Editorial Guidelines was to guide programme makers into making good judgements and to codify how that might be achieved. It noted the Editorial Value for Fairness states that:

“Our [BBC] output will be based on fairness, openness, honesty and straight dealing. Contributors and audiences will be treated with respect.”

The Committee noted this put the onus of responsibility on the BBC and that the fuller guideline 6.2.2 explained how this could be achieved, i.e. that “individuals should normally be appropriately informed about the planned nature and context of their contributions… unless there is an editorial justification for proceeding without their consent.” The Committee also noted guideline 6.4.1, which states that “informed consent’ means that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content”. The Committee concluded that the complainant had not been placed in a position to provide his informed consent and that therefore there had been a breach of Editorial Guidelines 6.2.2 and 6.4.1 on Fairness, Contributors and Consent.

**Point (D):** regarding the point that the programme contained serious criticism of the complainant and that he should have been offered a “right of reply”.

The Committee noted the relevant clause is 6.4.25 of the Fairness, Contributors and Consent guideline:

“When our output makes allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a ‘right of reply’, that is, given a fair opportunity to respond to the allegations.”
“We must ensure we have a record of any request for a response including dates, times, the name of the person approached and the key elements of the exchange. We should normally describe the allegations in sufficient detail to enable an informed response, and set a fair and appropriate deadline by which to respond.”

The Committee noted that the six minute section of the programme which covered the period from Spring 2012 to the complainant’s departure from his post as Birmingham Director of Children’s Services in July 2013, contains both general comment about the nature of the problems in the Department, and also explicit criticism of the complainant’s actions, particularly in these comments from an unnamed manager:

“All of the area manager posts were done away with and a situation was created where you had these massive thirty plus teams with one manager who was going to have oversight of 500 odd cases. That was seen as, like, undoable. That was seen as madness in terms of implementation. I think that [the complainant] was someone who had a lot of self-confidence and felt that he had the ability to personally turn around Children’s Services. But in terms of the actions that were being taken on the part of troops on the ground as it were, were just seen as sheer folly.”

The Committee noted the complainant’s comment in his letter of appeal:

“If criticism is to be made the subject should be given a right to respond. The programme was very critical of me but I was given no right to reply.”

The Committee noted too the response the complainant gave to the ECU finding at Stage 2, in which he summarised what he regarded as “damaging allegations” broadcast by the programme, which he said should have been put to him for consideration:

“I do not think it unreasonable for me to have expected your programme to report accurately on the sequence of events. Had it been presented to me that the programme would assert that my restructuring plans were in existence before Ofsted arrived, that they were ‘pure folly’ and that Ofsted delivered a ‘withering report’ then I am sure you will be confident that I would indeed have taken appropriate legal advice. I have not suggested that any programme should be restricted in ventilating issues of genuine public concern because individuals may be inhibited from responding. What I am asserting is that given the serious criticisms of me and the serious omissions by the programme (which I could not have reasonably predicted) I should have been given the opportunity to respond to the allegations. It is simply not acceptable to brush this aspect of the complaint aside by reference to the existence of a compromise agreement. The BBC is bound by its Editorial Standards and those standards demand that individuals who are criticised should be given the opportunity to respond. This opportunity was denied.

“...you have failed to recognise the serious extent of the inaccuracy portrayed in the programme. The factual errors in the programme were sufficient to seriously mislead the audience on the material point under consideration. The Editor has acknowledged that the programme should have contained reference to the fact that Ofsted made very positive comments about me. The Editor also accepts that the programme should not have said I arrived with plans to restructure. The programme suggested that these non-existent plans received a ‘withering’ assessment from Ofsted. I believe this is a clear and serious breach of editorial standards.

“Furthermore that Editor refused to remove the content from the iPlayer website despite there being a prima facie case for a complaint. In addition the programme...
failed to accurately report the lack of connection between my departure and a child death and failed to provide me with the opportunity to respond to criticisms that would clearly be made by the programme.”

The Committee noted the complainant’s response when invited by the Editorial Adviser to state what he had been told (beyond the initial email he had received) about the intended scope of the programme, about how his contribution would be used and whether he was advised about other contributors and the nature of their contributions:

“In the circumstances I expected the views of others to be portrayed in the programme. At no time however was any reference or suggestion made to the programme being an evaluation of my time at Birmingham. Had I been aware of some of the specific errors that were to be broadcast then I could have corrected them or at least had the opportunity to provide my perception of events.”

The Committee recalled that the issue of including a positive comment about the complainant’s tenure at Birmingham arose under its consideration of Point (A), where it was noted that the BBC had accepted that it would have been better had the programme included the positive comments about the complainant contained in the Ofsted 2012 Report.

The Committee noted how the positive comments were explicitly brought to the attention of the programme by the complainant prior to broadcast, as a way in which it could reflect what Ofsted had said about him in the absence of a direct comment from himself. The Committee noted the relevant email exchange:

12 November 2013
From the producer:
“I just want to check with you. We have a bit recorded from you pointing out what Ofsted said about your leadership in their 2012 report. Are we OK to use that bit of the interview? You bring it up after we’ve rounded up most of the interview, hence wanting to check.”

13 November 2013
From the complainant:
“Having taken advice and reflected on this, I would not wish to use that piece of the recording that was done after the interview. It was said in confidence to give you a bit more insight into the background.

“If the Ofsted comment is relevant, it is a public document on the Ofsted website and could be used by the presenter.

“Thanks for seeking permission for this. I hope some of the interview was helpful.”

The Committee noted the ECU’s response at Stage 2 to the complainant’s view that he had not been afforded the opportunity to respond to damaging allegations:

“I am taking this to mean that you were not provided with an opportunity to comment on the statement that you arrived with a restructuring plan and the false impression (as you see it) that your departure was linked in the programme with the death of Keanu Williams. However, it seems to me that the fact that you had declared from the outset that you were not prepared to discuss anything about your time in Birmingham rather disposes of the point. The programme did attempt to open up a discussion about your tenure in the recorded interview but you declined to engage with the
reporter. I do not think it can reasonably be argued that a programme such as this should be restricted in ventilating issues of genuine public concern because a party who might feel they are being criticised is inhibited from responding by a confidentiality agreement which they have freely entered into.”

The Committee noted also the Head of Radio Current Affairs’ response when invited to comment for this appeal:

“We didn’t specifically offer [the complainant] a right of reply to the criticisms made by a senior manager: partly because he had made it very clear that he wouldn’t breach the compromise agreement, and partly because what was said did not, in our view, amount to allegations needing a right of reply.

“The programme producer tells me that [the complainant] was unwilling to breach his compromise agreement in any way. ‘He’s absolutely categorical about it and doesn’t depart from the basic two lines we included in the programme.’ I don’t see how, in the light of that, he could have said anything to us about restructuring in Birmingham or anything else without contradicting this position.

“I don’t think the programme was unfair to him and there was much that, mindful of his compromise agreement, that we didn’t include.

“I think the final point I would make is that [the complainant] was not a large part of the programme, which focused much more on the role of Ofsted and the morale of social workers and their managers than it did on apportioning blame. [The complainant]’s tenure and his departure were controversial and I think we were right to reflect that.”

In coming to a view the Committee took into account its decision to uphold breaches of accuracy and fairness in points (A) (B) and of fairness in point (C) above.

The Committee concluded that the allegations laid against the complainant in the programme constituted the “strong and damaging critique of an individual” for which guideline 6.4.25 mandates a right of reply.

The Committee noted there was no evidence that any of the allegations contained in the programme had been put to the complainant, nor did he appear to have been made aware that the programme would contain anything personally critical of him.

The Committee did not accept that the fact the complainant had previously stated he could not comment on his time in Birmingham excused the programme’s decision not to put any of the specific allegations to him, contrary to the guideline 6.4.25 requirement:

“We should normally describe the allegations in sufficient detail to enable an informed response, and set a fair and appropriate deadline by which to respond.”

The Committee recalled the complainant’s comment that notwithstanding the existence of the compromise agreement, had he known what the programme was planning to say about him he would have taken appropriate legal advice.

The Committee also considered the BBC’s defence that it had suggested the complainant give permission for it to use an off-the-record comment it had recorded of him pointing out that Ofsted had commented positively on him. The Committee considered that, notwithstanding that it appeared unlikely the complainant’s compromise agreement with
the Council would have allowed the comment to be broadcast, it noted and understood
the explanation given by the complainant in his response to the draft background note,
that he had been uncomfortable about giving permission:

“I thought that my boasting about the very positive comments made by Ofsted about
me was, simply, inappropriate and ill-mannered. I fully expected the Producer to make
use of the source material”

The Committee concluded it was unfortunate the programme had chosen to ignore the
complainant’s alternative suggestion that it include the positive comments about him in
the Ofsted Report. The inclusion of the Ofsted inspection team’s comments would in the
Committee’s view have provided some mitigation of the programme’s failure to afford the
complainant a right of reply.

Accordingly, the Committee decided there had been a breach of guideline 6.4.25 on
Fairness, Contributors and Consent in respect of the programme’s failure to give the
complainant a fair opportunity to respond to the allegations.

The Committee ruled that the content must be removed from the iPlayer and re-edited to
take account of its findings. Whilst the Committee agreed the matter had been serious, it
did not consider it met the threshold required for an on-air apology.

Finding: Upheld in relation to Accuracy and Fairness, Contributors and Consent
Horrible Histories, Florence Nightingale and Mary Seacole, BBC Learning Zone

This appeal came before the Editorial Standards Committee at its July 2014 meeting. The Committee decided that some elements of the appeal qualified for consideration. These elements are reflected below. The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found under Rejected Appeals.

Background

Horrible Histories is a popular brand of over 20-years’ standing. It began in 1993 as a series of books, written by Terry Deary and illustrated by Martin Brown, and now extends to stage productions, a magazine, toys and CBBC’s TV show.

CBBC’s Horrible Histories is a children’s historical comedy TV sketch show. It is described in promotional materials as “Liberally splattered with guts, blood and poo” and on its BBC webpage as “Splattered with blood, battles, gore and glory”. Although aimed at younger audiences, Horrible Histories also appeals to adults, and it won the open-age Best Sketch Show category at the British Comedy Awards in 2010 and 2011.

The clip in question appears in the BBC website’s Learning Zone, which is “[a] range of short films, including dramas, animations and documentaries, designed to provide inspiration for the classroom and beyond”. The clip at the time of this complaint could be found at http://www.bbc.co.uk/learningzone/clips/horrible-histories-florence-nightingale-and-mary-seacole/12308.html. It appeared in the Learning Zone’s “Class Clips” section, from where it could be reached by clicking on the “Literacy” subject link, then the “Biography and Autobiography” topic link.

The clip is a short (2:34) excerpt of a marginally longer (3:03) sketch. The sketch was originally broadcast on 8 June 2010, in Episode 6 of Series 2 of Horrible Histories, as part of the Vile Victorians thread.

The complaint

Stage 1

The complainant first contacted the BBC in an undated letter, received on 10 May 2013. She stated that the clip included a number of inaccuracies, and that its content was...

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5 http://horrible-histories.co.uk/books
6 https://www.facebook.com/media/set/?set=a.794754943887982.1073741825.135154539848029&type=3;
http://www.barmybritain.com/tour/
7 http://www.hhmag.co.uk/
8 http://www.horriblehistoriestoys.co.uk/
9 See, eg: http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/03_march/26/horrible.shtml;
http://www.comedy.co.uk/guide/tv/horrible_histories/; http://www.amazon.co.uk/Horrible-Histories-Series-1-5-
DVD/dp/B00EOWFGB8.
10 http://www.bbc.co.uk/cbbc/shows/horrible-histories
11 http://www.bbc.co.uk/programmes/p01b9f09
12 http://www.bbc.co.uk/learningzone/clips/
13 http://www.bbc.co.uk/learningzone/clips/topics/primary.shtml#literacy
14 http://www.bbc.co.uk/learningzone/clips/topics/primary/literacy/biography_and_autobiography.shtml
“insulting to Nightingale” while “giving achievements and attributes to Seacole which she never had, nor ever claimed”. The complainant detailed a number of specific points of complaint.

The programme’s Historical Consultant responded to the complainant’s point on 16 May 2013. The response did not initially reach the complainant.

On 22 October 2013, having received the BBC’s substantive response, the complainant renewed her complaint. On 10 December 2013 she was sent a further response from the programme’s Executive Producer, with which she was not satisfied. The complainant then escalated her complaint to Stage 2 of the complaints process.

**Stage 2**

The complainant reiterated and amplified the arguments she had raised at Stage 1.

On 13 February 2014, the complainant was sent a provisional response from the Editorial Complaints Unit (‘ECU’), which did not uphold the complaint. Following further correspondence, the ECU finalised its finding on 11 March 2014.

**Appeal to the Trust**

The complainant appealed to the Trust on 29 March 2014, setting out a summary of her complaint. So far as relevant to the points under consideration, she stated:

- In his Stage 2 decision, the ECU’s Complaints Director relied heavily on the excuse of “humorous approach” and “comedy” for qualifying “due accuracy” to virtually nothing.

- The scene in question showed a white Florence Nightingale acting in a discriminatory manner towards a black nurse.
  
  - There was nothing funny about an accusation of racism, which appeared nowadays in schoolbooks and websites.
  
  - The BBC’s endorsement of this accusation gave weight to the portrayal of Florence Nightingale as a racist.
  
  - “Caricature and exaggeration” did not make such an accusation acceptable.
  
  - The “light touch” probably made the accusation more believable, and certainly easier to watch.

- The Complaints Director had stated that there was “evidence” to support the proposition that race played a part in decisions regarding candidates for the nursing corps; however, Mary Seacole never applied to join the nursing corps.

- The Complaints Director had acknowledged only that Mary Seacole perhaps did not apply in the “correct form”. According to Mary Seacole’s own account, what happened was quite different:
  
  - Mary Seacole arrived in London after the battle of Alma to look after her gold stocks.\(^{15}\)

\(^{15}\) Mary Seacole, *Wonderful Adventures of Mrs Seacole in Many Lands* (OUP), p 74.
She only decided to try to go to the war “after the battles of Balaclava and Inkermann [20 October and 4 November 1854] and the fearful storm of the 14th of November”, news of which reached London on 30 November 1854. 

Even if Mary Seacole had started applying on the afternoon of 30 November 1854, she could hardly have been included in the second contingent of nurses, which left on 2 December 1854.

Florence Nightingale had already left on 21 October 1854.

The second contingent of nurses was given some weeks of hospital experience, for which Mary Seacole was too late.

This was no mere matter of “correct form” of application.

The War Office records were held at the National Archives, Kew, and there was nothing from or concerning Mary Seacole.

• The Complaints Director had called the scene in question “a humorous take on historical figures and events for a young audience”. That the scene was funny was not in question; however, a young audience would conclude that a white nurse (Florence Nightingale) had elbowed aside a black nurse, for reasons of racism. The complainant said the BBC had Florence Nightingale say “Nursing is for British girls”.

• The Complaints Director had acknowledged that it might have been better to make it clear that Florence Nightingale did not herself turn down Mary Seacole, but justified the false portrayal as a “shorthand account of the events from Seacole’s perspective” which it was not: Mary Seacole made clear in her memoir that her only encounter with Florence Nightingale was friendly and had nothing to do with asking for a job.

The complainant concluded her summary of appeal by citing four articles18 offering “other refutations”.

The Senior Editorial Complaints Adviser responded on 30 May 2014, informing the complainant that she had decided that:

• three points of complaint should proceed for consideration by the Committee; and

• the remainder of the appeal did not raise any “matter of substance”.

16 Loc. cit.
17 “Gale in the Black Sea”, The Times (1854), 7A.
18 Luddy, Crimean Journals of the Sisters of Mercy, p 10.
19 Mary Seacole, Wonderful Adventures of Mrs Seacole in Many Lands, (OUP) pp 89–92.
21 www.maryseacole.info/
**Applicable Editorial Guidelines**

The Editorial Guidelines applicable to this case are those on Accuracy (section 3), in particular:

3.1 Accuracy: Introduction

3.2.1–3.2.3 Accuracy: Principles

The full text of the Editorial Guidelines can be found at http://www.bbc.co.uk/editorialguidelines/.

**The Committee's decision**

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC’s Editorial Guidelines and supplemented by its Editorial Policy Guidance. 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 complainant’s subsequent submission.

The Committee considered three points in relation to the accuracy of the clip:

**Point (A) Seacole’s statement that Nightingale turned her down for employment four times**

**Point (B) Nightingale’s statement that the nursing corps was for “British girls”**

**Point (C) The depiction of Nightingale as a racist, underlined by the physical altercation with Seacole**

The Committee noted that the clip contained a mixture of fictional and factual elements. In the view of the Committee, children would recognise that this was a humorous view of history. So, for example, they would understand that the two women had not contested for the attentions of a PR consultant. However, Trustees were concerned that children would not necessarily have been able to understand the difference between what was fictional and exaggerated and what was historical fact where it appeared to relate to what the two women had done historically.

The Committee felt that material hosted in the Learning Zone, which was signposted as “designed to provide inspiration for the classroom and beyond” should be essentially accurate in its relaying of historical facts. This would be the case whether it was labelled as a literacy resource (as this was) or as History, and whether it was presented humorously or otherwise. Given that such output was offered as an educational resource, the Committee felt that the change in context from broadcast to online educational resource could materially affect the audience’s likely expectation of the clip’s accuracy, in that viewers would be likely to expect a higher standard of accuracy of an educational resource than of a comedy sketch. The Committee did not consider it relevant that the clip was labelled as a Literacy resource, as in its view an equivalent standard of accuracy applied to both Biography and History.
The Committee noted the two appearances of the Rattus Rattus puppet, holding a placard bearing the word “TRUE”. However, given that the sketch contained other true statements that the rat did not acknowledge as such, the Committee did not consider that the puppet’s appearances implied that the content of the remainder of the sketch was all untrue.

**Point (A) Seacole’s statement that Nightingale turned her down for employment four times**

The Committee noted that this point of appeal concerned the following line of dialogue:

Mary Seacole: Four times me tried to join Old Lamp-Face’s nurses in the Crimean War, and four times she said no.

The Committee noted that, on the day that Florence Nightingale left for the Crimea with the first contingent of volunteer nurses, the Secretary-at-War, Sidney Herbert, wrote an open letter, subsequently published in several newspapers, setting out the procedure for recruiting additional nurses and providing for the registration, training and certification of applicants. The Committee noted that Florence Nightingale’s role in this procedure was to recommend prospective nurses for certification by the director-general of the army medical department. This function was to be carried out either by Nightingale in person or by “some person deputed by her”. The Secretary-at-War’s letter stipulated that no-one would be admitted as a hospital nurse without certification.

The Committee noted that, according to her memoir, Seacole made five unsuccessful approaches in pursuit of her wish to volunteer as a nurse. These were to:

1. the War Office (with a view to meeting the Secretary-at-War);
2. the Quartermaster-General’s department;
3. the Medical Department;
4. Elizabeth Herbert (wife of the Secretary-at-War); and
5. one of Florence Nightingale’s companions (unnamed).

The Committee noted that two of these parties had roles in the application process: namely, the Medical Department (certification) and Mrs Herbert (registration). The Committee noted that it was possible that a third party whom Seacole approached (Nightingale’s unnamed companion) was also involved in the process (in recommending applicants for certification).

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22 These appearances coincided with Mary Seacole’s statement that “Me built me own hostel with me own money, to provide care for the injured British soldiers” and Florence Nightingale’s statement that “I invented the pie chart”.
The Committee noted that Seacole eventually gave up, after being informed by Mrs Herbert and Nightingale’s companion that “the full complement of nurses had been secured”. She then made a final approach, to the managers of the Crimean Fund, in the hope of gaining passage to the Crimea.

The Committee noted the complainant’s arguments that Nightingale herself did not turn Seacole down, and that Seacole’s attempts to offer her services were not applications, properly so called, as they were merely informal approaches, were not in response to the Secretary-at-War’s open letter, and did not follow the prescribed application procedure. The Committee also noted the complainant’s arguments that Seacole never approached the prescribed contact for those without hospital experience, and that the War Office records in the National Archives make no mention of Seacole.

The Committee noted that the BBC’s Historical Consultant’s Stage 1a response stated:

“Seacole’s denial of joining the nursing corps is a problematic one, as she clearly tried on several occasions to offer her services...”

The Committee noted that the ECU’s provisional Stage 2 response stated:

“As you know, Seacole detailed her repeated attempts to volunteer for service, but did not claim to have approached Nightingale personally. She instead referred to her interactions with the War Office (mentioning failed approaches to the Secretary-at-War; the Quartermaster General and the Medical Department) and subsequent appeals to Mrs Herbert26 at her home and an interview with ‘one of Miss Nightingale’s companions’...”

“It would perhaps have been better to make clear that Nightingale had not personally turned down Mary Seacole, but rather those acting on her behalf, but in this context – as a shorthand account of the events from Seacole’s perspective in a comedic sketch - this does not to my mind amount to a serious inaccuracy.”

The Committee noted the complainant’s argument that, contrary to the Complaints Director’s suggestion, those whom Seacole approached were not acting on Nightingale’s behalf. According to the complainant, Nightingale did not know of the additional recruitment, and was furious when the second contingent of nurses arrived in the Crimea. The complainant argued that there was no established recruitment process, that communications between London and the Crimea took weeks, and that Sidney and Elizabeth Herbert both apologised to Nightingale for proceeding without consulting her or the doctors (who did not want more nurses) and without considering the lack of accommodation for them. The Committee noted that, in response to these arguments, the ECU took the view that, regardless of Nightingale’s reaction to the arrival of additional nurses, the individuals concerned were nevertheless vested with the authority to approve or reject candidates for the role.

The Committee noted that the factual elements of the statement in question (“Four times me tried to join Old Lamp-Face’s nurses in the Crimean War, and four times she said no”) were not contradicted by the Florence Nightingale character’s response, which instead addressed the reason for Seacole’s rejection.

The Committee noted that it was accepted by both the complainant and the BBC that Mary Seacole was not turned down by Florence Nightingale herself, but by others who were acting, or (the complainant would say) purporting to act, on her behalf. The

26 This is a reference to Elizabeth Herbert, wife of the Secretary-at-War.
Committee noted that, in short sketches such as this, dramatic economy often required the use of elision, conflation and omission. In the Committee’s view, these were legitimate dramatic devices, provided they did not result in any material inaccuracy.

In the Committee’s view, the target audience (largely children) was unlikely to regard the Seacole and Nightingale characters as representing anyone other than their historical counterparts. The Committee believed that viewers would therefore have inferred from this line of dialogue that Seacole was rejected four times by Nightingale herself. Given that the programme could be interpreted as suggesting that Seacole was rejected on the grounds of race (see below), and this was a serious allegation, the Committee considered the programme should have done more to make it clear that it was not Nightingale herself who rejected Seacole in order to achieve due accuracy. The Committee concluded that, given the subject and nature of the content, and the likely audience expectation, conflating Nightingale with others had been materially inaccurate in this case, and was therefore in breach of guidelines 3.1 and 3.2.2.

Point A Finding: Upheld

Point (B) Nightingale’s statement that the nursing corps was for “British girls”

The Committee noted that this point of appeal concerned the following exchange of dialogue:

Florence Nightingale: The nursing corps was for British girls. You’re from Jamaica.

Mary Seacole: Me father was from Scotland.

The Committee noted the complainant’s allegations that Nightingale never said, and never believed, that nursing was only for “British girls”; this was to accuse her of racism, and was very offensive.

The Committee noted that the Historical Consultant’s Stage 1a response stated:

“There is no agreed-upon reason why Seacole was not accepted (further nurses were sent out after Nightingale had arrived, so there was plenty of scope for Seacole to follow on) but Seacole herself postulated racial grounds for her refusal. We deliberately chose the phrase ‘British girls’ to highlight the ambiguity in why Seacole was not accepted onto the nursing staff. She may have been unfair in this claim, and indeed Nightingale seemed perfectly civil when meeting her in Scutari, but this sketch personifies Seacole’s own interior thoughts, not how historians perceive her.”

The Committee noted that the ECU’s provisional Stage 2 response stated:

“You have said that the sketch portrayed Nightingale as a racist, confining nursing to British girls. The passage in question suggested that she sought to confine admission to the nursing corps on grounds of nationality rather than race (‘the nursing corps was for British girls ... you’re from Jamaica’) so I don’t agree that this amounts to an accusation of racism...

“There is evidence to support the assertion that race and nationality played a part in decisions regarding candidates for the nursing corps. A Miss Belgrave was rejected on grounds that ‘the West Indian constitution is not one best able to bear the fatigue of nursing’ and that ‘some English patients would object to a nurse
being so nearly a person of colour’. I understand that the records show that Elizabeth Purcell was rejected on grounds of her age but also that she was ‘almost black’.27 Judged against this background I find it difficult to conclude that viewers would have been materially misled by the sketch – for instance, into believing that ethnicity and nationality played a part in the selection process.”

The Committee noted that the ECU’s final Stage 2 response stated:

“Seacole’s reflection on the part that race may have played in the matter tells us her view. So, in fact, did the sketch. I felt that the suggestion that her race had some bearing on her reception was not presented as an established fact but as the complaint of the character...

“That she may not have applied in the correct form does not preclude the possibility of race playing a part in her rejection ...

“You seem to me to have asserted that viewers would have been misled into believing that racism played a part in the decisions made regarding nurses for Nightingale’s nursing corps. It is a matter of record that it did. I do not therefore feel able to conclude that viewers would have been materially misled by the character’s account on this point.”

The Committee noted that, in her memoir, Seacole expressed misgivings concerning the true reasons for the rejection of her offer of services, as follows:

“Doubts and suspicions arose in my heart for the first and last time, thank Heaven. Was it possible that American prejudices28 against colour had some root here? Did these ladies shrink from accepting my aid because my blood flowed beneath a somewhat duskier skin than theirs?”29

The Committee noted that the true reason for Seacole’s rejection – and in particular the issue of whether racism was a factor – was a matter of dispute among historians. In this regard, the Committee noted that the Historical Consultant acknowledged that the phrase “British girls” was deliberately chosen, in order to highlight the ambiguity in why Seacole was not accepted onto Nightingale’s nursing staff.

The Committee noted the ECU’s conclusion that there was evidence to suggest that racism played a part in the rejection of other candidates for the nursing corps,30 which the complainant did not consider to be a relevant consideration. The Committee also noted that, drawing a distinction between nationality and race, the ECU had concluded that the passage in question concerned the former but not the latter.

The Committee noted that this clip was a dramatic piece. It was dialectical in form, in that the characters of Nightingale and Seacole expressed conflicting points of view. The Committee noted that there was no editorialising, and that the audience was left to form its own view on the basis of the characters’ interactions.

28 According to the BBC’s Historical Consultant, “[s]ome Americans she encountered joked about her bleaching her skin so she could better fit in with them, which must have been rather hurtful”.
The Committee noted that the BBC’s Historical Consultant stated at Stage 1a that the sketch personified Seacole’s own interior thoughts, not how historians perceived her. The ECU’s Complaints Director endorsed this view at Stage 2, concluding that viewers would have understood that they were hearing a particular perspective on events, rather than statements of fact. The complainant disputed this.

The Committee believed that, in principle, the exchange of conflicting views by the Nightingale and Seacole characters, in the form of a dramatic dialogue, was an effective way of dramatising the controversy concerning the reasons for Seacole’s rejection, provided that both sides of the argument were accurately represented.

In the Committee’s view, it followed from its finding on the previous point of appeal that children within the target audience would be likely to perceive the Florence Nightingale character’s statement as an accurate representation of the views of her historical counterpart. The Committee noted that there was no evidence provided to them to suggest that Nightingale’s nursing corps was “for British girls” alone, or that Nightingale believed this. As the Historical Consultant had acknowledged, the line in question was a dramatic device (and was not a literal representation of Nightingale’s views). Given that the programme could be interpreted as suggesting that Seacole was rejected on the grounds of race (see below), and this was a serious allegation, the Committee considered the programme should have done more to make it clear that it was not Nightingale herself who had said the nursing corps was “for British girls”. The Committee concluded that, given the subject and nature of the content, and the likely audience expectation, the Florence Nightingale character’s line was materially inaccurate.

The Committee noted that the Mary Seacole character’s statement was, in the literal sense, factually accurate – her father was a Scottish soldier. However, the question was what the audience would be likely to infer from her riposte, in the context of this particular exchange of views.

In the Committee’s view, the audience would be likely to regard Seacole’s riposte as effectively demolishing Nightingale’s invocation of Seacole’s nationality as the reason for her historical counterpart’s rejection, and as implying that this was merely a “fig leaf” excuse. The Committee believed that the audience would be likely to draw the inference that Seacole’s race, not her nationality, was the real reason for her exclusion from Nightingale’s nursing corps.

The Committee noted that this inference reflected the suspicions expressed in Seacole’s memoir. The Committee therefore considered whether the audience would be likely to appreciate that the implied allegation of racial discrimination was merely a statement of Seacole’s opinion, and was not established historical fact.

The Committee noted that the Mary Seacole character was given the final word. The Committee felt that, as Seacole’s statement went unchallenged, the audience would be likely to regard it as carrying more weight than Nightingale’s. The Committee concluded that the audience would be likely to regard the implied allegation of racial discrimination as established historical fact.

In the Committee’s view, it followed from its finding in the preceding point of appeal that viewers would be likely to regard the imputation of racial discrimination as attaching to Florence Nightingale herself, rather than to those acting (or purporting to act) on her behalf. Given that there was no evidence (apart from Mary Seacole’s own suspicions) that Seacole was rejected because of her race, and given that Florence Nightingale played

http://en.wikipedia.org/wiki/Mary_Seacole#Early_life.2C_1805.E2.80.931825
no part in Seacole’s rejection, the Committee concluded that - given the seriousness of the allegation, the subject and nature of the content, and the likely audience expectation - this exchange was materially inaccurate and was therefore in breach of guidelines 3.1 and 3.2.2.

Point (B) Finding: Upheld

Point (C) The depiction of Nightingale as a racist, underlined by the physical altercation with Seacole

The Committee noted that this point of complaint concerned the exchange of dialogue that was the subject of the preceding point of appeal, and the physical altercation between Nightingale and Seacole as they jostled in the doorway.

The Committee noted that the complainant had made the following allegations:

- The clip showed Nightingale literally pushing Seacole aside. This was a totally fictional and offensive misrepresentation. Nightingale’s grandfather, William Smith MP, was a leading member of the movement to abolish slavery and the whole family felt strongly about racial injustices.

- An 11-year-old girl, who had seen the clip, had written to the complainant, asking “Is it true Florence Nightingale turned down Mary Seacole four times because she was black?”

- The clip showed a white Florence Nightingale acting in a discriminatory manner towards a black nurse.

- There was nothing funny about an accusation of racism, which appeared nowadays in schoolbooks and websites.

- The BBC’s endorsement of this accusation gave weight to the portrayal of Florence Nightingale as a racist.

- “Caricature and exaggeration” did not make such an accusation acceptable.

- The “light touch” probably made the accusation more believable, and certainly easier to watch.

- The Complaints Director had stated that there was “evidence” to support the proposition that race played a part in decisions regarding candidates for the nursing corps; however, Mary Seacole never applied to join the nursing corps.

- The Complaints Director had called the scene in question “a humorous take on historical figures and events for a young audience”. That the scene was funny was not in question; however, a young audience would conclude that a white nurse (Florence Nightingale) had elbowed aside a black nurse, for reasons of racism. The complainant said the BBC had Florence Nightingale say “Nursing is for British girls”.

The Committee noted that the Executive Producer’s Stage 1b response stated:

“Your second concern relates to the interaction in the PR office clip between Florence Nightingale and Mary Seacole. The sequence, in fact, shows Mary Seacole trying to barge first through the office door in front of Florence Nightingale, the women are seen as competitive and silly with each wanting to get
in the room first. There is no aggressive gesture or commentary on Nightingale’s part.”

The Committee noted that the ECU’s provisional Stage 2 response stated:

“You have said that the scene of Nightingale pushing Seacole aside was fictional and amounted to offensive misrepresentation, as in fact Nightingale’s family had campaigned against slavery and racial injustice. As noted above, the scene itself is plainly fictional, and the possibility that viewers would consider the contemporary physical interaction between the two (long deceased) women to represent an accurate retelling of an actual event seems to me remote. In any case there was no suggestion that the jostling was a product of racism on the part of Nightingale. The point here, as with the sketch as a whole, seemed to me to be the reputational conflicts which can arise from history, rather than any personal animus between the two.”

With regard to the physical altercation between the Nightingale and Seacole characters, the Committee believed that viewers would recognise and appreciate this as a dramatization of the characters’ jostling for reputational precedence, which formed part of the comic premise of the sketch. The Committee could not therefore agree with the complainant’s argument that viewers would regard Nightingale’s concluding push as a white nurse elbowing aside a black nurse for reasons of racism.

The Committee did not uphold on this aspect of Point C.

Nevertheless, given its finding in the preceding points of appeal, the Committee concluded that viewers of the clip would be likely to receive the overall impression that Florence Nightingale had acted towards Mary Seacole in a racially discriminatory manner. The Committee therefore considered whether, in light of the available evidence, the clip’s portrayal of Nightingale in this regard was duly accurate.

The Committee noted the complainant’s argument that Nightingale’s maternal grandfather, William Smith MP, was a leading member of the movement to abolish slavery, and that the whole family felt strongly about racial injustices. The Committee noted that Smith was among the first to campaign for the abolition of the slave trade, and that, after the enactment of the Slave Trade Act 1807 (which abolished trade in slaves, but not slavery itself), he continued to campaign for the abolition of slavery, co-founding in 1823 the London Society for the Abolition of Slavery in our Colonies. The Committee also noted that, according to the complainant: Nightingale recorded her abhorrence of slavery when she came across it in Nubia; she aided the US government in the American Civil War; she worked for some 40 years with Indian nationals; she wrote a campaign letter for Dadabhai Naoroji (the first Asian to win a seat in Parliament); and her aunt Julia Smith, was a prominent woman abolitionist.

Although the Committee did not consider the views of Nightingale’s grandfather or aunt to be necessarily indicative of Nightingale’s own opinions, the Committee concluded that there was no evidence before the Committee about Florence Nightingale to suggest that she had acted in a racially discriminatory manner.

Given the seriousness of any imputation of racism, the relative recency of Nightingale’s life – she died in 1910 – the immensity of Nightingale’s contribution to modern nursing and her significant stature in modern British history, the Committee felt it was incumbent

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on the programme makers to ensure that there was sound evidence upon which to base any suggestion that she had acted in a racially discriminatory manner in a Learning Zone clip. It appeared to the Committee that an allegation of such gravity against a person such as Nightingale required compelling proof. In the Committee’s view, the programme makers had provided no such evidence.

The Committee therefore concluded that the clip’s depiction of Florence Nightingale in relation to racial issues was materially inaccurate and upheld on this aspect of Point C.

Point (C) Finding: Partially upheld

**Finding: Partially upheld on Accuracy.**

The Committee wished to emphasise that it supported the aim of *Horrible Histories* to engage a young audience in history by way of comedy. The Committee did not wish in any way to suggest a limitation in the range of comedic or dramatic devices used in the production of historical content for children. However, in this very specific instance, making a charge of racism was very serious. The Committee felt in considering this particular clip and this issue, especially given that it appeared in the Learning Zone, it was important for a clear and rigorous adherence to fact, even within the context of the audience expectations for the format of *Horrible Histories.*
Blue Peter, BBC One, 19 December 2013

Background

On 19 December 2013 Blue Peter broadcast a report on food banks. The introductory script stated:

“People celebrate Christmas by giving and receiving presents, eating turkey with all the trimmings and lots of Christmas pudding. But for a moment imagine a Christmas without any of these things, with little food on such a special day. For many children living in the UK, that will be the reality this December.

“Over 13 million people in the UK live in poverty which means 3.5 million children sometimes go hungry. But help is at hand from food banks where people can come for help and support at times when they are in need. There are over 500 food banks in the country like this one, the Hope Centre in Coventry, which is one of the busiest food banks in the UK.”

The programme visited the Hope Centre which helps 1600 families a month by supplying three days of emergency food provision. The presenter visited a school which collects food donations and met children who were helping at a food sorting centre. The children encouraged others to help, “because Christmas is all about sharing”. The presenter went on to meet Jay who used the food bank. Jay did not give reasons for needing help. She said, “There are a lot of people who are hungry in this country that you don’t realise and the people who donate, they’re marvellous.”

The complaint

Stages 1 & 2

The complainant contacted the BBC about the claim that “3.5 million children sometimes go hungry”. He stated that his youngest child was distressed by this statistic. He questioned the accuracy of the statistic and the impartiality of this item noting the figure was inflated and that benefits were generous in the UK.

The Editor of Blue Peter stated in reply that the figures were taken from the Department for Work & Pensions’ survey document which was published in June 2013. The survey indicated that 3.5 million children were living in poverty in the UK (after housing costs were taken into consideration).

The complainant replied, stating that “nowhere in the current definition of relative poverty is any discussion of hunger”. He requested an on-air apology and correction.

The Editor of Blue Peter replied on 11 February 2014. He stated:

“On reflection, I agree that we could have made it clearer about definitions, and children who may sometimes go hungry.

“This item on Blue Peter was meant, with the very best intentions, to encourage children to think about other children who are less fortunate than themselves over Christmas.

“I appreciate that any content around poverty needs to be balanced as in society there are differing opinions. I am sorry that your youngest child was distressed by
this piece. We never set out to produce items that upset children or confuse the audience.”

The complainant escalated his concerns to the Editorial Complaints Unit (ECU). The ECU issued its provisional finding on 10 March 2014. The ECU agreed that it was not possible to conclude that all 3.5 million children would sometimes go hungry, as the programme had suggested. However, the ECU concluded that there was a link between poverty and the provision of basic needs such as food.

“The Child Poverty Action Group34 says poverty can be related to household income, levels of consumption, material deprivation or well-being. The Joseph Rowntree Foundation35 defines poverty as ‘living in a condition where resources, especially material resources, are insufficient to meet minimum needs’ where minimum needs ‘include food, clothing and a home’.”

The ECU concluded that it would have been better if the statistics used in the programme had been explained more clearly, but viewers would not have been left with a materially inaccurate impression by what was said.

“The overall impression which viewers would have been left with is that very many children sometimes don’t get enough to eat. There are no official figures for the number of children in the UK who do sometimes go hungry but it does seem as though most organisations and charities working in this area recognise that there has been an increase in what is known as household food insecurity. The recent report commissioned by Defra36 on this subject said ‘The current economic and policy context means increasing numbers of households are having to deal with changes in circumstances which are potentially having negative impact on their food security in the immediate (and possibly longer) term’. On the basis that there is a recognised link between poverty and having sufficient to eat I cannot conclude that the overall impression given by the programme was likely to prove materially inaccurate or misleading.”

**Appeal to the Trust**

The complainant appealed to the Trust on 17 March 2014, raising the following points:

- **Point (A):** The programme made a claim that had “no evidential or statistical basis”, conflating hunger with an “unrelated” statistic on child poverty.
- **Point (B):** It was an emotionally charged claim about children, presented to children, and it misled viewers into thinking that food banks were a necessity because welfare spending was not high enough.

The complainant requested an on-air apology and correction.

**Applicable Editorial Guidelines**

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

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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.

Point (A)

The Committee considered the complainant’s argument that there was no evidence to support the programme’s claims that “Over 13 million people in the UK live in poverty which means 3.5 million children sometimes go hungry” and that the definition of poverty used by the current government “did not look at food”.

The Committee noted that at an early stage the Editor of Blue Peter had agreed that “On reflection, I agree that we could have made it clearer about definitions, and children who may sometimes go hungry”.

The Committee noted that the UK uses an income-based measurement system to determine child poverty. Children are said to be in poverty if they live in a household with an income that is less than 60% of the national median. The Department for Work and Pensions publishes statistics on these “relative low-income indicators” using two different measures: before housing costs (BHC) and after housing costs (AHC). In June 2013 the most recent figures were published, stating that in 2011-12 27% of children (3.5 million) lived in poverty after housing costs were deducted. The Committee noted that it was this figure that was used by Blue Peter.

The Committee noted that this measure of “relative poverty” did not provide insight into specific levels of deprivation such as hunger. The Committee noted that there was little recent published work measuring hunger in the UK. It considered a study of child hunger in London commissioned by the Greater London Authority in 201337 which was based on interviews with 500 parents and 500 children. The study concluded that 9% of children said they sometimes or often went to bed hungry and it noted previous reports38 that the proportion of people living in poverty was higher in London than in the rest of England. The Committee noted that these figures were much lower than the 27% suggested by Blue Peter.

The Committee also noted figures published recently by the Trussell Trust (http://www.trusselltrust.org/), which is the UK's largest food bank network, with 423 food banks in operation. In 2013-14 it fed almost a million people; of these 330,205 were children.

The Committee acknowledged that this was a much lower figure than the 3.5 million quoted by Blue Peter but it also noted that many families may have experienced hunger yet may not have used food banks for a variety of reasons. The Committee noted the conclusions of the report on UK household food insecurity cited in the ECU finding. The report, funded by the Department for Environment, Food and Rural Affairs (Defra) concluded that:

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38 http://www.londonpovertyprofile.org.uk/ (an organisation set up by the New Policy Institute and Trust for London)
“Households employ multiple strategies for trying to deal with food insecurity; these may, or may not, include accessing temporary food aid. International evidence is that it is only after other main strategies have been employed (including changes to shopping and eating habits, cutting back on other outgoings, and turning to family and friends for help) that the most food insecure households may turn to food aid.”

The Committee concluded that there did not appear to be any evidence to support the programme’s specific claim that 3.5 million children sometimes went hungry. The Committee considered the ECU’s view that there was a recognised link between poverty and hunger, but it noted that, whilst some definitions of poverty acknowledge the connection with hunger, the 3.5 million statistic quoted by the programme measured relative poverty rather than actual needs such as food deprivation. The Committee acknowledged the ECU’s view that this was a decision that “could go either way” but concluded, on balance, that it agreed with the complainant that the script was not duly accurate. It was not based on sound evidence and was not presented in clear precise language. As such, it was in breach of editorial guideline 3.2.2.

Finding on point (A): Upheld

Point (B)

The Committee considered the complainant’s allegation that the script was emotive and misled viewers into thinking that food banks were a necessity because welfare spending was not high enough.

The Committee noted that the context of this item was a report on food banks at Christmas time. It was therefore necessary to explain to children the role that food banks play. It noted that the Editor had explained that “This item on Blue Peter was meant, with the very best intentions, to encourage children to think about other children who are less fortunate than themselves over Christmas”.

The Committee noted that at no point was welfare spending mentioned in the introduction, nor during the item itself. The Committee noted that Jay, the user of the food bank interviewed in the programme, did not give reasons for doing so. The Committee concluded that nothing in the programme would have led viewers to conclude that 3.5 million children sometimes went hungry as a result of changes to, or shortfalls in, welfare spending. In this respect there had been no breach of the BBC’s Editorial Guidelines on impartiality.

Finding on point B: Not upheld

The Committee noted the complainant’s request for an on-air apology and correction. It noted that the Editor of Blue Peter had already apologised to the complainant for any distress caused to his youngest child, and had accepted that it would have been preferable had the programme clarified its definitions.

The Committee concluded that publication of the Committee’s findings was an appropriate remedy and that an on-air correction would be disproportionate.

Finding: Upheld on Accuracy, not upheld on Impartiality.
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.

Cowboy Trap, BBC One & BBC One HD, 25 January 2013

This appeal originally came before the Editorial Standards Committee at its December 2013 meeting. The Committee decided that some elements of the appeal qualified for consideration. These elements were considered at the April 2014 meeting. The Committee’s finding is available here:


The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered are reflected below.

The complaint

The complainants wrote to the BBC’s Complaints Department in a letter dated 4 March 2013, regarding an episode of Cowboy Trap first broadcast on 16 November 2010 (the “2010 edition”), which featured work their building company carried out at a couple’s property. The complainants argued that the programme had portrayed them as “dodgy incompetent workmen, who left a building structurally unsafe after downing [their] tools, leaving an elderly couple … out of pocket”. The complainants maintained that “every accusation put against [their] company on that episode was completely untrue”.

The complainants also referred to a “revisit” episode, broadcast on 25 January 2013 (the “2013 edition”). They argued that this episode “featured many of the previous inaccuracies plus an unexplained re-edit which completely redeems [the complainants] of the previous accusation that the [property owners] had paid far in excess of the contracted money”.

The complainants had previously (in late 2011) been engaged in legal correspondence with both the BBC’s litigation department and the independent production company that made the programme.

The Editorial Complaints Unit (“ECU”) did not uphold any aspect of the complainants’ appeal.

Appeal to the BBC Trust

The complainants appealed to the Trust on 7 September 2013, setting out a summary of their complaint. They stated that their 2011 legal correspondence had proved that the claims made against the complainants in the 2010 edition were “all lies”. They also stated that the ECU had refused to watch the 2010 edition and, according to the complaints, had therefore refused to deal with their complaint.

The complainants referred the Trust to the entirety of their correspondence with the BBC, but also gave one example of the “lies” that, they contended, the ECU had not addressed.
Decision of the Head of Editorial Standards

The Head of Editorial Standards carefully read the correspondence between the complainants and the BBC, and acknowledged the strength of the complainants’ feelings. The relevant correspondence was reviewed by the Trust Unit, and an independent editorial adviser viewed both episodes of the programme in question. The Head of Editorial Standards also reviewed the revisit episode.

The Head of Editorial Standards decided that:

- certain elements of the appeal raised matters of substance, and should proceed to a hearing before the Trust’s Editorial Standards Committee ("ESC");
- the remaining elements of the appeal did not raise matters of substance, and should not proceed to a hearing before the ESC.

1. Time limit for making complaints

Before considering whether any potential breach of the BBC’s Editorial Guidelines had arisen, the Head of Editorial Standards considered the appeal against the BBC’s Editorial Complaints and Appeals Procedures, paragraph 2.1 of which states:

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

The Head of Editorial Standards noted: that the 2010 edition was broadcast on 16 November 2010; that the complainants had made no editorial complaint about the 2010 edition to BBC Audience Services at that time; and that, some 11 months after the date of broadcast, the complainants’ solicitors had first contacted the independent production company and BBC Litigation in connection with proposed defamation proceedings.

The Head of Editorial Standards noted that the present appeal concerned both the 2010 and the 2013 edition. The Head of Editorial Standards noted that the 2013 edition featured a repeat of some of the footage first broadcast in the 2010 edition as well as some original material.

The Head of Editorial Standards noted that the complaint from which this appeal arose was initiated on 4 March 2013, which post-dated the 2010 and 2013 editions by 583 and 27 working days respectively. It therefore appeared to the Head of Editorial Standards that the complainants had complained within the prescribed 30-working-day time limit for the 2013 edition but had failed by a substantial margin to meet the time limit for the 2010 edition.

The Head of Editorial Standards concluded that, as there appeared to be no good reason for the delay in bringing the editorial complaint in respect of the 2010 edition, certain
points of appeal should be excluded from consideration to the extent that they solely concerned material broadcast in the 2010 edition and not repeated in the 2013 edition.

2. Applicable Editorial Guidelines

The Head of Editorial Standards considered this appeal against the BBC’s Editorial Guidelines on Accuracy (section 3) and Fairness, Contributors and Consent (section 6). The full text of the Editorial Guidelines can be found online at: http://www.bbc.co.uk/editorialguidelines/guidelines/

3. Elements of appeal that should proceed to a hearing before the ESC

The Head of Editorial Standards concluded that three elements of the complainant’s appeal raised matters of substance and should proceed to a hearing before the ESC.

4. Elements of appeal that should not proceed to a hearing before the ESC

The Head of Editorial Standards concluded that, for the following reasons, the following elements did not raise matters of substance and should not proceed to a hearing before the ESC.

4.1 Failure to mention that all works were inspected and signed off by the council

The Head of Editorial Standards noted the complainants’ arguments that:

- all the issues raised in the programme were structural, whereas if the allegations had been true the council’s building control officers would have intervened;
- all works for which the complainants were responsible were passed fit for purpose and ready for the second fix;
- the programme failed to mention that all the complainants’ work had been inspected and signed off by the council, which was misleading;
- since leaving the site, the complainants had never been contacted by the council regarding issues with the work;
- the complainants had informed the independent production company that the council had inspected and passed the first-floor construction.

The Head of Editorial Standards noted that regulation 7 of the Building Regulations 2010, SI 2010/2214, states:

“Building work shall be carried out … in a workmanlike manner.”

The Head of Editorial Standards instructed the independent editorial adviser to ask the council’s Building Control Officer for clarification of the significance of Building Regulations approval with regard to the standard and quality of workmanship. The Building Control Officer stated:

“Although the standard and quality of workmanship is important Building Control
would only take this into account if poor workmanship resulted in a contravention of the Building Regulations.”

The Head of Editorial Standards noted that, in his response to the independent editorial adviser, the Building Control Officer stated that the Council had issued a Completion Certificate for the build on 24 April 2012. The Head of Editorial Standards noted that the completion certificate was for the whole build, not merely the first fix, and that it was therefore based upon an appraisal of others’ work in addition to the complainants’.

The Head of Editorial Standards considered whether there was any evidence of building control sign-off of the first fix. She noted that the complainants had referred to a letter from one of them, dated 4 March 2008, to the council, which he had stated (amongst other things) that the corrective works required by the council had been carried out. The note is apparently endorsed with a handwritten note, initialled (presumably by the recipient), stating:

“Phoned client advising him that the above would be acceptable.”

The Head of Editorial Standards noted that this did not appear to amount to a formal sign-off of the first fix. She also noted that no evidence had been provided of the council’s findings at its subsequent inspections.

In the Head of Editorial Standards’ view, there was credible evidence (in the form of the opinion of the independent chartered surveyor who featured on the programme and the “Expert Witness Report” commissioned by the homeowner, which the complainants had supplied to the ECU), to suggest that the complainants’ workmanship was of a poor standard.

The Head of Editorial Standards took the view that this evidence was not necessarily contradicted by the fact that a Completion Certificate had been issued, as the certificate was concerned merely with the building work’s compliance with building regulations and did not address the adequacy of the complainants’ works in other respects. As a result, it was, in principle, possible that the complainants’ work was of a poor standard, but not so poor as to have contravened the Building Regulations. The Head of Editorial Standards could not therefore agree that the programme’s failure to mention that all works had been inspected and signed off by the council had misled the audience in respect of the standard of the complainants’ work or given rise to any unfairness to the complainants.

The Head of Editorial Standards concluded that there was no reasonable prospect that the Trustees would uphold this element of the appeal as amounting to a breach of the Editorial Guidelines. She also concluded that it would not be appropriate, proportionate or cost-effective for Trustees to consider this point of appeal.

4.2 The contract price

The Head of Editorial Standards noted the complaint that the 2010 edition had falsely claimed that £39,500 was paid under the contract, whereas the 2013 edition had correctly stated that £38,500 was paid. She also noted the complaint that the latter statement should have been signposted as a correction of the former, and that the absence of such signposting had rendered the 2013 edition misleading.
The Head of Editorial Standards noted that the 2010 edition contained the following statement:

**Narrator:** The [homeowners] paid out £39,500 and were left with some very questionable workmanship ...

and the 2013 edition contained the following statement:

**Narrator:** The builder quoted £38,500 for carrying out the first fix.

It appeared to the Head of Editorial Standards that these were materially different statements, in that the former referred to the amount paid, whereas the latter referred to the amount quoted. The Head of Editorial Standards could not therefore agree that the latter was a correction of the former. Consequently, she could not agree that it was misleading for the latter statement not to have been signposted as a correction.

With regard to the accuracy of the statement in the 2010 edition, the Head of Editorial Standards noted that this point of complaint was out of time. She therefore decided that it was not necessary to consider this point of complaint further.

The Head of Editorial Standards noted that the complainants had acknowledged the accuracy of the statement in the 2013 edition and concluded that no potential breach of the Editorial Guidelines on Accuracy had arisen in respect of that statement.

The Head of Editorial Standards noted that, in the complaint correspondence, the complainants had taken issue with the contention of BBC Audience Services that the programme’s format had changed between 2010 and 2013. She noted the complaint that the ‘revisit’ episode clearly displayed the price that the other couple featured in the programme were quoted and the amount of money that they eventually paid. However, the Head of Editorial Standards took the view that it was not necessary to consider this issue further, as it did not raise any potential breach of editorial standards.

With regard to the complainants’ claim that the programme falsely alleged that the customers had paid in excess of the contract price, the Head of Editorial Standards noted that the statement that they had paid “far in excess of the contract” featured in the 2010 edition only. For the reasons given above, the Head of Editorial Standards noted that this aspect of the complaint was therefore out of time, and so decided that it was not necessary to consider this element of the appeal further.

On the other hand, the Head of Editorial Standards noted that the 2013 edition contained the following statement:

**Narrator:** Despite being left with a complete mess on their hands, the couple had shelled out the entire fee of almost £40,000 ...

In the Head of Editorial Standards’ view, the audience was likely to have inferred from the phrase “the entire fee” that the property owners had not paid the complainants more than the fee that had been agreed between them and the complainants. The Head of Editorial Standards noted that the amount paid by the couple to the complainants was in dispute. Taking that figure at its lowest, in the Head of Editorial Standards’ estimation, “almost
£40,000” was a reasonable approximation of the quoted sum of £38,500. She therefore concluded that the marginal difference between those two figures would not have materially affected the audience’s appreciation of the size of the fee that was paid.

The Head of Editorial Standards concluded that there was no reasonable prospect that the Trustees would uphold aspects of the appeal relating to the contract price as amounting to a breach of the Editorial Guidelines. She also concluded that it would not be appropriate, proportionate or cost-effective for Trustees to consider these points of appeal.

4.3 The ‘good guy’ builder

The Head of Editorial Standards noted the complaint that it was falsely alleged that the ‘good guy’ builder and his team were employed by the homeowners and that the programme makers were going to ‘work along’ with them, whereas the builder had appeared in previous episodes of The Cowboy Trap, in which he was referred to as a “team member” (i.e., of Cowboy Trap).

The Head of Editorial Standards noted that the builder worked for a company, that he and his colleagues had carried out remedial work and that he and they were referred to collectively in the 2013 programme as “the good guys”.

The Head of Editorial Standards noted the complaint that the builder’s association with the BBC was “advertised” on the company’s website. She noted that the webpage in question states that the company has been involved in two episodes of The Cowboy Trap.

Although the complainants had not cited any specific episodes of The Cowboy Trap in which the builder had also appeared, the reference to “two episodes” in the statement on the company’s website could not include the 2013 edition, as the notice pre-dated this broadcast. The Head of Editorial Standards therefore accepted that there was prima facie evidence that, prior to the 2013 edition, the company had worked on two episodes of The Cowboy Trap (i.e., the 2010 edition and another).

The Head of Editorial Standards noted that the 2013 programme contained no reference to the good-guy builders being part of the Cowboy Trap team.

The Head of Editorial Standards noted that the 2013 edition stated:

**Narrator:** …Taking a job from first fix to final fit was a costly exercise for the couple, with so many bodges to rectify.

To help get them back on their feet, we helped complete the job with a top team of decorators …

**Homeowner:** …[W]e’ll never forget what Cowboy Trap was all about, they brought us the good guys.

In the Head of Editorial Standards’ view, the audience was likely to have inferred from these comments that:
• The good-guy builders were sourced by the programme makers (“...they [The Cowboy Trap] brought us the good guys”);

• They were paid by the homeowners (“Taking a job from first fix to final fit was a costly exercise for the couple, with so many bodges to rectify”); and

• The decorators (as opposed to the ‘good guy’ builders) were sourced and paid by the programme makers (“To help get them back on their feet, we helped complete the job with a top team of decorators ...”).

The Head of Editorial Standards took the view that the engagement of the company and the payment of its fees were two materially different matters. The Head of Editorial Standards noted that, while there was evidence to suggest that the company had been sourced by the programme makers, the Head of Editorial Standards had seen no evidence to suggest that the company had been paid by programme makers, or that the company had not been paid by the couple who owned the property being worked on. In the Head of Editorial Standards’ view, there was therefore no evidence that might call into question the accuracy of the comments quoted above.

The Head of Editorial Standards concluded that there was no reasonable prospect that the Trustees would uphold this element of the appeal as amounting to a breach of the Editorial Guidelines. She also concluded that it would not be appropriate, proportionate or cost-effective for Trustees to consider this point of appeal.

4.4 Other points

The Head of Editorial Standards also determined that a number of other aspects of the complaint did not qualify for consideration by Trustees.

Request for Review by Trustees

The complainants requested that the Trustees review the decision not to proceed with certain elements of their appeal. They stated that, apart from the points that the Head of Editorial Standards had already determined qualified for consideration by Trustees, they would like “an additional three further sections” to be considered by the ESC. They also added:

“We do not distinguish between the 2010 and 2013 show, they are one as far as we are concerned.”

The points that the complainants wished to be considered, and the further submissions they made in support of each, are as follows:

1. The ‘good guy’ builder

• As the Trust Unit accepted, the ‘good guy’ builder was sourced by the programme makers. He was therefore “forced upon” the property owners.
• This practice was contrary to the programme’s advice that viewers should obtain multiple quotations before selecting a builder.
• The 2010 edition had created the false impression that the ‘good guy’ builder was employed by the property owners.
• The property owners had been forced to pay for “corrective work that was not needed”.
• Misleadingly, the programme makers had changed their stance on the ‘good guy’ builder without informing viewers.

2. **The contract price**

• The programme makers had displayed £39,500 in the 2010 edition because they mistakenly believed the property owners had overpaid by £1,000.
• The format of the programme had allegedly been changed in order to conceal this error.
• If the property owners had corrected their assertion in relation to the alleged overpayment, this should have been reported in the 2013 edition.
• Both the contract price and the overall cost were clearly stated in relation to the other couple featured in the 2013 edition. This contradicted BBC Audience Services’ assertion that the format of the programme had changed.

3. **Failure to mention that all works were inspected and signed off by the council**

• It would have created a different impression if the programme had reported that the works had been signed off by the council.
• The council inspected the build five times after the installation of the steel beam.
• The council was given structural calculations for the beam.
• The council had inspected the floor joists.
• The expert report commissioned by the home owners stated that the timber frame was “out of alignment to both purlins and rafters”, whereas there were no purlins in the roof. It would be impossible for a genuine expert to make such a mistake.
• The expert report was “biased” and “inaccurate”, and should not be put to Trustees.

**The Committee’s decision**

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

The Committee noted the Head of Editorial Standards’ decision and the complainants’ concerns, as set out above.

1. **Time limit for making complaints**

The Committee agreed with the Head of Editorial Standards that, in respect of the 2010 edition, the 30-working-day time limit prescribed by paragraph 2.1 of the BBC’s Editorial Complaints and Appeals Procedures had not been met. The Committee also agreed that the complainants had provided no good reason for the delay in bringing their editorial complaint in respect of the 2010 edition. The Committee therefore considered that it would be likely to conclude that, in so far as it concerned the 2010 edition and not the 2013 edition, this appeal was out of time.

2. **The ‘good guy’ builder**

The Committee could not agree with the complainants that, if the ‘good guy’ builder had been sourced by the programme makers, it followed that he had been “forced upon” the property owners.
The Committee noted from its previous conclusion that points of complaint arising from the “false impression” that the ‘good guy’ builders were employed by the homeowners allegedly created by the 2010 edition were out of time.

With regard to the allegation that the corrective work carried out by the ‘good guy’ builder had not been needed, the Committee noted the view of the Head of Editorial Standards that it was in principle possible that the complainants’ work could be of a poor standard but not so poor as to have contravened Building Regulations.

The Committee noted that a list of corrective works had been provided by the Council and was endorsed by the Council as having been complete. The Committee also noted that there was an “Expert Witness Report” commissioned by the homeowner which suggested that the workmanship of the complainants was poor and listed recommended remedial works.

The Committee considered a distinction might be drawn between structural compliance with Building Regulations and workmanship achieving the level desired by the homeowners or best practice; and on that basis that they were not able to agree the corrective work carried out by the ‘good guy’ had been unnecessary.

With regard to the allegation that the imposition of the ‘good guy’ builder on the property owners was contrary to the programme’s advice to viewers, the Committee 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. “The direction of the BBC’s editorial and creative output” was defined in article 38(1)(b) of the Charter 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 regulatory breach (such as a breach of the BBC’s Editorial or Fair Trading Guidelines). The Committee took the view that the sourcing of the ‘good guy’ builder was within the programme makers’ editorial discretion, and that no Editorial Guideline had been engaged by the exercise of that discretion.

3. The contract price

The Committee noted that the complainants had acknowledged the accuracy of the statement in the 2013 edition that “The builder quoted £38,500 for carrying out the first fix”. The Committee noted that this was the only reference in the 2013 edition to either the quotation or the contract price. The Committee therefore considered that it would be likely to conclude that the 2013 edition was duly accurate in this regard.

The Committee noted, again, that the “direction of the BBC’s editorial and creative output” was defined in article 38(1)(b) of the Charter 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 regulatory breach (such as a breach of the BBC’s Editorial or Fair Trading Guidelines). The Committee was of the view that the decision to refer to the amount “quoted” rather than the amount “paid” was a legitimate exercise of the programme makers’ editorial discretion, provided that the Accuracy guidelines were complied with. The Committee therefore agreed that this aspect of the complainants’ appeal did not have a reasonable prospect of success.

The Committee noted that the complainants had raised concerns regarding the handling
of their complaint at stage 1 of the complaints process. Trustees noted that the
complainants did not accept as credible the explanation put forward by Audience Services
( that the format had changed) as to why the script had changed between 2010 and 2013
from ‘quoted’ to ‘paid’. Trustees noted that Audience Services liaised with programme
makers in responding to complaints but unlike the ECU did not investigate complaints.
The Trustees were satisfied that there was no evidence that Audience services had not
acted in good faith. As the substantive matter would not be considered by Trustees the
Committee did not consider it a proportionate use of the Licence Fee to explore this issue
any further.

4. Failure to mention that all works were inspected and signed off by the
council

At its meeting of 5 December 2013 the Committee also decided not to take this element
of the complaint on appeal. However, at its February 2014 meeting, the Committee
decided that this point would be taken on appeal.
Horrible Histories, Florence Nightingale and Mary Seacole, BBC Learning Zone

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.

This appeal came before the Editorial Standards Committee at its July 2014 meeting. The Committee decided that some elements of the appeal qualified for consideration. These elements are reflected under Appeal Findings. The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered are reflected here.

The complaint & appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold her complaint that a clip from Horrible Histories (hosted in the Learning Zone of the BBC’s website and concerning Florence Nightingale and Mary Seacole) was inaccurate and misleading. The clip featured a sketch in which the two argued with each other in a PR consultant’s office.

So far as relevant to the issues raised in the complainant’s request for a review, the complainant stated:

- Although Mary Seacole was shown in a nurse’s uniform, she never wore one, as she was a restaurant/bar proprietress. She served champagne and fine wines to officers, and catered for their dinner parties and events.
- Although Mary Seacole was middle-aged and stout, she was made to appear slim and young, like an NHS nurse from the West Indies.
- Mary Seacole was three-quarters white, and light-skinned: she called herself “yellow” and “brunette”.
- The Complaints Director had repeated the false claim of Mary Seacole building “a hostel which provided care” when the business was not a hostel, hospital or hotel.
- The Complaints Director was unconvinced that Mary Seacole was on the battlefield on only three occasions when a reading of Mary Seacole’s memoir against the dates of battles supports this:
  - Seacole “arrived in London after the battle of Alma to look after her gold stocks … [and] … only decided to try to go to the war after the battles of Balaclava and Inkermann”.
  - She arrived in the Crimea in March 1855 (after the battles of Alma, Balaclava and Inkermann).
  - She was present only at the two Redan assaults, and the Tchernaya.\(^41\)

\(^{40}\) Mary Seacole, Wonderful Adventures of Mrs Seacole in Many Lands (OUP): http://digital.library.upenn.edu/women/seacole/adventures/adventures.html pp 155, 173.
\(^{41}\) Ibid pp 164–7.
Most of her time in the Crimea was in the “balmy” days post-battle: “my restaurant was always full” as she said.\footnote{Ibid p 178.}

**The Trust Unit’s decision**

The Senior Editorial Complaints Adviser (the Adviser) responded on 30 May 2014, informing the complainant that the Adviser had decided that three points of complaint should proceed for consideration by the Committee (see below), but that the remainder of the appeal did not raise any “matter of substance”.

So far as relevant to the issues raised in the complainant’s request for a review, the Adviser stated:

- In terms of due accuracy, viewers would not be likely to believe that the language used by the characters was accurate, and would also be aware that the setting of the scene within a PR consultant’s office was fictional, but they would be inclined to believe the underlying stories were portrayed accurately.

- One of Horrible Histories’ conventions was that the many sketches were performed by a handful of actors who were familiar to the audience. While it might have been better if the character had been played by an actor who more closely resembled Mary Seacole, the Adviser did not consider Trustees would be likely to conclude that it was a failure of due accuracy for the actor to be younger and slimmer than Mary Seacole would have been at the time of the Crimea, or to have had darker skin.

- The sketch had not referred to Seacole running or working in a hospital. In the sketch, Seacole had stated:

  “...me built me own hostel with me own money, to provide care for the injured British soldiers”.

In Seacole’s memoir, she wrote that she offered “a mess table and comfortable quarters for sick and convalescent officers”. There was also evidence – accepted by the complainant – that Seacole had provided care for injured soldiers. Therefore the Adviser considered that the reference in the sketch was duly accurate.

- The sketch did not include any references to the point at which Seacole was in the Crimea; only that she had gone there and attended soldiers on the battlefield.

- With regard to the number of times Mary Seacole was present on the battlefield, the Adviser noted that there was no dispute that Seacole had been on battlefields, or that, in the sketch, the Seacole character said “I’d actually go out and treat the injuries ‘pon the battlefield”. The Adviser therefore considered this point of appeal had fallen away.

**Request for review by Trustees**

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

- The BBC wanted to “have it both ways”: standards of accuracy did not apply because Horrible Histories is a “comedy”, but the clip was listed in the “Learning Zone”. 
• The complainant asked:
  o what children learned from “such nonsense”; and
  o how a child in Year 2 was to know that BBC Guidelines do not require a high
    standard of accuracy in a comedy sketch, or that characters need not be
    accurately portrayed because they are part of a repertory team.

• Children, parents and teachers took BBC Learning to mean something serious.

• *Horrible Histories* is listed as a resource on school websites.

• The Adviser’s letter showed confusion between Seacole’s intention of opening a hotel
  (the “British Hotel”, although it was to be only for officers) and the reality:
    o Seacole opened no hotel or hostel.
    o The word “hostel” appeared in *Horrible Histories*, not in Seacole’s memoir.
    o Since she closed daily at 8pm and stayed closed on Sundays, one might easily
      conclude that this was no hotel, hostel or hospital.
    o This point would have a most “reasonable prospect of success” to anyone who
      read Seacole’s account, and compared her intention with what she actually did.

• The Adviser appeared to go along with the exaggerated account of Seacole’s treating
  injured soldiers.
    o From Seacole’s memoir, her three forays onto the battlefield, all post-battle,
      would have amounted to less than one hospital shift.
    o The complainant agreed that Seacole also treated wounded soldiers as walk-
      ins at her restaurant/store, but these were mainly sporting injuries.
    o Most of Seacole’s time in the Crimea occurred after the fighting was over.

**The Committee’s decision**

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

The Committee noted the complainant’s comments regarding the standard of accuracy
applicable to output hosted in the Learning Zone, and took them into account when
determining (i) this request for a review and (ii) the three points of appeal that the
Adviser had referred to the Committee for consideration.

In the Committee’s view, the target audience would be well aware of *Horrible Histories*
formal conventions, including its use of a small number of actors to play a large number
of roles. Viewers would therefore be likely to appreciate that actors would not be a look
alike for the person they were portraying. Nor was it the case that the Executive, in
casting dramas/sketches, were required by the BBC’s Editorial Guidelines to choose actors
who looked like the historical originals they were playing. This was matter of editorial
discretion and not a matter for the Trust.

Given that Mary Seacole had provided a mess table for sick and convalescent officers and
had provided care for injured soldiers the Committee concluded that it was duly accurate
for the sketch to have referred to Seacole’s establishment in the Crimea as a “hostel”.

The Committee noted that the sketch had not specified the number or duration of the
occasions on which Seacole had treated wounded soldiers on the battlefield, and that the
complainant accepted that Seacole had done so. The Committee therefore concluded that the Seacole character’s statement that “I’d actually go out and treat the injuries ‘pon the battlefield” was duly accurate.

The Committee therefore decided that these points of appeal did not qualify to proceed for consideration.
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.

The complaint

The complainant first contacted the BBC on 23 November 2013 regarding an online article with the headline “Y Chromosome – Why Men Contribute So Little”. The article was about scientific research into the Y chromosome on mice. It was illustrated with a photograph of a bare-chested overweight man sitting down and holding a remote control device. The complainant wrote:

“Yesterday’s article about new information regarding the y chromosome was interesting, however the title and photo were badly chosen. Not only did it have little to do with the facts of the recent scientific discovery, but it was a crass slur against men.”

The complainant received an initial response from Audience Services which acknowledged that the complainant had been unhappy with aspects of the report, but said the title and photograph were intended to be light-hearted. The complainant remained dissatisfied and pursued his complaint to Stage 2. He received a response on 8 February 2014 partially upholding his complaint as a breach of the Accuracy guidelines but not upholding a breach against the guidelines related to Harm and Offence.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust, saying that he was unhappy with the responses received at Stages 1 and 2.

The complainant raised the following points at appeal:

- the BBC’s guidelines on Harm and Offence “have clearly been transgressed”
- if the BBC believes the complaint “lacks substance/is trivial”, it should provide the reasons why
- the headline was a “stereotypical statement”
- dismissing the headline as a joke did not mitigate the offence caused.

On 15 May 2014 the complainant submitted a further point of appeal, that he was “not satisfied with the action taken as a result of my complaint”.

The Trust Unit’s decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.

The relevant correspondence was reviewed by the Trust Unit, the Adviser and an independent editorial adviser. The article reported on research which showed that male mice could still father babies with a Y chromosome consisting of two genes when normally 14 were present. Advanced IVF was required to make this possible, but the scientists
believed that this research “could one day help infertile men with a damaged Y chromosome.”

The Adviser decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted that, when considering the case, the ECU felt that the most applicable guidelines were those dealing with Accuracy and Harm and Offence.

The Adviser noted that at Stage 2 the Editorial Complaints Unit (ECU) had firstly considered the complaint in relation to the guidelines relating to Accuracy. The complainant in his initial correspondence had stated “…the title and photo were badly chosen. Not only did it have little to do with the facts of the recent scientific discovery, but it was a crass slur against men.” She noted that on the issue of the title of the piece the ECU stated:

“…the research did not address the question of man’s contribution to reproduction, and did not in fact concern men at all. The headline and the picture are therefore of little relevance to the matter at hand. The scientists concluded that their findings were not directly translatable to human male infertility cases, but that the techniques they used might support this approach as a viable option for infertile men in the future.”

The Adviser also noted that the ECU had consulted the scientist responsible for the study and, although she was happy with the article, she did have concerns about the headline. The ECU concluded that the headline “may have given rise to a mistaken assumption about the nature of the study and its conclusions” and for this reason the ECU upheld this part of the complaint. The Adviser believed the ECU was correct to address this part of the complaint with reference to the guidelines on Accuracy. These guidelines state that the BBC “must not knowingly and materially mislead its audience”. The guidelines also state the BBC “should normally acknowledge serious factual errors and correct them quickly, clearly and appropriately”.

The report had now been amended and was available through the following link: http://www.bbc.co.uk/news/health-24991843.

The Adviser noted that the headline had now been changed on the website to read “Y chromosome practically obliterated in mice” and the picture of the man had been removed and replaced with an image of mice. The report carried a statement that the article had been amended following the decision by the ECU and had a link to the following statement on the BBC’s Corrections page:

Y chromosome: Why men contribute so little, bbc.co.uk: Finding by the Editorial Complaints Unit

Complaint

Two visitors to the page complained that the headline was inaccurate and, together with the picture of a somewhat overweight man lounging on a sofa which illustrated the article, offensively sexist.

Outcome
The article itself was an accurate account of a study which sought to minimise the Y-chromosome contribution from male mice through assisted reproductive technologies, and which concluded that it was possible to produce mouse progeny via a Y chromosome which was limited to only two genes. As the study had no direct bearing on human reproduction, the headline was misleading. However, the ECU did not consider it or the illustration (though of little relevance) to be offensively sexist.

Partly upheld

Further action

Staff will be reminded that, while there is a place for humour in online output, headlines and associated material should be directly related to the content of the report in question.

The Adviser noted that the complainant wished the case to be considered in relation to the section of the BBC Editorial Guidelines dealing with Harm and Offence, in particular dealing with Generally Accepted Standards and Portrayal.

The Adviser noted that the guidelines were intended to find a balance between freedom of speech and the need to offer protection to vulnerable groups in terms of how they were portrayed and to protect viewers, especially children, from seeing inappropriate or harmful material.

She noted that, in response to the ECU finding, the complainant had written that he considered the headline was in breach of the guidelines on Harm and Offence and had stated:

“...there is no way it can be justified by the context (a study on infertile mice) ... and... it clearly is a careless stereotypical assumption that clearly can't be editorially justified (because it's completely irrelevant to the article as we've already agreed).”

She noted that the ECU had addressed this part of the complaint replying:

“I do not believe that men face a significant degree of prejudice as a consequence of their gender. That is not to say that it might not be possible to unfairly lampoon men through a stereotypical caricature, but I do think the risk that serious offence would be caused is somewhat lessened. It seems to me that this was an attempt to introduce a light, humorous tone to a serious scientific subject, and while it failed to illustrate that subject I don’t believe it was so sexist or offensive as to breach the BBC’s editorial standards.”

The Adviser appreciated that the complainant found the juxtaposition of the title, photograph and article offensive and acknowledged, when considering whether other readers would find it so, that it was ultimately a subjective judgement. However, she believed that the Trustees would not consider that any offence caused by the title, picture and article was so serious as to breach “generally accepted standards”. This did not mean that the Adviser believed that the issue raised did not play on certain stereotypes, but that the majority of readers would have seen the headline and photo as an attempt at humour to catch the attention of the reader although the article itself raised serious scientific findings. As acknowledged by the ECU, the title and picture had been ill-judged. The Adviser did not believe that any humorous approach necessarily negated any offence.
but it was a question of degree, and in this case she considered that the Trustees would not have considered this to be such a reprehensible headline as to cause widespread offence.

Overall, she considered that Trustees would not be likely to conclude that the content of the article was a serious attempt to marginalise the role of men in the reproductive process. The article had pointed out the potential benefits to men who might have a damaged Y chromosome in their wish to have children and in fact quoted the scientist involved as saying “a world without men would be ‘crazy’ and ‘science fiction’.”

The Adviser believed that the Trustees would conclude that the ECU had acted appropriately in upholding the complaint in terms of Accuracy. She noted the action already taken to change the headline and delete the picture and considered Trustees would be likely to conclude this action was appropriate and proportionate to the level of potential offence that may have been caused.

The Adviser noted that the complainant in his correspondence had wished to widen out the complaint to deal with the perceived prejudice that men faced as a consequence of their gender. She wished to reiterate, as stated in the covering letter, that the editorial appeals process dealt with complaints which raised specific issues in programmes or BBC output in relation to the BBC’s Editorial Guidelines, that the Complaints Framework made clear that all aspects of a complaint had to be raised at Stage 1 and that the Trust could only consider complaints once they had been addressed by the BBC.

The Adviser believed that the Trustees would be of the view that the ECU had provided a reasoned and reasonable response to the complaint about the online article and taken the appropriate action to rectify the misleading headline. She considered too that Trustees would be likely to conclude the actions taken – to change the headline and photograph, to publish a correction and to draw this issue to the attention of staff – were reasonable and appropriate. For these reasons she did not believe that the appeal had a reasonable prospect of success and she did not propose to put it before Trustees on appeal.

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant reiterated his key concern, which was not about chromosomes or the question of apologising for mismatching a headline and image, but “the picture/headline per se”. The complainant felt the headline and image were stereotypical and sexist.

The complainant also said it was wrong of the Adviser to say that “the complainant in his correspondence had wished to widen out the complaint to deal with the perceived prejudice that men faced as a consequence of their gender”. He said this has been introduced (correctly) by the ECU. It was the central issue.

The complainant rejected the idea that by changing the headline and image, his complaint had been addressed.

**The Committee’s decision**

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant’s letter asking the Committee to review her decision.
The Committee noted the original headline and image to which the complainant objected and referred to as “badly chosen”.

The Committee noted that the complainant felt there had been some misunderstanding about the substance of his complaint which the Committee understood to focus on his view that the headline and image denigrated men.

The Committee noted the response from Audience Services explaining that the headline and photograph were intended to be light-hearted.

The Committee noted that the Editorial Complaints Unit upheld the complaint as a breach of the Editorial Guidelines as they relate to Accuracy, but not Harm and Offence.

The Committee noted that the headline and image had been changed in response to the complaint.

The Committee noted that the complainant felt this did not address his complaint.

The Committee noted that the broadening out of his complaint to relate to prejudice against men was introduced by the Editorial Complaints Unit and now formed the substance of the complainant’s appeal to the BBC Trust.

The Committee agreed with the complainant that the original headline and image were not well chosen.

However, the Committee agreed with the Editorial Complaints Unit that the headline and image did not go so far as to breach the BBC’s editorial standards.

The Committee felt that as both headline and image were consequently amended and that the Editorial Complaints Unit’s published finding included a proposal to ensure future accuracy, appropriate and proportionate action had already been taken.

The Committee did not consider that this complaint had a reasonable prospect of success.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
The complainant was deeply offended by four uses of the word “Christ” in a one-off comedy drama, Two Doors Down. At Stage 1, he received a response from Audience Services on 15 February 2014 which stated:

“I am sorry that you were offended. It was not our intention. However, in an adult show like this, transmitted after the watershed, it is important for us to reflect the way people talk in the real world, while keeping within editorial guidelines. While the use of this word is clearly offensive to you it is commonly used vernacular, and we did not feel its use would have exceeded general audience expectations.”

The complainant remained dissatisfied and escalated his complaint to Stage 2. It was investigated by the Editorial Complaints Unit (ECU); however, the complaint was not upheld.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 27 March 2014, requesting a review of the ECU’s decision not to uphold his complaint at Stage 2. He made the following points in his appeal:

- He did not agree that it was within reasonable limits to use the word “Christ” on four occasions within ten minutes.
- The fact that four different characters used the word was irrelevant.
- He did not understand why a comedy/drama broadcast after the 9.00 p.m. watershed gave a writer “licence to be so offensive”.

The Trust Unit’s decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and watched the relevant output. While the Adviser acknowledged the strength of the complainant’s feelings, she decided that his appeal did not have a reasonable prospect of success.

The Adviser considered the complaint against the BBC Editorial Guidelines on Harm and Offence. These can be found in full at http://www.bbc.co.uk/guidelines/editorialguidelines.

The Adviser noted that the Editorial Guidelines did not require that output that was potentially offensive should not be broadcast, but reflected the balance that had to be struck between having the right to broadcast innovative and challenging content and protecting people from unjustifiable offence. She noted too that the guidelines were intended to protect groups who were considered vulnerable and that the BBC had a particular responsibility towards children.
She also noted that output producers were required to bear in mind the expectations of the audience and also what were considered “generally accepted standards”.

The Adviser noted that the programme was broadcast after the 9.00 pm watershed. While she acknowledged that the complainant did not understand why the watershed gave a writer “licence to be so offensive”, she considered the watershed was a very well established signal to adults, it was intended to protect children and young people from inappropriate output. She noted that in this instance the programme had included sexualised behaviour that would not have been considered suitable for young viewers. She noted and agreed with the statement made by the Complaints Director at Stage 2, who considered that the watershed gave:

“...the programme makers rather greater latitude to include the kind of colloquial language which is, rightly or wrongly, used by people in everyday life. On the basis that the watershed marks the point in the television schedule at which viewers know there is likely to be a discernable [sic] shift towards more adult-orientated content, including language, I think it is unlikely that dialogue of this kind would have gone beyond the reasonable expectation of viewers.”

In terms of the audience expectations for the programme, the Adviser noted that it was being broadcast on New Year’s Eve and had the billing:

“New Year’s Eve comedy set at a chaotic Hogmanay party. As neighbours and family descend on Beth and Eric’s home, secrets are revealed, scores are settled and a gazebo is destroyed.”

She considered that within moments of the programme’s start, the audience would have been aware that it would be likely to include comedy based on awkward interactions between family members. She noted the context of the use of the word “Christ” on the four occasions referred to by the complainant:

(Mr Baird is being asked about his Christmas plans by his son's partner)
Tony: Never thought about Christmas in New York, Mr Baird?
Eric: Me? New York? Christ! I’m lucky to get a new pair of socks...

(a middle-aged brassy woman in a short dress comes into the room)

Auntie Caroline: Get ready to party!

Eric: Oh, Christ, here it is, lock up your sons...

(Beth learns that Eric has forgotten to pick up crisps from the supermarket)

Beth: Christ, Eric, all you had to do was go to Costco, pick up the gazebo, drop the flowers off at the cemetery, nip into Superdrug and get me a pair of tights and then go to Tesco and get five packets of Kettle Chips, a big bag of Hula-Hoops and some peri-peri houmous...

(Auntie Caroline is asking Ian about his partner, Tony)

Ian: He's nice. He's funny, he makes me laugh. Christ, Caroline, he took me to New York for my Christmas.
The Adviser noted that in all four instances, the word was not used aggressively. She noted and agreed with the view of the Complaints Director, who had written:

"...there is an editorial justification for writing dramatic or comic dialogue which reflects the way some people speak, and that includes the use of the kind of words people use to punctuate or emphasise what they are saying."

The Adviser also took into consideration the research conducted by the Broadcasting Regulator, Ofcom, which was referred to by the Complaints Director in his Stage 2 response. She noted that the research found that:

“The phrase ‘Jesus Christ’ was also considered generally acceptable by many across both the general UK sample and minority groups, because it is frequently used in everyday life and not usually used in a context which is likely to offend people.”

She acknowledged that the complainant had found the casual use of the word offensive and did not consider its use was justified. However, she believed Trustees would be likely to conclude that the dialogue did not go beyond what might be regarded as generally acceptable for a programme of this kind.

The Adviser considered that Trustees would be likely to conclude that the programme met the requirements of the Editorial Guidelines. It followed from this that she did not consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He disagreed with the Senior Editorial Complaints Adviser that “creative risk taking” needed to include what he viewed as offensive language. He felt that a “clear editorial purpose” had not been demonstrated for the use of the word four times in ten minutes. The complainant rejected the watershed or the audience billing as a signal that such language was acceptable and said it was never acceptable and went beyond the reasonable expectation of viewers.

**The Committee’s decision**

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

The Committee noted the usage of the word “Christ” in the drama *Two Doors Down*.

The Committee noted the response from Audience Services at Stage 1 acknowledging the complainant’s distress and explaining both the use of the watershed and the need for the BBC to reflect the various ways in which people speak in its output.

The Committee noted that the complainant rejected the use of the watershed as a “licence” to broadcast strong language.

The Committee noted the Adviser’s view that it was a well established signal regarding the nature of subsequent broadcasts.
The Committee noted the editorial explanation offered by the Complaints Director at Stage 2 that the watershed allowed programme makers to “include the kind of colloquial language which is, rightly or wrongly, used by people in everyday life”.

The Committee noted the research by Ofcom that the phrase “Jesus Christ” was considered “generally acceptable” by many people.

The Committee agreed with the Complaints Director that the usage of the term was to punctuate speech and offer emphasis. The Committee did not consider that this complaint had a reasonable prospect of success.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
Handling of complaint regarding The Revolution Will Be Televised

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.

The complaint

The complainant’s original complaint concerned a sketch, broadcast on Remembrance Sunday, which contained scenes of a man dressed as Hitler and scenes of an English Defence League (EDL) rally. The complainant thought the scenes would have been acceptable on any other day except Remembrance Sunday. The complaint went to Stage 2 and was not upheld by the Editorial Complaints Unit (ECU).

The complainant also had concerns about the handling of his complaint at Stage 1, and these concerns were the subject of this appeal to the BBC Trust.

He first contacted the BBC on 11 November 2013 to complain about scenes in the programme The Revolution Will Be Televised which featured a man dressed as Hitler and scenes of an EDL rally.

BBC Audience Services responded on 25 November 2013 stating:

“I am sorry if you were offended by the content of ‘The Revolution Will Be Televised’, I can assure you it is never the intention of the BBC to deliberately upset its audience.

“We try to ensure that post-watershed, anarchic comedy series are well signposted and it is generally accepted that some newer comedy series thrive on self-consciously exhibiting bad taste.

“As the BBC is a public service financed by the licence fee it must provide programmes which cater for the whole range of tastes. We believe that there is no single set of standards in this area on which the whole of society can agree, and it is inevitable that programmes which are acceptable to some will occasionally strike others as distasteful. The only realistic and fair approach for us is to ensure that the range of comedy is broad enough for all viewers to feel that they are catered for at least some of the time.

“Your views are important to us, especially as you felt the sketch used was poorly timed on Remembrance Sunday, and we welcome feedback from our audience to help us create enjoyable programming for all.”

The complainant was unhappy with this response and made a follow-up complaint on 27 November 2013, objecting that the letter did not really address his complaint, did not empathise with his feelings, and was computer generated and unsigned. He also said he was disgusted rather than offended.

Audience Services passed the complaint to the programme’s Executive Producer for comment and sent a further response on 8 January 2014 which stated:
“It remains unclear whether you’ve seen this BBC Three series before, the remit of which is to bring a satirical treatment to those people, including members of the government of the day, at the heart of subjects of public concern. As you are aware, the topics under attack are flagged up in the billing information which for this episode read as:

‘Dale Maily enjoys a day out at an EDL march in Birmingham, while James and Barnaby try to convince the public to give MPs a pay rise.’

“The comedic nature of the series and the fact that the show would feature pranks was clearly flagged in the continuity announcement leading into the programme on 10 November 2013.

“In the EDL march prank, Dale Maily, an established comedy character and spoof right wing news journalist from series one of The Revolution Will Be Televised, attends an EDL march and by ostensibly agreeing with the people in attendance, Dale is clearly exposing some quite terrible, racists [sic] and unacceptable opinions held by their members.

“As regards the presenter dressed as Hitler sketch trying to gain access to a Bell Pottinger Summer ball – Bell Pottinger represents highly questionable people and political regimes, and this is made very clear in the run up to the prank. Therefore, by turning up as Hitler and as the devil, the point being made is that Bell Pottinger might likely welcome monsters like this into their summer ball.

“The episode you happened across was the first in the second series of The Revolution Will Be Televised, but we hoped that many BBC Three viewers will already be aware of this series, which garnered big audiences for its first series and went on to win the 2013 British Academy Television Awards for the Best Comedy Programme.”

In a further telephone call on 10 January 2014 the complainant said that the content of the programme which he had found offensive reminded him of the deaths and suffering of the Second World War and he felt that at no point had this hurt been sufficiently acknowledged. He also noted that at no point had he received an apology. He also felt that the letter from Audience Services was sarcastic and dismissive in tone.

Audience Services responded on 31 January 2014 stating:

“We are sorry that you felt the last letter you received was sarcastic or dismissive as that was certainly never the intention. We note that you continue to be offended by the prank where one of the characters is dressed as Hitler and tries to gain access to a Bell Pottinger Summer ball. We further note the offence caused by the timing of this broadcast, as it was broadcast on Remembrance Sunday. I think it is fair to say that the timing of the broadcast was unfortunate and the BBC has no reservations in apologising again to you personally for any offence caused by the prank. That apology would also extend to any offence caused by the timing of the broadcast. However, in closing, we would strongly defend our right to feature a character in such a way in a BBC Three series like The Revolution Will Be Televised. If you continue to feel that this prank (and its broadcast date) was a serious breach of the BBC’s editorial guidelines it is now up to you [to] escalate your complaint to the next stage by writing using the details below…”

Appeal to the BBC Trust
Following the ECU’s decision not to uphold the substantive complaint, the complainant re-

stated his concerns about complaints handling in a phone call to the BBC Trust on 7 April 2014. He said that the main thing he was unhappy with was getting replies which neither apologised nor addressed his complaint but instead kept referring to the fact that the show had won awards.

**The Trust Unit’s decision**

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She accepted that Remembrance Sunday had a strong resonance for people and she acknowledged the strength of the complainant’s feelings. However, she decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted the complainant’s concern that he kept receiving replies from Audience Services which neither apologised nor addressed his complaint but kept referring to the fact that the show had won awards.

Looking through the correspondence the Adviser noted that, in addition to the substantive responses, Audience Services had sent four holding letters that informed the complainant he might have to wait longer for a reply than the target times that the BBC worked to. Two of these four letters included an apology for the anticipated delay. Audience Services had also apologised in the following substantive responses:

**25 November 2013:**

“I am sorry if you were offended by the content of *The Revolution Will Be Televised*, I can assure you it is never the intention of the BBC to deliberately upset its audience.”

**31 January 2014:**

“We are sorry that you felt the last letter you received was sarcastic or dismissive as that was certainly never the intention...”

“I think it is fair to say that the timing of the broadcast was unfortunate and the BBC has no reservations in apologising again to you personally for any offence caused by the prank. That apology would also extend to any offence caused by the timing of the broadcast. However, in closing, we would strongly defend our right to feature a character in such a way in a BBC Three series like *The Revolution Will Be Televised.*”

The Adviser noted that once the complaint had been escalated to Stage 2, the ECU’s Complaints Director had also liaised with members of the programme management team and had made them aware of the complainant’s concerns.

The Adviser noted that Audience Services had apologised for the offence felt by the complainant both at the content of the programme broadcast on Remembrance Sunday, and also for the handling of the complaint which the complainant had found sarcastic and dismissive.

The Adviser noted that where the Executive had issued an apology – as they had in this case - Trustees usually considered the matter had been resolved. She therefore did not
consider this aspect of the appeal had a reasonable prospect of success as she considered Trustees would be likely to conclude the Executive had already addressed the complaint appropriately by apologising to the complainant.

Turning to the complainant’s concern that Audience Services kept referring to the fact that the show had won awards, the Adviser noted that this fact was referred to once in the response of 8 January 2014 which mentioned that the programme “garnered big audiences for its first series and went on to win the 2013 British Academy Television Awards for the Best Comedy Programme”.

The Adviser acknowledged that the complainant did not feel the comment was relevant or appropriate to his complaint. However, she noted that all BBC output was required to meet the standards set out in the Editorial Guidelines. She noted that the response from the Editorial Complaints Unit had included information about the broadcast of material that was potentially offensive.

She noted that the Guidelines stated the BBC should avoid causing “unjustifiable offence”, but had to strike a balance between offending audiences and broadcasting challenging material. In terms of how programme-makers tried to arrive at that balance, they were urged to consider different factors, including “audience expectations” and the guidelines also explained that: “Audience expectations of our content usually vary according to the service on which it appears”.

She noted that the response of 8 January 2014 had stated:

“It remains unclear whether you’ve seen this BBC Three series before, the remit of which is to bring a satirical treatment to those people, including members of the government of the day...

“The comedic nature of the series and the fact that the show would feature pranks was clearly flagged in the continuity announcement leading into the programme...

“The episode you happened across was the first in the second series of The Revolution Will Be Televised, but we hoped that many BBC Three viewers will already be aware of this series, which garnered big audiences for its first series and went on to win the 2013 British Academy Television Awards for the Best Comedy Programme.”

The Adviser considered that the response – despite not referring to the Editorial Guidelines – was setting out various factors that would have had an impact on the audience expectations for this programme. These included the continuity announcement before the programme, the fact that it had enjoyed large audiences during its first series and that the award indicated it had enjoyed a good degree of success.

The Adviser considered it was reasonable for the BBC to try to explain what the audience expectations for the programme were – although she acknowledged that the response could have spelt out more clearly why this information was relevant.

The Adviser noted that the complainant was offered a Stage 2 referral to the ECU to consider his substantive complaint and she considered that this referral had been handled in an appropriate way.

Overall, the Adviser did not agree that the correspondence was intended to be either sarcastic or offensive. She noted the apologies issued by Audience Services and also
noted that the Complaints Manager for BBC Audience Services had asked the ECU’s Complaints Director to reiterate those apologies (letter dated 13 February 2014). The Adviser noted that where the BBC Executive did issue an apology the Trustees usually considered the matter resolved. She therefore did not believe that the issue of complaints handling stood a realistic prospect of success and decided the complaint should not be put before Trustees on appeal.

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He contacted the BBC Trust to say he felt that the issue he raised about the programme was resolved, but his dissatisfaction with the way in which his complaint was handled remained. He felt the tone was sarcastic and patronising.

**The Committee’s decision**

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

The Committee noted that the complainant originally contacted the BBC regarding a programme issue but that he now considered that matter resolved.

The Committee understood the complainant wished to bring to its attention the way in which his complaint had been handled by the BBC. The Committee noted that the complainant took issue specifically with the tone of the correspondence he had received.

The Committee noted that the complainant was not satisfied with the initial letter he received from Audience Services because it was unsigned and he understood it was computer-generated. He also felt it did not dwell enough on the substance of his complaint or empathise with his feelings.

The Committee noted that the complainant objected to the fact he had not received an apology.

The Committee noted that the initial letter from Audience Services offered an apology to the complainant and subsequent correspondence offered an apology if the tone of its last letter caused offence. The Committee noted that this same letter continued:

“I think it is fair to say that the timing of the broadcast was unfortunate and the BBC has no reservations in apologising again to you personally for any offence caused by the prank. That apology would also extend to any offence caused by the timing of the broadcast.”

The Committee agreed with the Adviser that the responses from Audience Services had included several notes of apology and that the responses had been carefully written and were not sarcastic in tone. It did not consider that this complaint had a reasonable prospect of success.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
Britain’s Great War, BBC One, 3 February 2014

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.

The complaint

The programme that is the subject of this appeal is the second part of a four-part series on the First World War, presented by Jeremy Paxman and produced by the Open University and BBC Productions.

The Series Producer explained on the BBC website that the aim of the series was to “tell a different, unfamiliar story: the story of how the First World War affected the people of Britain, and dragged the country into the modern age”. 43 Each programme in the series was an hour long and the BBC website summarised the episode in question as follows: “The whole population is enlisted to turn an unprepared Britain into a war machine.”44 The programme looked at, among other things, the individuals who volunteered for service, the implementation of conscription, examples of those who argued that they should be exempt, and the stories of conscientious objectors and their treatment.

The particular area of complaint concerned the following comment by the presenter:

“To be honest, the extreme conscientious objectors have always struck me as cranks. The war was dreadful, and it was bloody, but unless Britain was prepared to see the rest of Europe turned into some enormous German colony, it had to be fought, and most British people saw that.”

The complainant contacted the BBC on 4 February 2014, saying the following:

“I do not think it appropriate that he should have given his personal opinion about any part of this subject and should have confined his presentation to an account of what happened. I was outraged that he chose to comment on individual Britons who were conscientious objectors, describing them as ‘cranks’. He can have no personal knowledge of any of them, of a hundred years ago, who chose to differ from the attempted coercion by a state into actions about which they could have had no prior influence.”

After a series of exchanges with BBC Audience Services, the complainant pursued his complaint to Stage 2 of the complaints process on 18 February 2014. The Editorial Complaints Unit (ECU) did not uphold his complaint. The ECU response considered the programme in particular against the guidelines on Accuracy – but also referred to the requirements under the guidelines for output to be impartial. In a response to the ECU of 7 April, the complainant stated:

“…my complaint was purely of ‘inappropriate personal opinion’. I am not able to see how an expression of personal opinion could possibly be held to be either misleading or inaccurate…

43 http://www.bbc.co.uk/programmes/p01npqws/features/makingtheseries
44 http://www.bbc.co.uk/programmes/b03xtmnv/episodes/guide#p01npqws
“I think that the BBC, in presenting a programme about the Great War has a duty to be as objective and non-contentious as possible and this is not achieved if a presenter is permitted to express personal opinions, unless these are counterbalanced by other differing views, which was obviously not done in this programme.”

**Appeal to the BBC Trust**

The complainant appealed to the BBC Trust on 8 April 2014. He emphasised that the central point of his complaint was that a documentary such as this one about the First World War “should not have afforded a platform for any personal opinions or criticisms”.

He questioned whether the ECU’s references to the Editorial Guidelines were applicable to the programme and questioned the selection of Jeremy Paxman as an appropriate and qualified presenter.

**The Trust Unit’s decision**

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.

The relevant correspondence was also reviewed by the Trust Unit and, additionally, an independent editorial adviser reviewed the programme in question and all the associated material.

The Adviser began by examining two general points made by the complainant: first, the choice of presenter and, second, the relevance of the Editorial Guidelines to this complaint.

In response to a point from the ECU (the reference in the guidelines to BBC presenters’ “professional judgements rooted in evidence”), the complainant said the following:

> “I am not aware of any qualifications, learning or study by Mr Paxman which might qualify him as a ‘professional’ either as an historian or psychologist which might have qualified him to give an unbiased account of either war or conscientious objectors.”

The Adviser was aware that Mr Paxman, as well as having extensive experience as a journalist, was the author of several books, including studies of power in England, politicians, the monarchy, empire, the Victorians, and a book accompanying the WW1 series.

However, she noted that the BBC’s choice of presenter would not be a matter that would be within the remit of the Trust’s Editorial Standards Committee to consider. 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 noted that the decision about the choice of presenter fell within the “editorial and creative output” of the BBC and so was the responsibility of the BBC Executive. She therefore did not consider it would be appropriate for Trustees to consider this point.

The second general point raised by the complainant related to the appropriateness of the Editorial Guidelines in this case. The Adviser noted that the complainant said the following:

“[The ECU Complaints Director] makes great play about his opinion that what was said having been in accordance with guidelines without in any way questioning whether or not these guidelines might or might not have been appropriate to this presentation, which was a documentary and I contend should not have afforded a platform for any personal opinions or criticisms.”

The Adviser noted that before the section of the programme about “absolutist” conscientious objectors, the presenter made the following general comments about them:

“...it seems to me remarkable that a country that considered itself in the grips of a struggle for national survival, nonetheless allowed individual citizens to decide whether they could reconcile that struggle with their personal conscience. It didn't happen elsewhere in Europe.

“The authorities were faced with a new question: what should be done with men who refused point blank to have anything to do with the war effort.”

The programme outlined the experiences of the Richmond 16 – conscientious objectors who had initially been imprisoned in Richmond Castle in Yorkshire, but had subsequently been sent to France. The rationale of one objector was examined – and his daughter in law explained how his strong religious faith had informed his views. The programme explained that they were then subject to military discipline and faced the death penalty - however, the sentence was commuted to ten years’ imprisonment.

Jeremy Paxman continued:

“When it came to it, shooting men for sticking to their principles was a step too far for the Government. Instead, ‘absolutist’ objectors served out much of the rest of the war in British jails.

“To be honest, the extreme conscientious objectors have always struck me as cranks. The war was dreadful, and it was bloody, but unless Britain was prepared to see the rest of Europe turned into some enormous German colony, it had to be fought, and most British people saw that.”

The Adviser noted that Mr Paxman was referring not to conscientious objectors in general but to the “absolutists”, who refused to involve themselves in any way at all with the War, not even as ambulance drivers or labourers, as some of their fellow conscientious objectors had agreed to do. Looked at in context, she thought it likely that the Trustees would consider the treatment of the issue of conscientious objection in the programme to have been balanced and, in some respects, even sympathetic.

She appreciated that the complainant believed the presenter should not have made his remark about “cranks”, and she noted that there had been criticism reported in the press from some Quaker groups and the Peace Pledge Union. Nevertheless, the Adviser noted that conscription was not a matter of current public policy, political or industrial.
controversy and she did not think it could be successfully argued that the passage referred to a “controversial subject” in any other area as referenced in the Guidelines.

In the Adviser’s view, the Trustees would therefore be likely to conclude that there was nothing to preclude Mr Paxman from stating his view about the “absolutists”, especially since he did make it completely clear that it was his view, and not a matter of fact. Therefore, she considered there was no reasonable prospect of the Trustees finding the programme had been in breach of the Impartiality Guidelines, and she did not propose to put the appeal before Trustees.

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He reiterated his view that the presenter should not have voiced his own opinion on conscientious objectors. The complainant noted that “the introduction of personal opinions, without any dissenting opinion cannot be impartial”.

**The Committee’s decision**

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

The Committee noted the programme which was the subject of the complainant’s appeal to the BBC Trust and, in particular, the comment which was the focus of the complaint.

The Committee understood that the complainant felt that Jeremy Paxman should not have given his personal opinion.

The Committee noted that the response from the Editorial Complaints Unit considered the complaint against the Editorial Guidelines relating to Accuracy and Impartiality.

The Committee noted that the complainant was not satisfied with this approach. He did not consider the presenter’s comment to be either inaccurate or misleading. He felt a programme on the Great War should be presented objectively and without personal opinion.

The Committee noted the context of the comment to which the complainant objected and that the presenter was referring to “extreme conscientious objectors” in particular.

The Committee understood the complainant’s objection to the remark, but felt there was nothing to preclude Mr Paxman from stating his view, especially since he did make it completely clear that it was his view, and not fact, and since extreme conscientious objectors were not a matter of current public policy, political or industrial controversy and were not a “controversial subject” as referenced in Impartiality Guideline 4.4.13. It therefore did not consider that this complaint had a reasonable prospect of success.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
Bluebirds and Swans, BBC Wales, 28 October 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.

The complaint

The complaint relates to the BBC Wales programme Bluebirds and Swans, 28 October 2013. The complainant contacted the BBC and considered the programme had given a less complete portrayal of Cardiff City’s successes than it had Swansea City’s and this was indicative of bias. He received a Stage 1 response on 11 November 2013 which acknowledged the complainant’s disappointment and stated that the BBC had worked hard to ensure the programme was fair. The response made the following points:

- The programme was restricted over the archive footage that was available to it. It did not have access to FA Cup footage post-1997 and nor did it have access to recent footage from the Premier League: “…unfortunately this ruled out Cardiff’s fantastic win against Manchester City and anything from the current campaign.”

- It acknowledged that the programme did not reflect all of the promotions Cardiff City had earned, nor did it show the same amount of goals from both teams: “…this was due to the challenge of portraying the narratives of two clubs over nearly ninety years, in a 30 minute programme.”

- The letter referred to the broad aim of the programme: “We also felt it was important to reflect the rivalry from social and cultural perspectives which constrained our time when showing action on the field.”

Audience Services noted that a Director of Cardiff City had contacted them after the programme to say that he had enjoyed the programme and considered it was balanced. The complainant remained dissatisfied and escalated his complaint to Stage 2. He received a response from the Editorial Complaints Unit on 10 February 2014 which did not uphold the complaint.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 31 March 2014, saying that he was unhappy with the response received at Stage 2. He made the following points:

- That the programme had shown bias in favour of Swansea Football Club by showing all of its football achievements while failing to mention Cardiff City’s achievements.

- That while the BBC had acknowledged that it had not been possible to acquire the rights to Cardiff City’s FA Cup final appearance, it had failed to compensate for this through sympathetic scripting and narrative.

The Trust Unit’s decision

The Senior Editorial Complaints Adviser carefully read the correspondence that had passed between the complainant and the BBC and watched the programme in question. She acknowledged the strength of the complainant’s feelings.
The relevant correspondence was also read by an independent editorial adviser who also watched the programme and carried out research on the two football clubs.

The Senior Editorial Complaints Adviser (the Adviser) decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted that the ECU had considered the complaint against the Editorial Guidelines on Impartiality and agreed that these were the appropriate guidelines.

The Adviser noted that “due impartiality” meant that the output producers had to consider what was appropriate given the nature and context of the programme and also had to bear in mind the audience expectations.

She noted that the programme had been scheduled to run less than a week ahead of the fixture when the two teams would meet for the first time in the Premier League. She noted the narrator’s introductory script:

“At either end of this forty mile stretch of road are two cities; two neighbours that have a history forged by coal, steel and rugby. But now their football clubs are leading the way: Cardiff City and Swansea City play in the richest league in the world where winning and pride are everything.

And now they are set to meet on the biggest stage.

This is a story of respect and the fight to be the top club in Wales.

But behind the glare of the floodlights, is a darker tale. A bitter rivalry between fans which spilt over into violence.

It is the story of how both clubs dragged themselves out of a troubled past and took their fans into a bright new future.”

The Adviser noted that the narration was interspersed with comments from fans about their passion for their club and the importance to them of the sport. The narrator subsequently stated that the forthcoming local derby would be: “one of the biggest ever sporting events to be held in Wales” and the programme highlighted, through comments from interviewees, how the global reach of the premiership meant that it would have significant implications for Wales.

She noted that within a thirty minute format, the programme included a sweep across the historical achievements of both clubs - including Swansea City reaching the FA Cup semi-final in 1926 and Cardiff City winning the FA Cup in 1927. She noted this was accompanied by archive footage from the game and the commentary that “by 1927, Cardiff had captured the most famous cup of all”. The programme referred to Swansea City’s “stunning FA Cup run” in 1964 before referring to Cardiff City’s victory against Real Madrid in the European Cup Winners’ Cup in 1971 - again with archive footage. She noted that as well as the two clubs’ respective historical sporting achievements, the programme clearly intended to reflect significant social and economic factors. It captured the sense of conflict when John Toshack was apparently not welcomed at Cardiff City and instead became Swansea City’s highly successful manager. It indicated how tensions between the clubs grew and that this had coincided with the growth in football violence, so that local derbies were violent and destructive. It set this against the significant political and economic tensions in South Wales at the time which resulted from the miners’ strike. The Adviser noted that the programme utilised appropriate historical
footage – including scenes showing the destruction in the wake of football hooliganism and news footage of the miners’ strike.

The Adviser noted that the programme then examined how the clubs had turned around their respective financial positions over the past twenty years and looked at the relationship between the fans and chairmen of each club. She observed that the clips used in this sequence were to illustrate each club’s journey to the Premier League whilst they sought to restore financial order. She noted that the programme had included footage showing Swansea winning its Championship league play-off in 2011 to reach the Premiership and winning its first major trophy, the League Cup, in 2013 and also noted that the programme showed Cardiff team losing its Championship play-off matches in 2010, 2011 and 2012 and then winning promotion to the Premiership in 2013.

The Adviser considered that the viewer would have understood that this part of the programme was looking at how each club had managed to tackle their financial problems as well as examining their different journeys to the Premier League. She did not consider there was a need to mention every footballing success in that period, particularly in competitions such as the FA Cup or League Cup which did not have a direct impact on either club’s promotion to the top division. She concluded that the programme’s use of clips from a variety of matches had been editorially justified and selected to illustrate the subject matter of the programme.

Overall, the Adviser considered the audience would have understood the programme to have been a broad sweep across the two teams’ histories, picking out rivalries and including some key moments. She considered Trustees would be likely to conclude the programme had met the requirement for “due impartiality” that was set out in the Editorial Guidelines. She did not therefore consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant said that, during the course of his complaint, there had been some acknowledgement of imbalance in the programme. He reiterated his view that this imbalance signified bias on the part of the BBC. The complainant argued that if there was not enough time to broadcast an equal number of goals from each team, the number of Swansea City goals could have been decreased. The complainant alleged that the omission of the club’s previous successes by the programme gave the wrong impression that success had not been achieved before the arrival of the new owner. He considered the upcoming match on the world stage meant that the demands of due impartiality were higher.

**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 understood the complainant felt the portrayal of Cardiff City’s successes against those of Swansea City indicated bias.

The Committee noted the Stage 1 response which outlined the work put in by the programme team in the effort to achieve balance.
The Committee noted that a Director of Cardiff City considered the programme balanced. The Committee noted that the complainant felt this was because it suggested that the club had achieved little success before his arrival.

The Committee noted that the background and achievements of both clubs were given. The Committee noted the complainant’s dissatisfaction that an equal number of goals was not shown for each club. However, it agreed with the Adviser that the selection of clips had been an editorial decision and used to illustrate a point.

The Committee did not think that the detail which the complainant felt was missing amounted to bias. The Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of the guidelines on Impartiality.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
PM, Radio 4, 31 December 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.

The complaint

The complainant expressed concern that an interview conducted with a doctor who had treated casualties in Syria contained elements of pro-Labour bias. He stated on 31 December 2013 that the doctor repeatedly said he blamed David Cameron for failing to intervene in that conflict and was not challenged or corrected by the presenter yet it was Ed Miliband who was responsible for the failure of Cameron’s efforts to intervene in Syria.

The complainant was unhappy with the initial response at Stage 1 and renewed his complaint. He was sent a second response at Stage 1 which stated that the doctor’s concern had been that there should have been humanitarian aid rather than military intervention and that he had been concerned at the lack of response from the international community.

The complainant remained dissatisfied, he felt that the doctor had been allowed a “political rant against David Cameron and the Coalition government without being challenged…” He said that the interviewer had failed to point out the central role of Ed Miliband in the failure to intervene in Syria.

The complaint was investigated by the Editorial Complaints Unit (ECU) at Stage 2 and was not upheld.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the response received at Stage 2 and that he would like the Trust to review his complaint.

The Trust Unit’s decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and listened to the interview in question. She acknowledged the strength of the complainant’s feelings about this matter.

The Adviser noted that the complainant had raised concerns that the output was not impartial.

The Adviser acknowledged the complainant’s concern that the interviewee, the doctor, was allowed “to criticise the Prime Minister several times unchallenged and failed to point out the central role of Ed Miliband in the failure to intervene in Syria”.

In listening to the output again, the Adviser considered that the main focus of the interview was on the doctor’s personal experience of witnessing the tragic plight of civilian victims in the Syrian conflict and on the emotional impact the experience had had on him.

The Adviser noted that the doctor stated that an unusually high proportion of the people he treated were civilians. He described how he had previously worked in, among other places, Haiti, Kabul, Kandahar, Ivory Coast, Darfur, Yemen and north-west Pakistan. He
compared the scale of suffering he had witnessed in Syria with his previous experiences and stated:

“I think the thing, why it’s got to me more this time, was because it was so full-on, I’d never worked really that hard before.”

He described how he was particularly affected by a photograph of a baby with a bullet in its head, an injury which had occurred in utero as a result of its mother being shot while she was pregnant. He discussed this with the charity Syria Relief and thought “Surely this is going to do something, surely this will change the way that this war is viewed”. With the support of the charity he had published the picture to “wake up the world to see the horrors that are going on” but had been disappointed to find that “nothing … changed”. He was particularly concerned and frustrated that, in his view as a doctor who had witnessed enormous civilian suffering at first-hand, no-one in the international community was showing leadership over the humanitarian situation in Syria.

She noted that he mentioned David Cameron only once during the interview, and that was in the context of his disappointment at the lack of international response to the humanitarian aid effort in Syria:

“I feel that nobody’s really taking any control of this, there’s no real leadership. You know, when I was in … when we went to … in September, when I was there in September, just before going I remember David Cameron saying that we weren’t going to use military air strikes, we were going to kill them with kindness with humanitarian aid. Well he hasn’t. There’s been no humanitarian corridor being created by the United Nations, there’s been no… When I was in Bosnia I remember the UNHCR trucks going in, bringing aid in. That’s what should happen again. Somebody should have a bit of leadership and say ‘this is what we’re going to do’, because the situation is getting worse and worse and worse.”

She noted and agreed with the responses that had been sent at Stage 1 and Stage 2 which had indicated the main thrust of the interview had been about the doctor’s view of the need for international effort to supply humanitarian aid. The Adviser noted the response given at Stage 1b from the editorial team on this point:

“The doctor criticised not just David Cameron, but the international community in general for not doing enough to help the people of Syria.

The thrust of his criticism was over humanitarian aid – not military intervention, as debated and defeated in the House of Commons last year.

The interviewer did challenge him on the problems of intervention in general – to which the doctor replied that the situation was so bad, something had to be done.

We believe Ed Miliband’s role in the Commons vote on Syria was not strictly relevant, and that the interviewee was challenged.”

She noted and agreed with the conclusion the ECU had also reached, that Ed Miliband’s role in the Commons vote on Syria was not relevant to the point the doctor was making, which was about humanitarian aid, not military intervention. That being the case, she considered there was no need for the interviewer to “challenge” the doctor in the way the complainant thought appropriate. She noted that, as pointed out by the programme editorial team at Stage 1b, the interviewer did challenge him on the problems of
intervention in general. He said: “You know the arguments that are often put forward in response to calls for intervention of various kinds. What do you say to them?”

In response to that question, the doctor replied that the situation was so bad, something had to be done. He felt the United Nations should do something and that there was a lack of leadership:

“Somebody should have a bit of leadership and say this is what we’re going to do because the situation’s getting worse and worse. They’ve left it so long now that everybody’s washing their hands and hoping that something will happen. But on the other hand if you’re part of a British government and you know that civilians are being killed every single day and you know about that, surely you have some blood on your hands as well?”

The Adviser did not agree with the complainant’s view that the “doctor repeatedly said he blamed David Cameron for failing to intervene in that conflict and all I heard from [the interviewer] was some clucking in sympathy”. Nor did she agree that the doctor had been allowed to have a “political rant”. She considered that PM’s audience would expect the programme to include different ways of considering international affairs and the experiences of a doctor who had significant experience in treating patients in extremely difficult situations were interesting and informative. She considered the audience would have understood that he was clearly expressing his own opinions. In this context, she believed that Trustees would be likely to conclude that the output met the requirements of the Editorial Guidelines on Impartiality, there was no requirement to refer to Ed Miliband’s role in the vote on military intervention in Syria and the decision not to refer to Ed Miliband’s role was not evidence of pro-Labour bias.

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

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He believed the BBC Trust Unit’s decision suggested an unwillingness to criticise the doctor and the interviewer. He considered this had breached the impartiality and accuracy guidelines.

The Committee’s decision

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

The Committee noted the interview conducted with the doctor.

The Committee understood that the complainant believed the interviewee showed a pro-Labour bias. The Committee noted in particular that the complainant objected to the blaming of the Prime Minister David Cameron for failing to intervene in the conflict in Syria.

The Committee noted that the complainant felt this viewpoint was left unchallenged in the interview.
The Committee noted the initial response from Audience Services outlining that the doctor was targeting the lack of humanitarian aid rather than military intervention.

The Committee noted that the complainant was not satisfied with this response and felt that the doctor had been allowed to make a political tirade which went unchecked.

The Committee noted the context of the comment which was the focus of the complainant’s concern.

The Committee noted that David Cameron was mentioned once by the doctor:

“...just before going I remember David Cameron saying that we weren't going to use military air strikes, we were going to kill them with kindness with humanitarian aid. Well he hasn't.”

The Committee agreed with Audience Services and the Adviser that, as a result of his work, the doctor’s particular frustration was the lack of an international response to the humanitarian situation.

The Committee did not agree that the doctor had been allowed a “political rant” and consequently saw no need for the interviewer to challenge him in the manner outlined by the complainant.

The Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of the guidelines.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
BBC Online coverage of the NHS in Wales

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.

The complaint

The complainant contacted the BBC on 16 December 2013 with reference to an online article which he said was “the latest in almost daily attacks on the Welsh NHS” by the BBC. The article, published on the BBC website on 15 December 2013, was entitled “Ex-Cardiff hospital boss Russell Hopkins says NHS a ‘mess’”.

The complainant did not focus specifically on this article in subsequent exchanges but, rather, related these to reporting in general of the Welsh NHS.

At Stage 1 of the complaint, the complainant said the following:

“…the BBC has no remit to follow an anti-NHS pro Tory line on this issue... We know it [the NHS in Wales] has failings but repetitive critical articles that are only rarely put in the context of financial cuts, health inflation and an ageing population are not acceptable...”

At Stage 2, the complainant provided weblinks to further examples of what he said was biased BBC coverage of the NHS. He said the following:

“I can't accept assertions of fairness when the evidence before my eyes in the daily criticisms of the Welsh NHS from BBC Wales tells me that the reverse is true. I repeat BBC Wales is pursuing a party political agenda with respect to their attacks on the Welsh Health Service. The criticisms are loaded, disproportionate and counter to the public perception of the effectiveness of the Health Service in Wales. Whilst the attacks are not always preceded by the Welsh Conservative Party says ... such and such, the effect is the same...”

The Complaints Lead for the BBC Wales website did not uphold the complainant’s allegation that BBC Wales was pursuing a party political agenda in coverage of the Welsh NHS.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 11 April 2014, forwarding the previous correspondence, giving a weblink to a further BBC online article that day, and saying the following about the BBC articles in general:

“...beyond what appears to be bias there is a complete lack of depth to the BBC’s reporting. It doesn't put cuts in Welsh NHS spending in context of cuts passed on from Westminster. Nor Wales’ problems of ageing population, geography and of poverty.”

The Trust Unit’s decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.
The relevant correspondence was also reviewed by the Trust Unit and, additionally, an independent editorial adviser reviewed the BBC website articles and all the associated material.

In reviewing the complaint, the Adviser took into account all the relevant Editorial Guidelines (see http://www.bbc.co.uk/guidelines/editorialguidelines) and, in particular, those concerning Impartiality.

The Adviser noted that the complainant had made the following points during the course of the correspondence:

- The BBC was following an “anti-NHS pro Tory line” in its “repetitive critical articles”.
- A Welsh Conservative Party agenda was being “pursued by an individual or group of individuals within BBC Wales”.
- The context of “financial cuts, health inflation and an ageing population” was rarely provided.

She initially considered the BBC website story that had first been referenced by the complainant; “Ex-Cardiff hospital boss Russell Hopkins says NHS a ‘mess’”. She considered the article in terms of the BBC’s Impartiality Guidelines.

The Adviser noted that, as a general manager of Wales’ largest hospital, former consultant surgeon, and former chair of the British Medical Association in Wales, Mr Hopkins’ views on changes to the NHS would have been of interest to readers. His views had come to the fore at that point because he was a signatory, along with seven other surgeons, to a letter in the Daily Telegraph newspaper.

She noted that the article had included Mr Hopkins’ description of his own experiences of spinal surgery in a hospital in Wales; he wrote that he had not been seen by a consultant for several days afterwards and had subsequently suffered irreversible health issues. Mr Hopkins described how he considered that organisational issues throughout the NHS meant consultants now gave less attention to their patients after an operation, and instead that work was carried by more junior doctors. The article stated:

He says problems are occurring throughout the NHS “fundamentally because some consultants” - not all – “are no longer looking after their patients in the way they used to do because there’s a timetable system in place - the management will pay for that, but nothing else”.

He added: “You cannot timetable a doctor to see how Mr Bloggs is doing because that’s not on the timetable. It would have to be done in their own time.

“An increasing amount have stopped going to see their patients post-operation, and are leaving it to juniors. ...I’m not embittered, because I’m not that sort of chap,” he added. “But I have been angry with the health service for some time. The politicians have messed it up.”

In the Adviser’s view, while the article included information about Mr Hopkins’ experiences in a hospital near Cardiff in 2011, the article and the letter to the Daily Telegraph were not specifically about the NHS in Wales, but about the NHS as a whole.

She noted the points Mr Hopkins made related to the “damage done in the last 20 years,” by politicians in general, by changes in working practices in the health service, over-
reliance, in his view, on targets, and the implementation of the European Working Time Directive.

The article also referred to research in England that had found higher death rates at weekends in hospitals than during the week, and steps that were planned for reforms in England to tackle this issue.

The Adviser thought it unlikely the Trustees would consider this article demonstrated a Welsh Conservative Party agenda within the BBC, as alleged by the complainant.

The second story the complainant referred to was a human interest story about a girl who was left with facial palsy after an operation in a hospital in Cardiff. It reported an uncontested case in the High Court in which the health board accepted liability, apologised, and agreed a settlement of £100,000 with the family.

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. This set out that decisions about “editorial and creative output” were the responsibility of the BBC – and the Trust would not become involved unless, for example, it related to a breach of the BBC’s editorial standards. The Adviser considered Trustees would be likely to conclude this story would be of interest to readers in Wales and there was a strong editorial justification for running it. She did not consider there was any indication that it had been included as a result of BBC staff following a Welsh Conservative Party agenda in breach of the guidelines on Impartiality. She did not consider there was any indication the story had breached the Editorial Guidelines and therefore considered it the BBC’s editorial decision to choose which stories it covered. Therefore she did not consider it appropriate for Trustees to consider this element of the complaint.

Two further stories cited by the complainant concerned Ann Clwyd, Labour MP, whose husband died in 2012 after allegedly spending 27 hours on a trolley at the University Hospital of Wales in Cardiff.

The first story was about an inquiry she led for the UK Government on how NHS hospitals in England handled complaints, and the lessons for Wales following the Francis Inquiry into events at Mid Staffordshire NHS Foundation Trust in England.

Mrs Clwyd was reporting as having said the following in the article:

“I don’t want this to be used as a political football and in the letter that I wrote to the first minister nearly four months ago I made the point that I felt this was a Labour issue and it was an opportunity for Labour to speak out, to show that we recognise the kind of things that Francis recognised ... I’m going to carry on talking about it and I hope somebody somewhere will realise that this is not an attack on any political party. This is a call for things to be put right in the Welsh NHS for the sake of the patients.”

The Adviser noted that the story also contained responses from the Welsh Government and Cardiff and Vale Health Board.

The second Ann Clwyd article concerned an alleged breach of confidentiality in connection with the inquiry into Ms Clwyd’s husband’s death. This article, too, contained a response from the Health Board. Again, the Adviser considered there was clear editorial justification for the article. She did not consider there was any indication that the two
articles, which reported the views of a Labour MP about changes she was arguing for in the NHS, showed the BBC was pursuing a Welsh Conservative Party agenda.

She noted the response of the Audience Services Lead at Stage 2, who had stated:

“You claim, in effect, that we are following the agenda set by the Welsh Conservative Party. However, the issue is more nuanced, with divisions also existing within the Labour party on the issue, notably between Ann Clwyd and Carwyn Jones, and we believe that we have represented both sides of this argument too.”

The Adviser noted the Complaints Lead had cited a number of BBC website articles reporting on both aspects of this debate within the party.

A further story cited by the complainant mainly concerned a pledge by the Welsh health minister that lessons would be learnt in Wales from the Francis report. The minister said that most of the care provided in the Welsh NHS was excellent. She was quoted as saying: “We have to do everything we can to make sure that that level of systemic failing does not happen in Wales [as happened in Mid Staffordshire] and I believe we have the building blocks in place to ensure that doesn’t happen.”

The Adviser thought this would be viewed by most readers as a largely positive story about the Welsh NHS – that it made the point that the NHS in Wales was not complacent and was prepared to learn lessons from the failure of some English hospitals, and had some arguably better systems already in place.

Another story cited by the complainant concerned what Sir Bruce Keogh, Medical Director of the NHS in England, considered “worrying” data about mortality in six Welsh hospitals and which, in his view, merited further investigation.

The article contained a response from the Welsh Government, including a comment that data were not comparable between England and Wales. The piece put this information in the context of other published performance data on the Welsh NHS, and highlighted the political tensions between the governments in London and Cardiff Bay over the performance of the NHS in Wales.

The final article cited by the complainant was a report on the speech by David Cameron, the Prime Minister, to a conference of the Welsh Conservatives, which was critical of education and the health service in Wales.

The Adviser considered this article highlighted just how much of an issue health had become in political debate and the interest this controversy was likely to be to readers, particularly as an election drew closer.

The Adviser noted that this point had been made by the BBC in its Stage 2 response to this complaint. The BBC Complaints Lead said the following:

“We have looked at the points you raised but cannot find foundation for your concern that ‘BBC Wales is pursuing a party political agenda with respect to their attacks on the Welsh Health Service.’ We have certainly covered this major area of political and public policy debate in some depth, but I think that you have conflated our coverage of others’ criticisms with the belief that we are taking sides…

“Our Parliamentary Correspondent has estimated that the issue of funding and managing the NHS in Wales has been raised around thirty times in Prime Minister’s questions and it...
is likely to become a major issue in the forthcoming general election campaign... It is inevitable given the prominence of this issue that it will continue to feature heavily in political argument and we will reflect that in our coverage while ensuring we represent a balanced picture.”

The Adviser thought it likely the Trustees would agree that the BBC’s argument in this respect was reasonable. She also noted further website articles referenced by the Complaints Lead to illustrate the balance in coverage of the Welsh NHS.

These articles included one entitled “Ed Miliband defends Welsh government’s handling of NHS”, which quoted the Labour leader saying that Carwyn Jones and his team were doing an “excellent job” making the health service “as good as possible”. The piece included the following from Mr Miliband:

“It's really important to remember that about 40 per cent of the Welsh budget goes on the NHS and we've seen big cuts handed down from Westminster ... the idea that Wales should take lessons from David Cameron, I think is frankly nonsense.”

The Adviser thought the Trustees were likely to consider that the articles cited by the complainant and the BBC demonstrated that there was strong editorial justification for covering the subject, that there was no evidence of lack of context or balance, nor was there evidence of the pursuit of a Welsh Conservative Party agenda by BBC staff, as the complainant had alleged.

In summary, for all the reasons stated above, the Adviser considered there was no reasonable prospect of the Trustees finding the BBC’s online coverage of the NHS in Wales was, in relation to this complaint, in breach of the guidelines on Impartiality.

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He reiterated his view that the BBC’s coverage of the NHS in Wales was biased.

**The Committee’s decision**

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

The Committee noted the several articles cited by the complainant.

The Committee understood that the complainant felt that, in general, BBC Wales’ online coverage of the NHS in Wales was biased.

The Committee understood the complainant to believe that BBC Wales was criticising the NHS in Wales in line with the Welsh Conservative Party’s political agenda.

The Committee noted the Stage 2 response outlining the complexities of the political issue and the varied response from within parties. The Committee also noted that the Complaints Lead had cited a number of BBC online articles to illustrate her view that all aspects of the debate had received coverage.

The Committee noted the Stage 2 response which stated that the coverage of others’ criticisms does not mean the BBC is partisan.
The Committee noted the articles cited in the Stage 2 response included the Labour Party leader’s defence of the Welsh government’s handling of the NHS.

The Committee noted that some of the articles cited by the complainant related to the NHS as a whole, not just the NHS in Wales.

The Committee noted that one of the articles cited by the complainant contained a quote from Labour Party Member of Parliament, Anne Clwyd:

“I hope somebody somewhere will realise that this is not an attack on any political party. This is a call for things to be put right in the Welsh NHS for the sake of the patients.”

The Committee felt there was interest in these stories in Wales. It could not detect the promotion of any particular political agenda or find evidence of a lack of impartiality. The Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of the guidelines on Impartiality.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
Application of expedited procedure at Stage 1

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.

The complaint & appeal to the Trust

The complainant wrote to the BBC Trust following the decision of the BBC News website to apply the BBC's Expedited Complaints Procedure to certain future Stage 1 complaints by him. The complainant stated:

1. The BBC had failed to give a proper reason under the Complaints Framework for applying the expedited complaints procedure to certain complaints by him at Stage 1.
   a) As the expedited procedure could only be applied for one of five reasons given in the Complaints Framework, the BBC had no cause to apply the expedited complaints procedure.
   b) The BBC had failed to show which of those five reasons had led to the application of the expedited complaints procedure.
   c) The BBC should inform the complainant which reason applied to him, and allow him to make further submissions accordingly.

2. All his complaints were accompanied by “warnings” asking the BBC to let him know if he was doing anything that would lead to the BBC stopping his right to complain. As the BBC had failed to do so, it could hardly now say that he had been taking such actions.

3. The BBC had said:
   “The general theme of most of these [complaints] is that the BBC should be reflecting your own interpretation of particular events.”

That was incorrect. The general theme of the complainant’s complaints was that the BBC was illegally reflecting its own interpretation of events and was not following editorial guidelines. The complainant did not make a complaint unless he thought he could prove that the BBC had broken its guidelines.

4. The BBC was not assessing the complainant’s complaints in an impartial, fair, unbiased way. The BBC appeared to be acting unlawfully, by intentionally not assessing his complaints properly. Whilst the complainant was able to prove nearly all the complaints he brought to the BBC, the BBC appeared to be unable to support its findings with any real proof. The BBC had either lied or deceived when judging some of his complaints, or had incompetently assessed his complaints and come to a conclusion which was not backed by the facts, or there may be some other explanation.

5. The BBC had said:
   “In our view, this correspondence now represents a disproportionate use of BBC staff time and consequently of our increasingly limited licence fee resources.”

The reality was that, if the BBC followed its own guidelines, it would not be necessary for him to complain to the BBC. The BBC consistently broke its own guidelines and did
not do the job it was paid to do, and it was therefore necessary to complain. If the BBC examined his complaints properly, they could be resolved quickly and inexpensively at Stage 1. However, the BBC refused to admit its mistakes, and consequently it presumably cost a lot to examine his complaints as the BBC attempted to defend the indefensible. The apparent failure of the complaints section to examine the complainant’s complaints fairly, and the failure of the BBC to admit its own mistakes, were what was costing the BBC money.

6. The BBC was banning his complaints because he had consistently been able to show and prove that the BBC was breaking its own editorial guidelines. The decision to apply the expedited complaints procedure was unlawful.

7. The BBC made the complainant pay the licence fee, yet was not providing him with the full range of services for which he had paid, which included the right to complain.

8. It seemed to be fraudulent if the BBC took money from the public for providing impartial news coverage, but intentionally did not do so. If the complainant could not complain to the BBC, his future complaints would go to the Police, alleging possible fraud by the BBC and its staff. However, before going to the Police, the complainant would still have to inform the BBC that he believed it may be committing a fraud on licence fee payers.

The complainant cited his previous complaints about the following three items of BBC output, in which the BBC had stated that the nub of complaint was that it should be reflecting the complainant’s own interpretation of particular events:

- **Recent immigrants to UK ‘make net contribution’** – 5 November 2013 – BBC News online
- **London ‘needs more than 800,000 new homes’**– 15 September 2013 – BBC News online
- **The release of Ministry of Justice (‘MOJ’) “race figures”** – November 2013

The complainant cited four further examples of BBC output, in respect of which it appeared to him that the BBC had failed to examine his complaints in a fair and impartial manner:

- **Why have the white British left London?** – 20 February 2013 – BBC News online
- **The bad and good of Wonga** – 27 June 2013 – BBC News online
- **The BBC’s coverage of political party leaders’ conference speeches** – 2013
- **Map headed More News from Around the World** – BBC World News online

**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.

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45 [http://www.bbc.co.uk/news/uk-24813467](http://www.bbc.co.uk/news/uk-24813467)
46 [http://www.bbc.co.uk/news/uk-england-london-24099715](http://www.bbc.co.uk/news/uk-england-london-24099715)
Noting that the complainant was familiar with the content of the BBC's Complaints Framework, and was alive to the possibility that the Expedited Complaints Procedure might be invoked against him, the Adviser concluded that BBC News website's email had provided the complainant with sufficient information to allow him to identify the grounds on which it had decided to use the expedited complaints procedure (namely, grounds (a) and (e) of paragraph 2 of Annex B to the Complaints Framework).

In the Adviser's view, each complainant was responsible for ensuring that his/her own conduct did not lead to the expedited procedure being invoked, there being no provision in the BBC's Complaints Framework or complaints procedures that permitted or entitled complainants to unilaterally transfer responsibility for their own conduct onto the BBC, as the complainant had purported to do by issuing “warnings” with his complaints.

In the Adviser's view, the BBC's adjudications in the complainant's complaints were detailed and reasoned, and she could not agree that they were biased, unfair or unlawful, or that they were unsupported by “real proof”, as alleged.

With regard to the allegation that it was the BBC, not the complainant, that was responsible for the disproportionate use of licence fee resources, the Adviser took the view that, given the complainant's continuing refusal to accept the BBC's adjudications in his complaints, there was no merit in this argument.

With regard to the allegation that the BBC was banning the complainant's complaints because he had consistently proved that the BBC was breaking its own Editorial Guidelines, it appeared to the Adviser from the complainant's complaint history that this was not the case.

Noting that the opportunity to complain about the BBC's output was not restricted to those who paid the licence fee, the Adviser could not agree that the fact that the complainant was a licence fee payer was a relevant consideration.

With regard to the allegation that the BBC may be committing a fraud on licence fee payers, the Adviser recommended that, if the complainant had any evidence of fraud on the BBC's part, he should submit it to the Police.

**Request for Review by Trustees**

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

- For the following reasons, the Adviser had not assessed his complaint fairly, impartially or correctly.
  - To justify the application of the Expedited Complaints Procedure, the BBC had given examples of some of the complainant's recent complaints, in each of which the complainant proved conclusively that the BBC's Editorial Guidelines had been breached. The Adviser had totally ignored this aspect of the complainant's appeal, and should now consider it.
  - The BBC would need to explain to the Police why, in the circumstances, it had applied the Expedited Complaints Procedure.

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The Adviser stated that the complainant had a history of making repetitious/misconceived claims, and of making complaints that failed to raise an issue of breach of relevant guidelines or policies, but had provided no evidence to support this. If the BBC was unable to evidence its claims, there was no case to answer.

The Adviser stated that the complainant had a history of persistently making complaints at Stage 2 after rejection at Stage 1, yet the complainant was entitled to do so under the BBC’s complaints process. The Adviser had failed to give any examples of such cases, or to show why the complainant was wrong to escalate his complaints to the next stage of the complaints process.

If the Adviser was not prepared to examine the complainant’s complaint fairly and impartially, the complainant wished to make a formal complaint against the Adviser.

If the Trust did not examine his complaint, the complainant would complain to the Police about the BBC Trust and its staff.

- The BBC had consistently broken its Editorial Guidelines, and Audience Services had consistently refused to examine his complaints fairly or impartially.
- The BBC was paid billions of pounds by the public to provide, amongst other things, an impartial and accurate news service.
  - BBC News was neither always impartial nor accurate.
  - BBC staff who provided news that was not accurate or impartial were committing fraud on the public.
  - BBC staff who intentionally provided news that was not accurate or impartial to further their own political goals or others’ political agenda were guilty of misconduct in public office.
  - The complaintant would report the BBC and certain of its staff to the Police for these offences.
  - The BBC had shown itself to be an organisation unfit to continue in its present form, and because the BBC output was not always accurate or impartial this would be very easy to prove.

- Many BBC staff had broken the law and needed to be in jail, and the complainant intended to do his utmost to procure this.
- The Director-General, the acting Chair of the BBC and the Executive should be informed that the complainant believed that his complaints showed that the BBC and some of its staff were guilty of either fraud and/or misconduct in public office and that a “torrent of complaints” was about to be put to the Police. If those parties chose to do nothing, then at best they would have been negligent and at worst may be guilty of breaking the law.
- BBC staff, including Trust members, who broke the law needed to go to jail; BBC staff who were incompetent needed to be sacked.

The Committee’s decision

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

Having considered the content of the Adviser’s response, the Committee concluded that there was no evidence of any bias or unfairness in her decision. The Committee therefore rejected the complainant’s “formal complaint” against the Adviser.
The Committee was also satisfied that the decision taken by the BBC News website to apply the Expedited Complaints Procedure to the complainant had been based on the grounds that his complaints were repetitious, and that they were often appealed unsuccessfully to the next stage, which are two of the permitted grounds under paragraph 2 of Annex B to the Complaints Framework. The Committee observed that the BBC News website could specifically have told the complainant that these were the grounds from paragraph 2 of Annex B upon which it relied; however, the Committee did not consider this was necessary for a valid decision about expedition to have been made.

The Committee therefore decided that this appeal did not qualify to proceed for consideration.
Sportscene: Scottish Cup Final, BBC One Scotland, 21 May 2011

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 and complaint

Former footballer Pat Nevin (‘the contributor’) was one of the studio guests in Sportscene’s live coverage of the 2011 Scottish Cup Final, during which he and the presenter commented on “sectarian” singing by some Celtic supporters. The song in question was The Boys of the Old Brigade.

Following the Sportscene broadcast, a large number of complainants contacted the BBC at Stage 1 of the complaints process (‘the 2011 complaint’). Of these, 28 (including the complainant) appealed to the BBC Trust at Stage 3.

The complaints were consolidated, and a number of points were put before Trustees on appeal. On 1 December 2011 the Committee decided not to uphold the complaints either as a breach of the Editorial Guidelines on Accuracy or on Impartiality. Among the points that Trustees considered when making their decision, the following were particularly relevant to the renewed complaint:

- that rather than seeking to precisely define the term “sectarian”, a key consideration in deciding whether there had been due accuracy was the likely audience expectation and what the audience would have understood by the reference on Sportscene to “sectarian” singing;
- that the word “sectarian” was commonly used in Scotland to refer to cultural, political, religious and historical passions which inform rivalry between football teams in Scotland;
- that it was likely that the audience would consider that the singing of The Boys of the Old Brigade at the match fell within the range of behaviours and actions which are associated with being “sectarian”;
- that the audience would have expected analysis of the game and surrounding issues during the half-time segment;
- that in making comments condemning sectarian singing the presenter and the studio guest were not making comments that were controversial;
- that the decision to devote around a minute of the half-time discussion to the issue of sectarian singing was justified and was proportionate;
- that the exchange between the presenter and studio guest had clearly distinguished opinion from fact;
- that nothing was said in the exchange between the presenter and studio guest which demonstrated partiality against Celtic.

The bulletin with the full finding can be found through this link: http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/dec.pdf

Appeal to the BBC Trust

The complainant contacted the Trust about the Committee’s decision of 1 December 2011. According to the complainant, in an interview with Celtic Quick News (‘CQN’) Magazine, the contributor expressed the view that he and the presenter were “stitched
up” by inaccurate and potentially biased information received from a member of the
programme team. The complainant asked:

- whether the Trust was aware of this when it considered the 2011 complaint;
- if so, why the Trust did not include this information in its feedback to
  complainants; and
- if not, whether there was a cover-up.

In subsequent correspondence, the Trust Unit asked the complainant to identify the
relevant interview quotes and the elements of the Committee’s decision that he believed
they brought into question.

The complainant responded on 4 April 2014, stating that he wished all of pages 04, 05
(where the magazine’s Editor set out “the context and the charges”) and 18–31 (the
interview) to be read as evidence. The complainant cited a number of specific examples
from those pages in support of his appeal. The relevant article can be found through this
link: http://en.calameo.com/read/0003901710a55b5798f06

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. For
the following reasons, the Adviser did not consider that the appeal had a reasonable
prospect of success:

- Some points were properly regarded as first-party complaints, in respect of which the
  complainant was not entitled to represent the person affected.
- Some points did not raise any specific breach of the Editorial Guidelines, or were no
  more than commentary.
- Some points had already been adjudicated and/or considered by the Committee in the
  2011 complaint.
- Some points were new points of complaint, but they did not undermine the reasoning
  of the Committee’s decision.

With regard to the new points of complaint, the Adviser took the view that the question
for consideration was whether, if any of those allegations had been made at the time of
the 2011 complaint, the Committee might have reached a different conclusion about the
accuracy and/or impartiality of the programme.

The Adviser believed that the Committee’s previous finding on Accuracy –that the use of
the term “sectarian” was not misleading and was duly accurate – was based on a
considered, multi-factored, contextual analysis. The Adviser therefore considered that
Trustees would be likely to conclude it was highly unlikely that any of the new allegations
would have had any material influence on the Committee’s decision in this regard.

The Adviser noted that the ESC’s finding on Impartiality concerned the content that was
broadcast, not the means by which that content came to be broadcast. In her view, this
was because the BBC’s editorial standards on Impartiality, set out in section 4 of the
Editorial Guidelines, concerned the content of the BBC’s output. Consequently – provided
that they did not result in bias in the BBC’s output – the personal sympathies, views,
allegiances, affiliations or prejudices of BBC staff were an irrelevant consideration. Even
allowing for the especially heightened cultural, political, religious and historical passions
which inform rivalry between football teams in Scotland, the Adviser considered Trustees
would be likely to conclude that it was highly unlikely that they would revise their view
that the programme was duly impartial, on the basis that a programme team member was a supporter of one of Celtic’s rivals.

The Adviser noted that the allegation that the BBC had been lobbied by a PR firm potentially raised issues concerning the Editorial Guidelines on Editorial Integrity and Independence from External Interests, which the Committee did not consider in the 2011 complaint. Noting the content of Editorial Guidelines 14.1 and 14.2.1, the Adviser took the view that, even if a PR firm had contacted the BBC five days before the Scottish Cup Final in order to make representations on behalf of Rangers FC, it did not necessarily follow that the BBC had been influenced by an outside interest, or that its editorial integrity had been undermined. Given that the ESC had agreed with the programme makers’ view that the singing in question was “sectarian”, the Adviser considered Trustees would be likely to conclude that this point of appeal did not have a realistic prospect of success.

With regard to the allegation that matches featuring offensive chanting were still regularly screened, the Adviser considered that, if the complainant believed there had been any specific breaches of the BBC’s editorial standards, he should make a complaint to BBC Audience Services within 30 working days of broadcast.

**Request for review by Trustees**

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

- The BBC’s idea of a shared understanding of the term “sectarian” betrayed a naivety about the debate over the continued justification of the simplistic definition on which it relied.
- If *The Boys of the Old Brigade* - a song about the War of [Irish] Independence - clearly fell within the BBC’s definition of sectarian chanting, and the Advocate-General and the Police FoCUS Unit were trying to make it so with mixed results in Scottish courts, then the BBC betrayed an unbecoming naivety about Irish politics.
- The BBC was guilty of hypocrisy, since the song was freely available in high street shops and from outlets such as Amazon. It had been played in the presence of Royalty and was an entirely uncontroversial song in Ireland.
- The Adviser had asserted that “the exchange between presenter and contributor had clearly distinguished opinion from fact” and “nothing was said in that exchange which demonstrated partiality against Celtic”; yet it was the essence of the complaint that the presenter had demonstrated partiality against Celtic, but the contributor was now admitting that he had not. This was “glided over” in the Adviser’s response.
- The Adviser provided no explanation as to why this remained the only occasion on which presenters had mentioned this controversial topic during a live match.
- The Adviser provided no evidence of the BBC’s impartiality in “calling out” other teams and supporters guilty of this practice. The BBC had sullied the good name of Celtic supporters in a manner not attempted with any other group of fans.
- It was mere sleight of hand to suggest that, since in the BBC’s view there was no bias, there was no possibility that bias from an individual employee could have affected the BBC’s output.
- The complainant was reminded of Lord Denning’s reference to an “appalling vista” in his judgment in the ‘Birmingham Six’ appeal. The BBC needed to view the seepage

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51 “If [the six men] won, it would mean … that the confessions were involuntary and improperly admitted in evidence; and that the convictions were erroneous. … That was such an appalling vista that every sensible person would say, ‘It cannot be right that these
of individual bias into its output as just such an “appalling vista”. The complainant believed it was time the BBC faced up to its dependence on flawed human beings.

- With regard to the Adviser’s comment that “even if a PR firm had contacted the BBC five days before the Scottish Cup Final in order to make representations on behalf of Rangers FC, it did not necessarily follow that the BBC had been influenced by an outside interest, or that its editorial integrity had been undermined”, the complainant observed that it “[did] not necessarily not follow either”.

- The promptness of the Adviser’s response indicated that no investigation had taken place into whether a PR firm had contacted the BBC and, if so, who received the lobbying and whether they were in a position to influence or attempt to influence the output in question.

- The complainant felt his complaint had been carefully sidelined and neutered. The Adviser’s approach had been to show rigour in representing the nature of his complaint as evidence that it was being taken seriously. Meanwhile, the Adviser confidently asserted that all aspects were unproven because “we know sectarian when we see it”, and it was merely a bizarre coincidence that this was the one and only time when the BBC did see it.

- The complainant had no confidence that the complaints process was ever meant to seriously investigate the BBC.

The complainant concluded by stating that he believed the record would eventually be put straight.

**The Committee’s decision**

The Committee was provided with the complainant’s appeal to the Trust, the response from the Adviser and the complainant’s emails asking the Committee to review her decision. The Committee was also provided with a copy of its decision of 1 December 2011 in the 2011 complaint and the extract from *CQN Magazine*.

The Committee noted that, in its adjudication in the 2011 complaint, it did not seek to precisely define the term “sectarian”, but to determine whether its use in the output in question was duly accurate. The Committee noted that its adjudication of 1 December 2011 with regard to the accuracy of the use of the word “sectarian” was final. The Committee also noted that, in reaching that final adjudication, it had taken account of all relevant arguments raised by complainants, including the arguments that *The Boys of the Old Brigade* was a song about the War of Irish Independence, that it could be purchased on the high street or downloaded from online retailers, and that it had been played in front of the Queen. The Committee therefore concluded that the complainant had not raised any fresh argument or adduced any fresh evidence that would undermine the Committee’s decision with regard to the accuracy of the use of the word “sectarian”.

With regard to the Committee’s previous finding that the exchange between presenter and contributor had clearly distinguished opinion from fact, the Committee noted that the contributor had relied on information, received from a member of the programme team, that “sectarian” singing had taken place. Given that, in the 2011 complaint, the Committee had found that information to be duly accurate, the Committee concluded that there was no fresh evidence that would undermine its previous decision in this regard.

The Committee agreed with the Adviser’s view that the personal sympathies, views, allegiances, affiliations or prejudices of BBC staff were irrelevant, provided that they did
not result in bias in the BBC's output. Given that, in its decision of 1 December 2011, the
Committee had found that the output in question was not biased against Celtic, the
footballing allegiance of the BBC employee who conveyed the message to the studio was
not a material consideration. The Committee therefore rejected the complainant’s
argument that bias from an individual employee could have affected the BBC’s output.

The Committee took the view that (in fairness to the interests of all licence fee payers in
genral) it was not appropriate, proportionate or cost-effective for the Trust to investigate
hypothetical or speculative allegations. With regard to the alleged lobbying by a PR firm
on behalf of Rangers FC, the Committee noted that the BBC continually received
representations from various campaigners, special-interest groups and lobbyists, all
seeking to influence the BBC’s output. Given the Committee’s previous findings that the
content of the output in question was duly accurate and duly impartial, the Committee
concluded that an allegation that a PR firm had made representations to the BBC, and
that those representations might hypothetically have influenced the output in question,
did not justify the use of licence fee resources to fund an investigation.

The Committee therefore decided that this appeal did not qualify to proceed for
consideration.
Tensions high between Israel and Gaza a year after truce, BBC News Online, 22 November 2013

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

Background and appeal to the BBC Trust

The complaints related to an article written from Gaza City on the first anniversary of the ceasefire which ended eight days of violence between Israel and Islamist militants in the Gaza Strip\(^2\). The article can be found at the following address: http://www.bbc.co.uk/news/world-middle-east-25050450

A number of complainants contacted the BBC in relation to the article. At Stage 1, in response to an issue raised by some complainants, the Middle East desk added a sentence of clarification to the article to explicitly state there had been Israeli breaches consisting of “air strikes and other military action” to guard against any suggestion that breaches had been from the Palestinian side only. None of the other allegations were upheld at Stage 1 or Stage 2. Five complainants wrote to the BBC Trust between March and April 2014 requesting that their complaints be heard on appeal. Their appeals were consolidated in accordance with paragraph 5.6 of the Editorial Complaints and Appeals Procedure http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf

The Senior Editorial Complaints Adviser read each appeal and considered their respective merits individually, in deciding whether each qualified for consideration by the Trust. Her consolidated decision below dealt with all the issues that had been raised and was intended to ensure that the key reasons for the decisions were communicated to complainants in an efficient manner.

Below is a summary of the allegations; greater detail is in the decision section below.

1. the article left the misleading impression that it was the Palestinians who had repeatedly violated the truce and were the major aggressor; the report had failed to include the more serious Israeli breaches which had led to several Palestinian deaths and focussed only on Israeli concerns for its civilians

2. the article left the misleading impression that there was parity of military power between Israel and the Palestinians

3. the article portrayed Palestinian military preparedness in offensive terms and that of Israel in terms of its defensive capabilities

4. the article failed to mention the ongoing blockade on Gaza by Israel as the reason for the ceasefire being shaky

\(^2\) http://www.bbc.co.uk/news/world-middle-east-25050450
5. the article failed to mention Israel is the occupying power in Gaza

6. the article gave only Israel’s reason for launching the attack on Gaza in 2012

The Trust Unit’s decision

The relevant correspondence was reviewed by the Trust Unit and the Senior Editorial Complaints Adviser and an independent editorial adviser read the article in question.

The Senior Editorial Complaints Adviser (the Adviser) decided that none of the allegations should proceed to appeal.

The Adviser noted the relevant guidelines were those which required that the BBC observed “due accuracy” and “due impartiality”, as defined in the Editorial Guidelines:

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 noted how the Impartiality guideline clarifies “due weight”:

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’…

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 majority of the allegations raised by complainants on this occasion concerned the omission of information which complainants argued should have been included and that not to have done so had resulted in bias. The Adviser noted, as did the ECU at Stage 2, that the omission of specific information could only be considered against the editorial guidelines if this had misled the audience on a material point, otherwise the decision of what to include was a legitimate exercise of editorial judgement.

In this context the Adviser considered how the article “signposted” its primary focus to the reader in the headline and opening:

Tensions high between Israel and Gaza a year after truce

BBC News, Gaza city

One year on from a ceasefire that ended eight days of violence between Israel and Islamist militants in the Gaza Strip, the truce often looks shaky.

There are frequent breaches of the agreement and both sides continue to prepare for the possibility of further fighting.
Over the past week, Hamas has used the anniversary of the conflict to show off its arsenal of weapons and to vow to continue its armed struggle against Israel.

The Adviser concluded that from the outset the article clearly defined its scope to the reader and would have managed audience expectation about the extent to which other aspects of the conflict might be reflected.

The Adviser noted that the conflict as a whole, across the range of issues, had been covered consistently across BBC output over a number of years. She considered therefore, given the longstanding nature of the conflict, there would be likely to be pre-existing knowledge by the audience of some key facts, i.e. that Gaza is considered occupied territory; that Israel imposed a blockade a number of years ago when Hamas seized control and that this has led to severe hardship for the people of Gaza; that Hamas and other militant groups in Gaza fire rockets into Israel and that Israel had retaliated with considerable force on an ad hoc basis and occasionally with sustained campaigns.

The Adviser considered that Trustees would be likely to conclude that the extent to which any of this additional information might be reflected in BBC output on any one occasion would depend on the context and that it was neither realistic nor necessary in a news article such as this to include all possible contextual points every time the conflict was discussed. The Adviser considered this was part of the editorial thinking that lay behind the terms “due weight”, “due accuracy” and “due impartiality” which were set out in the Editorial Guidelines. Nevertheless she noted that some relevant broader context was reflected in the article:

- the duration of the conflict the previous year and the disproportionate level of casualties sustained by the Palestinians
- that it had begun with an Israeli assassination of a militant leader
- the broader terms of the ceasefire
- that Israel had imposed border restrictions and a naval blockade on Gaza

The Adviser noted that the overall thrust of the allegations from the five parties to this consolidated complaint was that the article’s focus on the nature and level of the Palestinian threat to Israel from a rearmed Gaza had resulted in the article having a pro-Israel bias, chiefly because it failed to reflect Israeli aggression and Israeli military superiority and minimised Palestinian casualties.

The Adviser agreed with complainants that the primary focus of the article was an assessment of the military threat from Hamas. She considered whether Trustees would be likely to conclude there was editorial justification for this. The Adviser noted that although the “peg” was the anniversary of the truce, this was not a general feature, rather it was an extended news story, the starting point of which was the decision by Hamas to announce with a public parade, thousands of men and a display of weaponry, that it had rearmed and was prepared for another confrontation with Israel.
The Adviser noted the publication a few days earlier of another article on the BBC website from a different angle, which was also pegged to the anniversary but spoke to civilians in both Gaza and Israel about their experiences and fears.

Taking into account the stated focus of the article as signposted to the audience, the Adviser did not consider that any details of the scope of the blockade, the antecedents to the outbreak of violence a year earlier, civilian anxieties, or that Israel was considered the occupying power in Gaza were issues that were required to be included. The Adviser noted and agreed with the Stage 2 response on this point, and that the ECU’s Complaints Director had written:

I think it might reasonably be argued that if Hamas chooses to demonstrate its military prowess, preparation and hardware in such a fashion then reporting the fact in this context and giving it due weight does not offer evidence of bias.

The Adviser considered the remaining allegations regarding how the article reflected Israeli breaches of the ceasefire and the respective parties’ military strength.

In relation to Israeli breaches, the Adviser considered the issue was not whether a specific statistic was included or not but whether overall the article gave due weight to ceasefire breaches on either side, so that the audience was able to form a fair impression of the state of the ceasefire. The Adviser noted complainants’ major focus in this regard was the omission from the article of the information that 10 Palestinians had been killed by Israel during the truce. She noted how complainants framed their allegations:

1 The inclusion of this one material fact alone would provide hard evidence of serious Israeli breaches of the ceasefire, to balance a report which repeatedly highlights ‘potential’ threats to Israeli civilians.

It simply isn't credible to believe that the killing of 10 Israelis and no Palestinians during the same timeframe would have been deemed immaterial to a story proposing to look at the fragility of the truce.

2 The killing of ten people is a crucial piece of information in the context of the article and should have been included.

If I was reading something about, for example, Northern Island in the 70s and a report spoke about exchange of fire - I may have some concerns, but may also think "so what's new?" But if I read that 10 people on one side had been killed, I would have a totally different view of the situation, would understand increased anger of the people who had suffered these losses and I would want to know more. The killing of people takes any situation to a different level of gravity.

It is obvious that this knowledge would have a significant impact on the reader. It can be given in a sentence or a phrase...

This omission skews the article, which is "materially" misleading. What is more it diminishes the importance of Palestinian life.

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53 http://www.bbc.co.uk/news/world-middle-east-24927102
The article ... makes no comment at all on the proportionately greater number of breaches made by Israel: within three months Israel had committed 800 breaches compared to Hamas' 3, and by the end of the 12 month period 11 Palestinians had been killed by Israeli forces compared with one Israeli killed by Palestinian action.

In an article which the BBC has claimed to be about the fragility of the truce it surely is materially misleading not to highlight such an enormous imbalance?

Furthermore, it seems extraordinary that fatalities due to breaches of the fragile truce are not considered newsworthy. I am absolutely certain (bearing in mind past BBC reports) that, had those fatalities been Israeli, then they would most certainly have been reported.

Nothing seems to have been learned from the Thomas Report of 2006\textsuperscript{54} which recognised in paras 4.7 that BBC broadcast news reported Israeli and Palestinian fatalities differently in that Israeli fatalities generally receive greater coverage than Palestinian fatalities.

At no point in her article which claimed to examine why tensions remained high between Israel and Gaza a year after the truce, had [the author] enlightened the reader that Israel had killed 10 Palestinians during this period. I wrote that this may be one reason for tension on the Palestinian side, and a reason why the Palestinians felt they had to remain armed – in order to defend themselves from constant Israeli attacks...

The Israeli killings throw a different light on [the author]'s portrayal of the Palestinians as the aggressors and the Israelis as defenders...

If the reader is kept in the dark that there have been Palestinian fatalities at the hands of Israel during this period, but is only informed that Israel has been attacked many times by Gaza during the same period, then the reader has been materially misled ... the author should be painting the whole picture for the reader, not just part of it.

[The author]'s article is an exercise in obfuscation and propaganda. The article states that the ceasefire is shaky but does not explain why it is so – e.g. Israel’s failure to lift the illegal siege (which is destroying Gaza), perpetual ceasefire violations and frequent murder of Gazans. These facts are omitted from the article while the reader is given the impression that the shakiness of the truce is entirely the fault of Hamas by presenting Hamas, and Gaza as a whole, as an existential terrorist threat to Israel. By presenting Gaza as a credible threat to Israel’s peace and security the BBC is aiding Israel in legitimising the illegal use of force against an illegally besieged civilian population.

The Adviser noted how the article reflected the state of the truce in its second paragraph:

\textsuperscript{54} Independent Panel Report – Impartiality of BBC Coverage of the Israeli-Palestinian Conflict, commissioned by the BBC Governors and published in May 2006
There are frequent breaches of the agreement and both sides continue to prepare for the possibility of further fighting.

She noted where the commentary stated that “Hamas has largely kept to its pledge to prevent rocket fire”.

She noted this sentence later in the article, which had been added following a number of complaints at Stage 1 that the article did not explicitly say that Israel had breached the ceasefire:

Palestinians point to air strikes and other military action by Israel since the truce was signed as evidence that it has breached it multiple times.

In the Adviser’s view the article neither understated the severity of Israeli breaches, (in noting these included air strikes and other military action), nor had it overstated Palestinian breaches (“Hamas has largely kept to its pledge to prevent rocket fire”). She concluded the article gave due weight to the scale of the breaches on each side and the number of Palestinians killed in the 12 months would not in itself be a material fact which required to be included.

The Adviser noted that a number of the complainants said the failure to report the Palestinian deaths during the truce period suggest that such deaths are seen as of “little account”. She noted this sentence in the article referring to the deaths during the offensive itself:

More than 170 Palestinians and six Israelis were killed in last November’s clashes.

Given the inclusion of this statistic, the Adviser could not agree that the audience would draw any conclusion about the perceived value of Palestinian lives in the choice not to note casualty figures in the subsequent 12 months.

The Adviser considered a separate allegation, also in relation to the omission to specifically mention Palestinian casualties since the truce, that the article had nevertheless chosen to reflect the concerns of Israeli civilians even though they were clearly in less danger. The Adviser noted how one complainant framed the allegation:

“It beggars belief that the editorial team would think their audience would not be better informed by recording numerous Palestinian deaths, caused by Israeli ceasefire breaches in an article reporting on why tensions are high a year after the truce. Yet, in the same report it is felt necessary to inform the reader that Israeli ‘civilians in their range are still forced to run for cover whenever the ‘red alert’ siren sounds’ during potential Palestinian rocket attacks, presumably because this is considered a materially important point in the context of the ‘shaky’ truce. Whereas the murder of Palestinians isn’t?”

The Adviser noted this from another complainant:

“It is notable that readers’ attention is drawn to Israeli civilians’ anxieties, but not to those of Palestinian civilians who are clearly at far greater risk of attack, injury or death.”
She noted the relevant paragraphs:

The Israel Defence Forces (IDF) says that since Operation Pillar of Defence about 50 rockets have been launched from Gaza, compared with 1,500 the previous year.

Those fired have caused little damage, landing in open areas or being intercepted by Israel's Iron Dome missile defence system. However, civilians in their range are still forced to run for cover whenever the "red alert" siren sounds.

"This year has seen a great improvement as far as the security and safety of the Israeli communities around the Gaza Strip," says IDF spokesman Lt-Col Peter Lerner...

"Hamas is digging tunnels, putting IEDs [improvised explosive devices] near the fence, trying to get over to harm civilians here in Israel," comments Lt Avidav Goldstein. "You can see they are preparing for the next round."

The Adviser noted it was Israel's choice how to respond to statements by Hamas leaders that they were now in the position to engage in a new battle. In the event the Israeli interviewees quoted in the article had chosen to comment from the perspective of the perceived threat to their civilians. Furthermore, given that Israel had stated its justification for launching the previous offensive was to prevent rocket fire, then it was editorially justified, in the Adviser's view, to discuss what impact that fire had in Israel. In the Adviser's view this aspect of the article was unrelated to specific Palestinian deaths during the truce period and it was neither meaningful nor appropriate to draw a comparison between the treatment of the two issues.

The Adviser then considered whether the article gave a misleading impression about the relative military strength of each side. The allegation was that there was too great a concentration in the report on the military hardware on the Palestinian side and on its offensive capabilities, whereas Israel's military preparedness was framed from the perspective of defending itself. The Adviser noted the following allegation from one complainant, which was representative of the points made by other complainants on the same issue:

"The article's overall bias toward Israel can also be seen clearly from [the author]'s detailed inventory of Hamas' ballistic capabilities - which are only mentioned in terms of their destructive potential - while simultaneously neglecting to mention the far more sophisticated weapons technologies used routinely by Israel the military superpower. Furthermore, when Israel's capabilities are mentioned they appear typically to be benign and nonlethal - e.g. Iron Dome, remote-controlled patrol vehicles, unmanned drones. Firstly, 'Iron Dome' is a defensive rather than offensive ballistic technology which Israel uses to defend itself from rocket attacks. 'Remote-controlled patrol vehicles' are patrol vehicles, the article makes no mention of their possessing offensive ballistic capabilities. 'Unmanned drones to carry out surveillance', well, they carry out surveillance, again, no mention of offensive ballistic capabilities.

"When Israel's offensive ballistic capabilities are mentioned however the BBC is careful to minimise the effect of so doing, I illustrate this below."
‘The Israeli military carried out hundreds of air strikes on the Palestinian coastal territory, while hundreds of rockets were fired into Israel by Hamas and other armed groups.’

“In this extract ‘hundreds’ is used to produce precise equivalence, to mirror the crimes of the superpower military aggressor with those of its much weaker victim, ‘hundreds’ is a matching point. Israel’s incomparably superior ballistic power/technology is concealed from the reader by the phrase ‘air strikes’, ‘hundreds of airstrikes’ which is precisely equivalent to the image of ‘hundreds of rockets [...] fired into Israel by Hamas and other armed groups’ ”.

The Adviser noted again the starting point for the article, which was the decision by Hamas to use the anniversary to put on display the strength of its military wing and to focus in some detail on the extent of its capabilities. The Adviser noted a selection of relevant quotes from the article.

“I brought my son here. I’m very proud of al-Qassam Brigades,” said Abu Ahmed from the al-Shati refugee camp at one rally in Gaza City. “Now Israel will know that we have many weapons.”

“‘We are stronger, we are ready to defend ourselves,” says one of the group’s founders, Mahmoud Zahhar. “Everybody should understand we won’t be destroyed by any power in this region.”

“When last year’s fighting stopped, all the armed factions started repairing the damage to their facilities and making up for losses,” Abu Ahmed, a spokesman for the armed wing of Islamic Jihad, the al-Quds Brigades, told the BBC.

“I am confident now that we have all the military equipment we need to engage in a new battle with Israel because we believe that while one battle finishes, the war will last.”

The Adviser acknowledged that on its own the reference in the article to “hundreds” of air strikes by Israel alongside “hundreds” of rockets fired from Gaza could give a misleading impression on the relative strength of each side. However, she noted the inclusion just a few paragraphs earlier of the casualty figures in that conflict, which highlighted the disproportionately heavy losses on the Palestinian side. As a result the Adviser took the view that the audience would understand the deadly force of “hundreds” of air strikes compared to the relatively minor impact of “hundreds” of rockets and would not perceive an equivalence. The Adviser noted where elsewhere the article noted that damage caused by the rockets fired during the truce period had been limited and the reference to Hamas’ “strong rhetoric against Israel”. All of this, in the view of the Adviser, would have given the audience a fair picture of the extent of the threat to Israel from the kind of weaponry at the disposal of Hamas and its allies.

The Adviser acknowledged that complainants would have preferred the article to have had a different focus, but she concluded that the editorial justification for the framing and content of the report was clear: Hamas had chosen to use the anniversary to go on the offensive rather than to highlight the shaky ceasefire or Israeli breaches. She considered that Trustees would be likely to conclude it was appropriate that the reflection in the article of the Israeli point of view was in relation to the gauntlet laid down by Hamas: Israel’s military preparedness was not the news, the news on this occasion was that Gaza potentially posed the same “threat” to Israel as it had done a year previously: they
appeared to have rearmed and wanted the world, but especially Israel, to know. Israel’s offensive capabilities were alluded to but there was neither the requirement nor would there have been the audience expectation for any greater reflection of her strengths; the omission of such detail would not in the Adviser’s view have led to a failure of due accuracy or due impartiality.

Accordingly the Adviser considered that Trustees would be likely to conclude that none of the allegations would have a reasonable prospect of success. Therefore she did not propose to put the complaints before Trustees on appeal.

**Request for review by Trustees**

All the complainants to the consolidated appeal requested that the Trustees review the Adviser’s decision not to proceed. They rejected the Adviser’s reasoning on the majority of points, reiterating in particular that omitting to explicitly mention Palestinian deaths since the ceasefire would have misled the audience. One complainant stated that

“...not reporting that ten people on one side have been killed ... is excluding a crucial and substantial set of facts that an audience would take into account when considering why the truce might be ‘shaky’, or, just as importantly given the framing of the article, an important on-going brutal set of reasons why an occupied people might choose to arm itself for the purpose of resistance against a major military power”.

A number of the complainants rejected the Adviser’s view that the concentration in the article on the military strength of Hamas was justified because of the decision by Hamas to mark the anniversary of the ceasefire with a public parade of military strength and weaponry. They considered that the article had given the impression it would be about the ceasefire in general. Neither did complainants accept that because Israel chose not to focus on its military strength in responding to the gauntlet laid down by Hamas, it excused the BBC from discussing Israel’s military preparedness in the article. Some complainants also rejected the Adviser’s view that a pre-existing knowledge of the key issues meant the basic facts did not need repeating on each occasion; one complainant argued that “any single report should stand on its own as a clear reflection of the situation, containing any relevant major facts that might affect the understanding of the audience”. A number of complainants argued that the ceasefire breaches on the Israeli side were exponentially greater in number than on the Palestinian side, rejecting the Adviser’s conclusion that the article had given due weight to ceasefire breaches on each side.

**The Committee’s decision**

The Committee was provided with the complainants’ appeals to the Trust, the response from the Senior Editorial Complaints Adviser and the complainants’ letters asking the Committee to review her decision. The Committee was also provided with the article in question.

The Committee did not accept the complainants’ argument that due accuracy and due impartiality on this occasion required the inclusion of information about the number of Palestinians who had died since the ceasefire had been agreed. The Committee considered that were this issue brought to it on appeal, it would be likely to agree with the Adviser’s view that it had been the reporter’s choice how to reflect the state of the ceasefire and what information to include. The Committee took the view that it would
also be likely to conclude that the article had reasonably focussed on those aspects that Hamas themselves had chosen to highlight in their parade and in the speeches and comments which accompanied the event.

The Committee also agreed with the Adviser’s conclusion that it would be likely to find the nature and subject of the content had been adequately signposted and thus would have managed audience expectations as to the extent to which wider matters might be reflected; they noted that the reporter was identified as being in Gaza City, the article included first-hand accounts from Palestinians living in Gaza and images and comments from the parade. It considered that it was clear the Hamas anniversary parade was the peg for the story and that any discussion of the wider aspects of the ceasefire and the conflict in general would reasonably take place within that context. The Committee noted and agreed with the Adviser’s view that the article was not required to discuss the range of aspects relating to the ceasefire that complainants argued should have been included, noting the guidelines explicitly allow for the focus on a specific aspect of an issue.

While the Committee accepted there had been no explicit discussion of Israel’s offensive capability to compare with the assessment of Hamas’ arsenal, were it to take the issue on appeal it decided it would be likely to conclude that there had been no requirement to do so. The Committee noted the inclusion in the article of information about Israeli air strikes; of the minimal damage caused by rockets fired by Hamas; and of the disproportionate Palestinian casualties during Israel’s previous engagement, such that were this issue to be brought to it on appeal it would be likely to conclude that there had been sufficient detail to guard against the audience forming a misleading impression of the two sides’ relative military capabilities.

While the Committee noted complainants’ assertions that there had been vastly more ceasefire breaches on the Israeli than the Palestinian side, it did not accept that the article was required to explicitly discuss either the numbers or the wider circumstances around any of the breaches. It noted the statement in the article that Hamas had largely kept to its pledge to reduce rocket fire, and also the inclusion of information that Israel had carried out air strikes during the 12 month ceasefire. It agreed that a broader discussion with the kind of detail the complainants argued should have been included was not necessary on this occasion and considered that it would be likely to conclude, were this issue brought to it on appeal, that there was sufficient information for the article to have achieved due accuracy and due impartiality.

The Committee therefore decided that this appeal did not qualify to proceed for consideration.
BBC Audience Services’ handling of complaint about Precision: The Measure of All Things

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.

The complaint

The complainant contacted the BBC on 9 July 2013 to raise his concern that Precision: The Measure of All Things, broadcast on 17 June 2013, “was marred by a basic error in physics”. He explained that the programme had been mistaken when it suggested that a metal weight, when taken to a specific distance away from the surface of the earth, would appear to lose most of its weight as a result of the reduced effects of gravity.

He queried what had been done to check the technical content of the programme. He felt that a substantial investment had been made in the visual content of the programme, but it had been let down by the factual error.

In the programme, the presenter had referred to a metal weight and had stated:

“Now, let’s take this piece of metal to the top of this block of flats and see how much it weighs up there. Now, up here, the metal weighs 368.69 grams, so I seem to have lost ten milligrams. But of course the mass hasn't changed, what's changed is the gravity.”

“I've got less gravity up here than I have got down at the bottom of the block of flats. If I took this piece of metal another 100,000 metres up into space then it would weigh hardly anything at all. Simply put, mass is measuring the amount of stuff there is inside here, and that doesn't change whether I'm at sea level or out in space.”

The complainant stated that this was wrong - and in fact if the weight were taken 100,000 metres up into space, its weight would remain substantial.

After an initial holding response, Audience Services sent a substantive response to the complaint on 5 August 2013. This referred to the presenter’s script (quoted above) and also explained that the programme was exploring the story of “Le Grand K”, the world’s “master kilogramme” which had been found to be losing weight. The letter assured the complainant that his concerns were valued by the BBC and that senior editorial figures kept abreast of the comments in the audience log.

The complainant was unhappy with this response and made a follow-up complaint on 12 August 2013 which made the following three points:

- The meaning of the following paragraph in the letter was not clear:

  “The overall point being gravity, nevertheless, I acknowledge the strength of your complaint and I can assure you that I’ve registered your comments on our audience log.”

- The following paragraph grossly misrepresented his complaint:
“I understand you believe the programme had contained a factual inaccuracy in that when discussing gravity and the weight of an object in space would weigh hardly anything at all.”

He explained that:

“An object in empty space half-way to the Andromeda Galaxy would weigh nothing; an object near the surface of the earth … would retain a considerable portion of the weight at the surface. It is not a question of what I ‘believe’ or ‘factual inaccuracy’; the claim of the object weighing ‘hardly anything at all’ at a hundred thousand metres was wrong.”

- He had not had a reply to his question “what was done to check the technical content?” He awaited a response on this.

Audience Services sent a further response on 4 September 2013. They stated:

“Firstly, please accept my apologies for our previous response, which failed to adequately address your concerns. I have now raised this directly with the programme makers, who have in turn raised it with [the consultant] of the National Physical Laboratory who acted as a consultant for the programme.

“The purpose of this demonstration was to illustrate that ‘weight’ changes according to the gravity acting upon an object, but that its mass remains constant. [The consultant] has calculated that if the object is not in orbit, and the earth is considered to be a uniform sphere, then the attraction (‘weight’) falls off in inverse proportion to the square of the distance to the centre of the earth. Therefore a 370g mass would weigh about 1.5g at 100 km from the centre of the earth or about 1.3g 100 km from the surface of the earth (for the purpose of this explanation [the consultant] has avoided the correct unit – Newtons, but I hope you will agree that the principle is sound).”

The complainant was not happy with this response. He stated that while the BBC had produced calculations for the weight of an object if it were 100,000 metres from the earth’s surface, these were incorrect and in fact the calculations would only have been true if the object was 100,000 km (not metres) from the earth’s surface.

Audience Services sent a further response on 22 October 2013, explaining that in the light of the complainant’s comments, they had asked the BBC’s consultant physicist to check the calculations again. They acknowledged that, following this further investigation, the complainant was right and the programme had indeed contained a factual error as the complainant had initially believed. They stated:

“While we always strive for accuracy and take great care in fact-checking scripts, unfortunately such mistakes can still occur. It is particularly unfortunate that we failed to spot this error after your initial letter to us, and for this I can only apologise and assure you that the programme will not be repeated in its current form. It is perhaps worth noting that although the line ‘would weigh hardly anything at all’ is clearly an over-statement, the general point – that an object’s ‘weight’ would decrease as it moves away from the Earth – remains correct. None the less, thank you again for bringing this mistake to our attention.”

The complainant wrote a letter addressed to the BBC Director-General on 1 November 2013. He said he noted the apology offered to him by Audience Services and their
acknowledgement of the error he had pointed out. However, he still did not feel his complaint had been resolved because:

- It had taken three and a half months from his first letter to receiving the response from Audience Services acknowledging the error which was not an acceptable timescale.

- Re-checking the calculation involved “squaring two numbers and dividing one answer into the other”. The lack of early action on this by Audience Services was unfortunate, as the episode was repeated on 24 August 2013, after the receipt of two letters from the complainant pointing out the error.

- The BBC seemed to be “in denial as to the seriousness of the lapse”.

- He had still not received an answer to the question he asked about whether technical content was checked.

- Referring to the letter sent by Audience Services on 4 September 2013, he asked for clarification of the role of the National Physical Laboratory in handling the calculations.

This letter was passed to Audience Services for response. They wrote to the complainant on 21 November 2013 making the following points:

- They issued a further apology for the delay in resolving the issue.
- They acknowledged that it was unfortunate that the error was not confirmed and corrected sooner, and that it had been necessary for the complainant to send a further letter. They issued a further apology for this.
- They confirmed that as soon as the error had been confirmed, action was taken to ensure that the programme would be corrected for future broadcasts.
- They confirmed that the National Physical Laboratory had acted as consultants for the series.
- The complainant was offered a referral to Stage 2 of the complaints process.

A second letter was sent by an Audience Services Adviser on the same date, 21 November 2013. They understood he had written to the Editorial Complaints Unit (ECU). They asked the complainant not to contact Audience Services further in the meantime, and to wait until he heard from the ECU.

The complainant wrote to the BBC Director-General on 25 November 2013, setting out his dissatisfaction with the handling of his complaint. He pointed out that he had not been offered a Stage 2 referral until the first letter of 21 November, therefore the letter from the Adviser on the same date, which noted that the complainant had already taken up the opportunity to take his complaint to the ECU at Stage 2 was sent on a mistaken premise.

The same Audience Services Adviser sent a further letter to the complainant on 3 December 2013 which stated:

“I would like to offer my apologies if there has been any error in my attempts to follow the chain of correspondence between you and the various departments at the BBC.”
The complainant took his complaint to the ECU at Stage 2, setting out both the substantive complaint about the factual error, and also his concerns about the handling of his complaint. The ECU explained that the complainant’s concerns about the handling of the complaint should be dealt with by Audience Services. The ECU Complaints Director stated in his letter of 11 December 2013 that he had passed the complainant’s concerns about the handling of his complaint to Audience Services for response.

The complainant wrote to the Chairman of the BBC Trust on 20 January 2014 explaining that, to date, he had not received a response from Audience Services.

The Complaints Manager, Audience Services wrote to the complainant on 5 February 2014. He apologised for the delay in responding to the complainant’s concerns about the handling of his complaint. He set out the history of the complaint as he understood it from a reading of all the correspondence. He also included the following points:

- It was his belief that the complainant’s question regarding the checking of content - which in this case was done by a consultant physicist from the National Physical Laboratory - had already been addressed in Audience Services’ letter of 4 September 2013.

- As the complainant had been writing alternatively to two different offices, that of the Director-General and also that of the Chairman of the BBC Trust, which sits externally to the BBC Executive, there had unfortunately been two separate entries created for the complainant on the Audience Services database, resulting in response delays and confusion over the stage at which the complaint was at.

- He appreciated the point the complainant was making, but it was precisely to avoid the possibility of confusion over dates - and confusion over who was to take ownership of a complaint - that the BBC asked people to adhere to the complaints framework.

- Nevertheless, he said he was sorry the complainant’s experience of dealing with the BBC was not as smooth as he might have expected.

The complainant was not happy with this response and wrote again to the BBC Director-General on 10 February 2014. He felt that the Complaints Manager had criticised him for sending letters to the Director-General and the Chairman of the BBC Trust, and that contacting the BBC in that way was to blame for the BBC’s difficulty in keeping track of the correspondence. He said he failed to follow the Complaints Manager’s reasoning. He said the BBC was a large and complex corporation and he had no knowledge how it was organised. He felt it should have been a simple matter to log his correspondence and distribute it between offices as appropriate. He said that his letters to the Chairman of the BBC Trust, which had been necessary to move the matter forward, had also been copied to the Director-General’s office.

This letter was passed to the Complaints Manager, Audience Services, for response. He wrote to the complainant on 26 February 2014, noting that the complainant still wished to question the “conduct” and “behaviour” of staff in Audiences Services.

The Complaints Manager, Audience Services said he did not understand why the complainant felt the blame lay with those staff in Audience Services who had handled the correspondence and who had passed on the correspondence from the production team in good faith.
He said he felt that he had responded as fully as he could and did not believe there was anything more he could usefully add to his previous response.

**Appeal to the BBC Trust**

The complainant appealed to the BBC Trust on 10 March 2014 as he was not satisfied with the response received from the Complaints Manager, BBC Audience Services. He made the following points:

- Re. the substantive complaint handled at Stage 2 by the ECU:
  - Programme error: he felt it was unsatisfactory that no post-production checks were done, and that the presenter, an eminent mathematician, appeared to have had no technical involvement.

- Re. the handling of the complaint:
  - There was no indication following his first letter that any action had been taken or that the log on which his comments were made had been inspected. He considered the letter appeared to be standard issue.
  - There seemed little point in providing a service to customers that did not investigate potential factual errors and acknowledge them when substantiated.
  - The technical portion of Audience Services’ letter dated 4 September 2013 was in error.
  - In the same letter, it was claimed that the matter had been raised with the production team and the consultant. However, the checking of the calculation was clearly not done, and it was not until after his letter to the BBC Trust (dated 2 October 2013) that the error was discovered.
  - He explicitly asked for the nature of the information exchange with the consultant to be investigated but this was not done.
  - There was a clear lack of due diligence in the BBC’s responses overall, despite the claim by the Complaints Manager, Audience Services, that his team had acted in good faith.
  - The queries in his last letter (dated 10 February 2014) were not answered.
  - The fact that valid comments were simply logged and ignored must be a matter of public concern.
  - He took exception at a personal level to being accused of unfairly criticising Audience Services staff.

**The Trust Unit’s decision**

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC.
She acknowledged that the complainant had gone to a good deal of time and effort to pursue his complaint and was grateful that he had persisted with his complaint so that the mistake he had seen could be corrected.

With regard to the substantive complaint about the factual error in *Precision: The Measure of All Things*, the Adviser noted that the ECU considered that the complaint had been resolved, as set out in the ECU’s stage 2 finding.

“The programme-makers have apologised for this mistake and I understand the programme was re-edited to remove this section before you wrote to the Editorial Complaints Unit. I think that is sufficient for me to regard your complaint as having been resolved. However, because there was a breach of editorial standards on this occasion, a summary of your complaint and our finding will be published in the complaints section of the BBC website, alongside other cases where a breach of standards has been identified. I hope that will go some way towards reassuring you that the error has been publicly acknowledged.”

The Adviser noted that BBC Audience Services had written to the complainant on 26 February 2014 indicating that it would not respond further to the complaint about complaints handling, as it considered it had responded as fully as it could. She therefore decided the point she should consider was whether an appeal against the decision of BBC Audience Services not to investigate the complainant’s concerns any further subsequent to their letter of 26 February 2014 had a reasonable prospect of success.

Therefore, the points made by the complainant in his appeal about the post-production and consulting procedures which led to the error, would not be addressed formally here.

However, the Adviser noted that Audience Services had addressed this point, from a complaints handling point of view, in their letter of 5 February 2014:

“It is our belief that your question regarding the checking of content - which in this case was done by a consultant physicist from the National Physical Laboratory - had already been addressed in our letter of 4 September.”

While acknowledging that the complainant did not consider that this point had been answered in the way he would have liked, the Adviser considered that it had been addressed adequately and it had been made clear exactly who had been consulted in an effort to verify the information contained in the programme.

The Adviser agreed with the complainant that it was regrettable that the error had not been picked up following his first letter of complaint. She noted that Audience Services had also accepted this and had apologised for the delay. However, she also noted that the error had since been rectified by the production team.

She agreed that the first substantive response sent to the complainant had not been adequate; however, she noted that Audience Services had acknowledged this and apologised for it. She also noted that there had been some overlaps of correspondence and confusion which led to the erroneous statement by Audience Services on 21 November 2013 that the complainant had already taken his complaint to Stage 2 when he had not yet done so. The Adviser noted that Audience Services had apologised for this also, and that the Complaints Manager, Audience Services, had addressed these points in his detailed letter of 5 February:
“As you had been writing alternatively to two different offices, that of the Director-General and also that of the Chairman of the BBC Trust, which sits externally to the BBC Executive, there had unfortunately been two separate entries created for you on our complaints database.

On 17 October [the BBC Trust] acknowledged your letter of 2 October to the Chairman and then passed it to BBC Audience Services for a response. Unaware that another member of the team was already replying to the duplicate copy that you’d sent directly to the BBC, … Audience Services responded on 21 November (CAS-2356506).

[The Audience Services Adviser] was aware that you’d already been invited to write to the ECU for a Stage 2 review so he checked with the ECU and they confirmed that you had made contact with them two days earlier in the form of a letter dated 18 November.

On 25 November you wrote to the Director General to say you had received two responses. You said you were disturbed by the failure of BBC staff to record the sequence of correspondence from you accurately. You also informed the Director General that you did not consider yourself to be bound by the BBC’s complaints framework.

While I appreciate the point you are making, it is precisely to avoid the possibility of confusion over dates – and confusion over who is to take ownership of a complaint – that we ask people to adhere to our framework.

We deal with over a million audience contacts every year and we have to ensure they can be efficiently tracked using our handling system. In addition, following the process correctly means we can match return correspondence up with the previous contact from that person without the need to cross-check thousands of letters and emails which then have to be manually transferred into the tracking system.

I recognise this may be annoying, but our policy takes into account what is operationally efficient and avoids the need to employ additional staff to process incoming correspondence.

The response we originally provided to you from the production team was sent in good faith and we did our best to keep track of what turned out to be quite a confusing chain of correspondence that you were sending (and in some cases copying) to different offices.

Nevertheless, I’m sorry your experience of dealing with the BBC was not as smooth as you might have expected.”

The Adviser understood the complainant’s view that he felt he was being criticised for writing to different departments - and that he could not be expected to know the procedures of a complex organisation like the BBC.

However, she believed that Trustees would be likely to conclude that the Complaints Manager had not been criticising the complainant, but had been trying to explain how the process worked and why it was important for complainants to follow the BBC’s complaints procedure.
She confirmed that the BBC received around a million separate contacts each year and that the complaints procedure was designed to ensure complaints were responded to efficiently and with the minimum delay, while making the best use of the licence fee.

The Adviser noted the points made by the complainant regarding the delays he had experienced in making his complaint. She noted that the Executive had accepted their error and apologised for it. She noted that where the Executive do accept a breach and apologise, the Trustees normally consider the matter resolved (unless there are features to the breach which suggest it is so serious that further action may be necessary). The Adviser did not believe that this matter raised such serious issues that further action would be required. She therefore decided the appeal did not have a reasonable prospect of success as it had been resolved.

The Adviser acknowledged the complainant considered the mistake was “not an isolated case of factual error” and that he believed there was a case for “reviewing professional standards in programmes with technical content”. However, she had not seen any indication that there were commonly mistakes in programmes that included technical information. She noted that operational decisions (such as which specialist advisers to seek information from or how programme makers should go about ascertaining technical information) rested with the BBC. She noted this was set out in the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC, which drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The operational management of the BBC” is specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station’s Service Licence.

Overall, the Adviser considered that Trustees would share the complainant’s regret that the BBC had not appreciated it was wrong when the complainant had first drawn the mistake to its attention. She was grateful that the complainant had continued to press his complaint and that the BBC had subsequently acknowledged the programme contained a mistake and had changed it. However, she noted that Audience Services had acknowledged the shortcomings in this case and had repeatedly apologised for them (in terms of the substantive mistake in the programme and also for the delays the complainant had experienced and for mistakes in responses that had arisen because letters were being sent to the complainant from different parts of the BBC). She considered Trustees would be likely to conclude that it was reasonable for the BBC not 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 she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal, making the point that he had not asked for an appeal but an investigation. The complainant explained that he wanted the production team, the ‘interface’ between the production team and Audience Services and the ‘interface’ between the production team and the external consultant investigated. The complainant commented on the letter from the Senior Editorial Complaints Adviser and the chain of complaints-handling activity following his initial contact with the BBC in July 2013. The complainant felt that the programme content matter he raised was fundamentally ignored. He also took issue with an implication that he criticised Audience Services staff as he considered his criticism was of the BBC as a whole.
The Committee's decision

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

The Committee noted the complainant’s letter of 24 June 2014 outlining his view that the analysis of his complaint by the Trust Unit was flawed. The Committee decided to proceed in considering the issues raised by the complainant, bearing this objection in mind.

The Committee noted the programme which was the focus of the issue brought by the complainant to the attention of the BBC Trust.

The Committee understood that the technical aspect of the issue had been resolved by the re-examination and subsequent correction of the facts highlighted by the complainant.

The Committee understood that the complainant wished Trustees to consider the time taken for this issue to be resolved as a whole and also the approach taken at each stage of the process.

The Committee noted the initial response from Audience Services noting the issue raised, and logging the complainant's comment. The Committee noted the complainant was not content with this response.

The Committee noted a subsequent response from Audience Services apologising for its previous response and noting that the matter had been raised with the programme's consultant from the National Physical Laboratory.

The Committee noted that the contribution from the consultant tackled the broader point the programme was trying to make about gravity, rather than the figures questioned by the complainant.

The Committee understood that the complainant did not feel his issue had been addressed.

Following a further letter from the complainant, the Committee noted that Audience Services asked the BBC’s consultant physicist to check the calculations again and the factual error was acknowledged.

The Committee understood the complainant objected to the time this discovery had taken and the fact that his earlier prompts to re-consider this information had not resulted in this outcome sooner.

The Committee noted some confusion in tracking the progress of this complaint. The Committee noted that correspondence had passed through Audience Services, the Director-General’s office and the BBC Trust. The Committee understood that the complainant was frustrated by the response he received from the BBC as a whole.

The Committee noted that the complainant’s substantive complaint had resulted in the Editorial Complaints Unit acknowledging and publishing a breach of the Editorial Guidelines on Accuracy. It further noted that Audience Services had ceased corresponding with the complainant in relation to his handling complaint on 26 February 2014.
The Committee noted that the Trust Unit’s Adviser had decided that the complainant’s appeal was against the decision by Audience Services not to correspond further with him in relation to his handling complaint. However, the Committee considered that the complainant was also appealing against the actions taken by the Editorial Complaints Unit at Stage 2 of his substantive complaint, which the complainant thought were inadequate. It noted the complainant had requested a full investigation into both his substantive complaint and his handling complaint.

The Committee decided that the question for it was whether either the complainant’s substantive appeal, or his appeal against the decision not to correspond with him further about his handling complaint, should proceed for consideration.

The Committee regretted that it had proved necessary for the complainant to send three letters before the factual error was resolved but noted that Audience Services had apologised for the delay. The Committee considered that the substantive aspect of the complainant’s complaint had been resolved by the ECU’s finding, and the handling aspect of his complaint had been resolved by the apology from Audience Services. Consequently, it did not consider that either aspect of the complainant’s complaint had a reasonable prospect of success.

The Committee therefore decided that this appeal did not qualify to proceed for consideration.
Decision of BBC Audience Services not to respond further to complaint about BBC News online’s article relating to the ‘Plebgate’ affair

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.

The complaint

The complainant originally contacted the BBC regarding a BBC News Online report published on 4 December 2013, with the headline: Plebgate PC Toby Rowland to sue ex-chief whip Andrew Mitchell.

In September 2012 The Sun newspaper reported that Conservative MP Andrew Mitchell, who was at the time the Government’s Chief Whip, had an argument with police officers who would not let him cycle through the gates of Downing Street. The newspaper alleged that Mr Mitchell swore at the officers and called them “plebs”.

Mr Mitchell denied using the word “plebs” or suggesting that officers should “know their place” and in March 2013 Mr Mitchell began libel proceedings against The Sun over its reporting of the “Plebgate” incident.

The police officer who was on duty at the Downing Street gates at the time of the incident was Toby Rowland PC and he made handwritten notes of the encounter with Mr Mitchell. These notes were examined by the police and the Crown Prosecution Service but Mr Rowland did not face a misconduct inquiry. Mr Mitchell subsequently held a press conference in which he accused Mr Rowland of lying and challenged him to tell his version of events on oath. On 4 December 2013 the Police Federation confirmed that Mr Rowland was to sue Mr Mitchell for libel.

BBC News Online published an article stating that:

Toby Rowland, the police officer at the centre of the Plebgate row, is to sue the Tory MP and former cabinet minister Andrew Mitchell for libel. PC Rowland was on duty at Downing Street when Mr Mitchell was prevented from bicycling through the main gate. Mr Mitchell has admitted swearing, but recently accused any officer who maintained he had used the word "pleb" of "not telling the truth". The officer stands by his account of the incident.

Former chief whip Mr Mitchell is suing the Sun newspaper, which first reported the incident, for libel and has challenged the PC to repeat his claims under oath in court "to allow a decision to be made between my account and his".

PC Rowland issued a letter of claim against Mr Mitchell, on Tuesday, in the wake of their differing accounts of what happened in Downing Street in September 2012.

Separately, in March Mr Mitchell launched a legal action against the Sun newspaper, which first published the Plebgate allegations.

It is understood that the officer was already considering legal action before Mr Mitchell said last week that he wanted Mr Rowland to give his account of the argument under oath.

A Police Federation spokesman said: "We can confirm that PC Toby Rowland yesterday issued a letter of claim for libel against Andrew Mitchell MP. This relates
to comments he made following the media-termed Plebgate incident in Downing Street in 2012.

"It would be inappropriate to comment further at this time while there are ongoing legal issues."

The Crown Prosecution Service said in November there was insufficient evidence to show that PC Rowland had lied.

### Appeal to the BBC Trust

The complainant contacted the BBC on 4 December 2013 to complain that the wording “it is understood” gave the impression that it was a fact that Mr Rowland had been considering legal action before Mr Mitchell's press conference. The complainant said he would like to know “who understands this”. The complainant also wished to have the opportunity to comment on the story online and he complained that the comments section was closed.

Audience Services responded on 18 December 2013, stating that the wording was deliberate: “it means the BBC understands something to be true, even if it’s not been an officially announced thing. The language deliberately does not reveal the source of the info... We tend not to open stories up to comments when there are legal proceedings or court action pending.”

The complainant noted his dissatisfaction with the responses from Audience Services on several occasions. On 3 March 2014 Audience Services stated that there was little they could add to the response they’d previously sent.

“References in news reports to things that are ‘understood’ are perfectly commonplace and they represent a very long-established and standard journalistic premise where information gleaned is felt sufficient to warrant inclusion, but where - as we’ve explained - it may not have been officially announced.

We note your demand to see our evidence upon which we based our ‘understanding’ in the Plebgate report which concerned you, but as we also made clear previously, we do not disclose information sources. This is, once again, a standard premise because generally speaking no news organisation will reveal details of sources for any story in any circumstances.

Our story was accurate in reporting the situation as we understood it to be - we did not present it as fact and, as explained in our original response to you, the language we used was very carefully chosen to clearly reflect this meaning readers of the article were made aware of the situation and were thus able to judge the matter and the context accordingly.”

Audience Services concluded that the points raised by the complainant did not suggest a possible breach of standards, and they were therefore unable to engage in further correspondence.

The complainant appealed to the BBC Trust on 2 April 2014. He stated that the explanations he had received from the BBC were repetitive and unsatisfactory. He noted that the ‘Plebgate’ incident was a controversy over who was telling the truth [and it was inappropriate to accept claims at face value]. The complainant stated that he was not asking the BBC to reveal its sources, but to confirm what evidence there was to support the claim.
**The Trust Unit decision**

The Senior Editorial Complaints Adviser [the Adviser] carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.

The complainant had appealed on the substance of his complaint which was about the factual basis for Mr Rowland’s reported intentions to sue Mr Mitchell. The Adviser noted, however, that 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 Audience Services not to correspond further with the complainant had a reasonable prospect of success.

She noted that the BBC’s Editorial Guidelines set high standards for the achievement of due accuracy. These guidelines can be found at [www.bbc.co.uk/guidelines/editorialguidelines](http://www.bbc.co.uk/guidelines/editorialguidelines). She noted that the introduction to the section on Accuracy stated that journalists should

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

She noted that the Accuracy guidelines specified practices to avoid misleading audiences: section 3.4.12 stated that “we should normally identify on-air and online sources of information… so that our audiences can judge their status”. She noted that the subsequent section (3.4.13) relating to anonymous sources stated that:

> “When quoting an anonymous source, especially a source making serious allegations, we must take all appropriate steps to protect their identity. However, we should give the audience what information we can about them in a way that does not materially mislead about the source’s status”.

The Adviser noted that the central point of the article was Mr Rowland’s reported decision to sue Mr Mitchell.

She noted that Mr Rowland’s reported intention to take legal action was clearly sourced to the Police Federation, which allowed readers to make their own assessment regarding the veracity of the information.

The Adviser noted that, given Mr Mitchell’s press conference the previous week, it would be understandable for a journalist to ask whether the legal action was in response to Mr Mitchell’s comments. She noted that the wording “it is understood that” indicated that Mr Rowland was not available or not willing to answer this point officially but that other sources confirmed this to be the case. She noted that whilst no source was given, the statement was not a serious allegation of wrong-doing, nor one which required attribution for the audience to properly assess its context. She concluded that it was a secondary point to the main thrust of the article and that it was highly unlikely that readers would have been misled by the lack of attribution. She agreed with Audience Services that the wording “it is understood that” was a well-known form of signposting to the audience, and therefore their likely expectation was that the information was not a fact officially confirmed by Mr Rowland.
The Senior Editorial Complaints Adviser noted the [Editorial Complaints Procedure] stated:

At all stages of this Procedure, your complaint may not be investigated if it:
1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or
1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

The Senior Editorial Complaints Adviser considered that Trustees would be of the view that Audience Services provided a reasoned and reasonable response to the complainant’s concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. His complaint was that this was a question as to who was telling the truth and the BBC should not accept a claim from either side without evidence and without showing that evidence and to do so showed bias.

**The Committee’s decision**

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

The Committee noted the subject of the complaint which was an article published on BBC News Online. The Committee noted in particular the sentence:

> It is understood that the officer was already considering legal action before Mr Mitchell said last week that he wanted Mr Rowland to give his account of the argument under oath.

The Committee noted the complainant’s objection to the use of the wording “it is understood” ahead of the information that Mr Rowland had been considering legal action before Mr Mitchell’s press conference. The Committee noted the complainant’s request to explain by whom this was “understood”.

The Committee noted the response from Audience Services offering an explanation of news reporting conventions:

> “References in news reports to things that are ‘understood’ are perfectly commonplace and they represent a very long-established and standard journalistic premise where information gleaned is felt sufficient to warrant inclusion, but where - as we’ve explained - it may not have been officially announced.”

The Committee noted that Audience Services also explained news organisations’ practice of not disclosing sources.

The Committee understood that the complainant found the lack of citation of the source for this point as evidence of bias.

The Committee noted that Mr Rowland’s decision to sue Mr Mitchell was clearly attributed to the Police Federation but that the intention to sue was presented differently.
The Committee noted the complainant’s view regarding this way of presenting information but agreed with Audience Services that it was a journalistic convention. The Committee agreed with the Adviser that the choice of language was unlikely to mislead readers and so did not consider that this complaint had a reasonable prospect of success.

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

Text
Decision of BBC Audience Services not to respond further to complaint about the BBC News Channel, 25 March 2014

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.

The complaint

The complainant contacted the BBC on 25 March 2014 to raise his concerns about a news story which was referred to in a text loop running across the bottom of the screen on the BBC News Channel. The text was labelled ‘breaking news’ and stated:

“A nazi sympathiser has been convicted of planning to cause explosions at mosques.”

The complainant said he had awaited further details of the story, but none came.

He said that the main on-screen item at the time had been Commissioner Bernard Hogan-Howe giving evidence in the Stephen Lawrence police corruption enquiry.

The complainant stated that he believed the purpose of putting the text along the bottom of the screen during that particular item might have been to discredit Commissioner Hogan-Howe as every time the programme was repeated, the text loop along the bottom of the screen would also have been seen.

He also believed the story on text loop was “highly inflammatory”. He stated that this “…seems to be a made up story”.

BBC Audience Services responded on 28 March 2014, their response stated:

“I understand you had concerns with a story which was reported on the news ticker on the BBC News Channel relating to a Nazi sympathiser [who had] been convicted of planning to cause explosions at mosques. I note you believe this was a false story to discredit Police Commissioner Bernard Hogan-[Howe].

I can assure you that the story you refer to was a real story, you can read more about it via the following weblink:
http://www.bbc.co.uk/news/uk-england-merseyside-26739406”

The complainant was not happy with this response. He said the complaint he had made was broader than the answer he had been given and considered the response he had had was “not good enough”. He said he did not consider his complaint had been resolved and wished to escalate it. He also complained about the complaints process and said he wished to have an email address for the person who would consider his complaint because he did not consider it appropriate to have to use an online link which restricted the way he set out his complaint.

Audience Services sent a Stage 1b response on 1 April 2014. They explained that they could not enter into further correspondence on the issue as they did not consider the points raised suggested a possible breach of standards. They felt they had responded as
fully as they could and had nothing further to add to their previous response. They informed the complainant that he could appeal against this decision to the BBC Trust.

**Appeal to the BBC Trust**

The complainant appealed to the BBC Trust on 3 April 2014. He appealed on the substance of his complaint, that a news story about a Nazi sympathiser written in text running along the bottom of the screen during another item might have incited people to violence. He was disturbed by the fact that no further updates on the ‘breaking news’ story were given. He believed it was a failure of the BBC’s editorial team to leave the story “hanging in the air”.

The complainant also noted that he could not respond directly to the person who had sent the initial reply from Audience Services and instead had to use an online form and start the process again. He considered that this system was designed to deter people from complaining and noted that he was not able to continue corresponding with the BBC but was instead advised to appeal to the BBC Trust if he remained unhappy.

**The Trust Unit’s decision**

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She acknowledged the strength of the complainant’s feelings. However, she decided that the complainant’s appeal did not have a reasonable prospect of success.

The complainant had appealed to the Trust about both the breaking news text and the way in which his complaint had been handled. The Adviser summarised how the complaints process worked.

The Adviser explained that under the Complaints Framework, it was open to the BBC to close down correspondence, as set out below:

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.

... 1.9 If the BBC Executive decides not to investigate your complaint for one or more of the reasons set out in paragraphs 1.7 and 1.8 above, you can write to the BBC Trust Unit (address below) and ask the Trust to review that decision.

The Adviser noted that this was the process that the BBC had been following; the BBC had notified the complainant on 1 April 2014 that it did not wish to respond further because it did not consider the complaint raised an issue which was a breach of the Editorial Guidelines.

As BBC Audience Services had ceased handling this complaint at Stage 1, the complaint had not gone to Stage 2. The Adviser 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. Where a complainant appealed to the Trust against a 1b closedown, if Trustees upheld the appeal, the complaint was sent back to the BBC for a further response.
The Adviser noted that the complainant had raised concerns about the accuracy of the news item which was the subject of his complaint. The BBC Editorial Guidelines can be found in full at http://www.bbc.co.uk/editorialguidelines.

The Adviser noted that the complainant had contacted the BBC because he considered this was a “made up story” that might fuel rioting and he queried whether it had been featured in order to discredit the Metropolitan Police Commissioner Bernard Hogan-Howe.

She noted that the facts reported on the strapline were in the public domain and related to court proceedings which had taken place in Birkenhead that day. The story related to the conviction of a man from Merseyside on charges of terrorism. Audience Services had acknowledged the complainant’s concerns that the breaking news had been ‘made up’ and had possibly been featured to discredit the Metropolitan Police Commissioner. They had assured him that the story was accurate and provided the complainant with a link to a more detailed report that could be found on the BBC website.

The Adviser noted that the story had been reported in similar terms elsewhere in both local and national media. She considered that there was no indication that the breaking news strapline had not met the requirements under the Editorial Guidelines for due accuracy. She considered that she had not seen any evidence that suggested the story had been run in an attempt to discredit the Metropolitan Police Commissioner and noted that it had continued to run under a number of other reports, including coverage of the landslide in Washington State, America; the ongoing search for the Malaysian airlines plane MH370; reporting of the financial markets and coverage of the UK inflation rate. While she noted the complainant’s concern that the breaking news strapline might have incited violence she considered no evidence had been provided to support this claim.

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

The Adviser noted that decisions relating to the choice of stories for inclusion in news programmes and how they should be covered fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

Therefore the Adviser considered Trustees would be likely to conclude BBC Audience Services had given the complainant a reasoned and reasonable response to the concerns he had raised and had acted appropriately in declining to reply further. She did not, therefore, consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

In terms of the complainant’s concerns about the complaints process, the Adviser acknowledged the frustration that complainants were not able to ‘reply’ to responses they were sent by Audience Services, but instead had to renew their complaint via the online form. She also noted that the complainant would have preferred to have had a dialogue with the BBC about his concerns.

She hoped she could give background information about the complaints process that would answer the complainant’s concerns. The BBC received around a million contacts...
each year and had to have a system that accurately tracked each comment and complaint, allowing them to be answered in a way that was timely and ensured efficient use of the licence fee. The online complaints system – with its webform – was a significant part of that system. It meant that complaints – and follow up complaints – were properly tracked and received a timely response. The Trust had a duty to oversee that process and, in the summer of 2013, carried out a mystery shopping exercise to monitor the responses sent out by Audience Services at Stage 1. The results of that have been published and are available through this link: http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html

The Adviser considered Trustees would be likely to conclude there was no evidence that the complainant’s concerns had not been handled appropriately, therefore she did not consider this aspect of the appeal had a reasonable prospect of success. Nonetheless she thanked the complainant for bringing his concerns to the attention of the Trust and she considered Trustees would welcome the feedback about the complainant’s experiences of the process.

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He noted that the language used by the BBC Trust in its correspondence was not simple and resembled the style usually found in legal documents. He felt this added another layer of complication to the complaints process. The complainant also restated his previous criticism of aspects of the complaints procedure. The complainant reiterated his views about the breaking news scrolling text which was the subject of his complaint. He noted it ran for 45 minutes uninterrupted and that it was “an emotive ticker tape subject at an emotive time”.

**The Committee’s decision**

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

The Committee noted the ticker tape text which was the subject of the complainant’s appeal to the BBC Trust.

The Committee noted that the complainant felt that the scrolling text had been used specifically to discredit Commissioner Bernard Hogan-Howe who was part of the main item on screen.

The Committee noted that the complainant felt this text went out at a sensitive time and that he considered it to be “highly inflammatory”.

The Committee noted the response from Audience Services providing a link to the story and explaining that it was genuine and not made up.

The Committee agreed that the selection of content fell under “editorial and creative output” and was therefore a matter for the BBC Executive. The Committee noted the complainant’s view that the news was inflammatory but did not accept that it amounted to incitement to crime or disorder.
The Committee noted that the complainant was not content with the complaints process; that he would prefer to deal with a named individual and not be restricted by the webform when outlining his complaint.

The Committee noted that the complaints process had been explained to the complainant during the course of his correspondence with the BBC Trust Unit.

The Committee agreed with the Adviser that Audience Services had provided appropriate responses and so did not consider that this complaint had a reasonable prospect of success.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
Decision of BBC Audience Services not to respond further to complaint about Escape to the Country, BBC One, 29 January 2014

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.

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.

The complaint

The complainant contacted the BBC on 1 February 2014 to complain about a property she and her husband had purchased, which was featured in an edition of Escape to the Country. She stated that the series Escape to the Country “epitomises quality and ‘idyllic’ homes”. She stated that the Estate Agent had promoted the property as having featured in Escape to the Country and, although she and her husband had not seen the programme at the time of purchase as the programme had not yet been broadcast, this fact had served to reassure the complainant that it was a good quality house. She was very disappointed to discover after they moved in that there were a number of defects in the property. She said that the programme should “come with a warning of not taking things at face value”.

BBC Audience Services responded on 7 February 2014, having discussed the complaint with the programme makers. Audience Services relayed their comments:

“Escape to the Country is about finding properties that fit the general requirements of the contributors. It does not provide an in-depth condition report or survey, as this is always the responsibility of the buyer. It is also important to note that the programme does not seek to ‘advertise’ specific properties to viewers, and purposely withholds the exact addresses for this reason.”

The complainant found this response unsatisfactory. She said that the Estate Agent marketing the property had “made much of the property being featured on the show which influenced our purchase”. She stated that she had had a job to start and so had not had long to buy a property. She stated that the flaws in the property only emerged once they had moved in. She also raised concern about the way her complaint had been handled by Audience Services. She said the response had been condescending and showed no ownership of the complaint. She said she had asked for a Stage 2 complaint and had heard nothing.

Audience Services responded on 24 March 2014. They stated:

“Thank you for your further comments on this matter. While I note that you were disappointed with our initial response, we stand by it in full, and firmly believe that your complaint about the alleged problems with the property would be more appropriately directed to any individuals or organisations directly involved in the sale (which appears, incidentally, to have taken place prior to the episode being broadcast) rather than the BBC.”

Appeal to the BBC Trust
The complainant escalated her complaint to the BBC Trust, saying that she was unhappy with the response received at Stage 1b from Audience Services and their decision not to engage in further correspondence on the issue as they felt they had nothing further to add. She made the following points:

- She had tried to no avail to get some acknowledgement from the BBC that it had contributed to the current situation she and her husband were in because of the “kudos and provenance associated with properties featured on Escape to the Country”.

- Whether the BBC liked it or not, properties featured on the programme were conferred with “some esteem and reputation by virtue of the perception of patronage”. For this reason, the BBC had a responsibility to offer some protection to people who trusted in the association of the BBC with the property.

- She and her husband had only had a very short time to find a property and had relied on local estate agents to steer them towards appropriate houses. One particular estate agent had appealed to them because the agent’s “ethos was that they marketed ‘quality homes’”. That, together with the “great emphasis that they placed on being associated with [the BBC’s] programme” had reassured them that the house was a good purchase.

- With regard to complaint handling, the complainant noted her dissatisfaction with the process. She said Audience Services had not attempted to apologise, understand or get to the crux of the complaint.

- She was unhappy that Audience Services had commented on the timing of her complaint by noting that she and her husband had purchased the property before the programme was broadcast. She noted one person in the Complaints Department who appeared to understand her situation rather than patronise her.

- She requested detailed answers to questions about the BBC’s filming of the property.

- The property needed substantial expensive repairs after several years of neglect by the previous owner, and the stress of the situation had affected the health of her husband and herself.

**The Trust Unit’s decision**

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings. She regretted the complainant’s disappointment following her property purchase. However, she decided that the complainant’s appeal did not have a reasonable prospect of success.

As requested by the complainant, a copy of the appeal had been sent to the BBC Director-General’s Office.

The Adviser 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.

The Adviser noted that the complainant believed that properties featured on *Escape to the Country* were conferred ‘kudos’ and a reputation for being ‘quality’ homes because of their association with the BBC. The Adviser believed that this was not a correct representation of the programme’s premise, which, as stated by the programme makers in Audience Services’ first response, is

“...about finding properties that fit the general requirements of the contributors. It does not provide an in-depth condition report or survey, as this is always the responsibility of the buyer. It is also important to note that the programme does not seek to ‘advertise’ specific properties to viewers, and purposely withholds the exact addresses for this reason.”

The Adviser acknowledged the complainant’s point that the estate agent “made much of the property being featured on the show”, but noted that the BBC did not endorse any of the properties whose details were passed to them by estate agents and nor was it responsible for the way estate agents marketed the properties they were selling.

The Adviser noted that the complainant raised a number of questions in her appeal that related to the amount of information the production team had had about the property and how the BBC had come to feature it in the television programme. However, she considered these were not issues that could be addressed in this appeal, as its purpose was to examine whether the decision of Audience Services not to correspond further with the complainant on points already raised at Stage 1 was reasonable.

The Adviser turned to the issue raised by the complainant about the way her complaint had been handled. The complainant was not content with the responses she received from Audience Services, which she considered were disrespectful, and objected to the fact an agent “commented on the ‘timing’ of my complaint”.

The Adviser carefully read the correspondence related to this complaint. However, she did not believe that Trustees would consider that it would be appropriate for the BBC to issue an apology for a situation which was outside its control and for which it was not responsible. She did not consider Trustees would be likely to agree with the complainant that the responses were disrespectful. She noted that Audience Services had explained in the response of 7 February 2014 that

“the alleged problems with the property would be more appropriately directed to any individuals or organisations directly involved in the sale...”

She considered that Trustees would be likely to conclude that the complainant had been advised appropriately on this point by Audience Services.

The Adviser noted that the complainant was unhappy with the reference to the timing of the broadcast which came after the complainant’s purchase of the property. However, she considered that the timing of the broadcast was relevant because it confirmed that the complainant’s purchase of the house [before broadcast of the programme] had not been based on any inaccurate or misleading information broadcast by the BBC in the programme.

For completeness, the Adviser watched the relevant section of the programme and noted that no information concerning the structural state of the house was given.
The Adviser noted that the complainant stated in her follow-up complaint of 8 March 2014 that she had requested that her complaint be escalated to Stage 2 but she had heard nothing. The Adviser could not find a record of this request having been made.

The Adviser set out broadly how the BBC’s editorial complaints system worked, and explained that under the Complaints Framework, it was open to the BBC to close down correspondence. In this situation, the BBC advised the complainant that it had nothing further to add to its responses, and that it did not propose to correspond further. It gave the complainant information about how to appeal against that decision. This was the process the BBC had followed with the complainant’s complaint. It did not consider the complaint related to a possible breach of the BBC’s Editorial Guidelines and informed her that it would not consider the complaint further. Where a complainant appeals to the Trust against a 1b closedown, if Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The Adviser recognised the complainant’s disappointment in the property which she and her husband had purchased very quickly out of necessity last October. However, she considered that Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complainant’s concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and she did not, therefore, propose to put it before Trustees.

**Request for review by Trustees**

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

**The Committee’s decision**

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

The Committee noted the complainant’s disappointment with the property she bought.

The Committee noted that, subsequent to the purchase, the BBC broadcast a programme which featured the same property.

The Committee understood that, prior to the broadcast, the complainant’s Estate Agent had spoken about the BBC’s planned transmission and that the complainant felt this had influenced her decision.

The Committee noted the response from Audience Services outlining the premise of the programme which was to find properties to suit contributors’ requirements.

The Committee noted that the complainant was not, in the round, content with the responses she had received from Audience Services.

The Committee noted that the Trust Unit’s Adviser had explained that, under the Complaints Framework, it was open to the BBC to close down correspondence before Stage 2.
The Committee found no evidence that the complaint had been mishandled by Audience Services and agreed with the Adviser that the timing of the broadcast was relevant because it confirmed that the complainant’s purchase of the house had not been based on anything in the subsequent broadcast of the episode.

The Committee agreed that the BBC could not apologise for events outside the BBC’s control.

The Committee did not consider that this complaint had a reasonable prospect of success.

**The Committee therefore decided that this appeal did not qualify to proceed for consideration.**
Decision of BBC Audience Services not to respond further to complaint about the coverage of changes to housing benefit policy on BBC news programmes

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.

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.

The complaint

The complainant contacted the BBC on 27 September 2013 to complain that the BBC was not effectively challenging Conservative Party representatives about the so-called ‘bedroom tax’.

In support of his complaint he stated that:

- in a Daily Politics programme (for which no transmission date was specified but which was “before the summer break”), Conservative politicians “were allowed to repeatedly state unchallenged that the Bedroom Tax did not affect the disabled”, whereas the complainant stated that more than 60% of those affected were disabled.
- the programme had recently stated that the tax had been going on for three months, whereas it had been in place for five months at the time.
- in a recent discussion about food banks, the programme had not suggested a link between food banks and the bedroom tax.

Audience Services replied on 8 October 2013, stating that the BBC did not take a political stance on this or any other issue, and that balance on any issue should be judged over time. Audience Services noted that the complainant had not provided specific transmission dates. They therefore responded in general terms, stating that the issue of housing benefit changes had been covered comprehensively across the BBC’s news output. They provided web links to nine online articles which included a guide to the changes, reports about legal challenges to the policy, a pledge by the Labour party leader Ed Miliband to abolish the ‘unfair bedroom tax’, and coverage of a report by the Trades Union Congress which suggested that a third of council tenants affected by the changes had fallen behind on rent since the policy took effect.

The complainant was dissatisfied with this response, stating that the online articles confirmed a lack of proper investigation and negligible challenge by the BBC to the policy, though he provided no specific details in support of this claim. He cited a recent Housing Federation report highlighting issues which he claimed were ignored by the media. He stated that it was time that the BBC challenged Iain Duncan Smith, the Secretary of State for Work and Pensions, about the policy.

Audience Services responded on 14 December 2013, noting that BBC Radio 4’s The World at One had devoted a significant section of their programme broadcast on 14 October 2013 to the report by the Housing Federation. It stated that the Minister of State for Employment, Esther McVey had appeared on the programme and was challenged on multiple occasions about the content of the report. Audience Services noted that the
complainant felt strongly about the issue but stated that they had responded as fully as possible and did not have more to add.

Meanwhile the complainant made two further complaints related to this issue:

- on 23 November 2013 he complained that the Daily Politics programme had failed to “thoroughly confront the housing minister on the most opportune day of the actual parliamentary debate on the subject – which went on to detail some of those inflicted from the vast information out there… but instead wasted most of this significant time by attacking the labour representative”.
- on 9 December 2013 he complained that the Daily Politics programme had failed to mention the issue of housing benefit changes the previous week.

In his email dated 23 November 2013, the complainant raised a new issue: that the presenter of the Daily Politics had failed to ask Conservative Chairman Grant Shapps about a police enquiry into allegations made against an online marketing company set up by Mr Shapps. [This inquiry was dropped by the police in early November.] The complainant asked whether this failure to raise the issue was as a result of the BBC “running scared” of Mr Shapps who had suggested in a recent newspaper interview that the licence fee be reduced.

The complainant contacted Audience Services on 13 March 2014 stating that his two further complaints had remained unresolved. He asked why the BBC was not challenging the Conservative Party on their policies and whether the BBC had “made a deal” with Grant Shapps. He noted that Iain Duncan Smith had now been interviewed on the Daily Politics but he claimed the presenter had failed to challenge Mr Duncan Smith sufficiently on this occasion.

Audience Services responded on 18 March 2014 noting the complainant’s points but stating that they had responded as fully as they could, given the nature of the complaint, and did not consider there was evidence of a possible breach of standards. They were therefore unable to engage in further correspondence.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the response received at Stage 1 and appealed on the substance of the complaint which he described as a failure by BBC television news programmes in general to properly challenge the Conservative Party on the ‘bedroom tax’. In a detailed appeal which included information about the complainant’s own qualifications and circumstances, the complainant highlighted eight specific questions he wished to raise in support of his appeal:

1. The Daily Politics programme broadcast before the summer break had allowed Conservative politicians to “repeatedly get away with stating that the bedroom tax did not affect the disabled when the opposite is actually true”.
2. The complainant cited a letter from his benefits office which stated that the “payment of Jobseekers Allowance is based on the amount the law says you need to live on”. He asked how claimants could be expected to pay for the shortfall in rent out of this allowance, (the shortfall being the result of a reduction in housing benefit received) – and he asked why this point had not been made when challenging Conservative Party representatives.
3. It was disappointing that in a regional television news bulletin [no date provided] there was a technical issue during an interview with the Housing Federation. The
complainant asked why the BBC had failed to show the interview on the later edition of *North West Tonight*.

4. The complainant asked why the Housing Federation report was not featured on *Newsnight*.

5. The complainant referred to an undated incident on television with Grant Shapps MP and Nadim Zahawi MP which he objected to. He asked why the two politicians were not challenged and why there was no response from any opposition party.

6. The complainant asked whether a deal had been done with Grant Shapps.

7. The complainant asked whether there was an agreement between the BBC and the Conservative Party which restricted honest and unbiased reporting on this or any other policy.

8. The complainant asked why recent changes to the Lobbying Bill had not been discussed properly on BBC news programmes.

Finally the complainant described his proposal for a new form of “Inclusive Capitalism” and he asked for the BBC Trust’s assistance with this proposal.

**The Trust Unit’s decision**

The Senior Editorial Complaints Adviser [the Adviser] carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.

The complainant had appealed on the substance of his complaint which was a failure by BBC television news programmes to properly challenge the Conservative Party on the ‘bedroom tax’. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

She noted that the complainant’s concerns related to his perception that the BBC lacked impartiality when dealing with changes to housing benefit policy. She noted the BBC’s editorial complaints procedure specified the following requirements:

- Complaints should be made within 30 working days of the date on which the content was broadcast.
- The complaint should include the date and time of the broadcast, and the channel or service on which it was broadcast. A failure to provide these details meant the BBC may not investigate the complaint.
- The BBC may not consider new points made after Stage 1a.
- When appealing to the BBC Trust, the Trust will not consider new points unless, exceptionally, it is necessary to do so in the interests of fairness.

The Adviser noted that the complainant had not provided transmission dates and times for his original points of complaint to the BBC, and that at least one point of complaint appeared to be ‘out of time’ [the *Daily Politics* programme broadcast “before the summer break” which was mentioned in a letter of complaint on 27 September 2013, and is the complainant’s question 1.]

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The Adviser noted that, as no transmission dates were provided in his original letter to the BBC, Audience Services had provided a general response to the complainant’s concern that the BBC was not sufficiently challenging Conservative politicians on the issue of ‘bedroom tax’. The response at Stage 1a had included references to nine different BBC online articles which included reports of criticisms and legal challenges to the new housing benefits policy. When the complainant cited a Housing Federation report in his response, Audience Services noted significant coverage of this report in BBC Radio 4’s World at One.

The Adviser concluded that on the original points of complaint raised at Stage 1a, the Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complainant’s concerns.

The Adviser noted that the complainant had raised new points in his letter of 23 November 2013 which were not related to the original point of complaint but were instead about allegations made against Grant Shapps.

The Adviser concluded that the Trustees would be of the view that it was reasonable for Audience Services not to respond on these new points. She noted that the complainant had raised these points again in his letter of appeal to the Trust (questions 6 and 7). She noted that the BBC was precluded from any such agreement with the Conservative Party as that suggested by the complainant and she concluded that the complainant had raised insufficient evidence of a breach of the BBC’s Editorial Values of Integrity and Independence.

The Adviser noted that questions 2, 3, 4, 5 and 8 were new points which could not be considered by the Trust and that questions 3 and 5 did not include dates and times of broadcast, nor details of the channel in question.

The Adviser noted the complainant’s proposal for a new form of “Inclusive Capitalism” but concluded that the BBC Trust was unable to help the complainant progress this proposal.

The Adviser noted the [Editorial Complaints Procedure] which stated:

At all stages of this Procedure, your complaint may not be investigated if it:
1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or
1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

The Adviser considered that Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complainant’s concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

**Request for review by Trustees**

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

He reiterated his view that the BBC is biased in its reporting related to the Conservative Party in news output and specifically the Daily Politics programme. He noted that none of the links offered to him to illustrate balance in BBC output related to television news or the Daily Politics. In addition, the complainant sought assurance of the independence of the BBC.
The Committee's decision

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

The Committee noted the complainant’s view that the BBC was not effectively challenging Conservative Party representatives about the so-called ‘bedroom tax’.

The Committee noted the complainant levelled this complaint at television news output and Daily Politics but did not cite any particular broadcasts.

The Committee noted the response from Audience Services that the issue of housing benefit changes had been covered across a range of BBC news output and that the response provided links to online articles to illustrate this which included a quote from the Labour Party leader Ed Miliband referring to the ‘unfair bedroom tax’.

The Committee noted that the complainant felt that these examples did not address his complaint which related to television news output and the Daily Politics programme.

The Committee noted that the complainant raised a specific issue about the lack of coverage of a Housing Federation report. The Committee noted Audience Services’ response citing significant coverage of this report on BBC Radio 4’s World at One.

The Committee noted the complainant’s request for assurance of the independence of the BBC and noted that the Senior Editorial Complaints Adviser had provided wording from the BBC’s Editorial Values of Integrity and Independence prohibiting the BBC from any arrangements which could compromise its editorial integrity.

The Committee considered that the nine online news articles and the World at One programme demonstrated due impartiality and that there was no reasonable prospect of it finding there had been a breach of the guidelines on Impartiality.

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