

# Editorial Standards Findings

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

December 2013, January 2014 & March 2014, issued April 2014

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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](http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2011/esc_tor.pdf).

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

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<sup>1</sup>[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/complaints\\_fr\\_work\\_ed\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf)

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

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

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

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

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

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

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

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

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

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

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

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

# Summary of finding

Newsnight, BBC Two, 15 July 2013

## Summary of finding

The complainant said that an item about the publication of a report by Professor Sir Bruce Keogh into the quality of care and treatment at 14 NHS hospital trusts in England had presented “excess deaths” as the same thing as “avoidable deaths”. The complainant said this breached the BBC’s guidelines on accuracy and impartiality.

The Committee concluded:

- that, at a time when the standard of care and treatment in NHS hospitals was the subject of attention across the media, the Trust expected the BBC to be particularly responsible when reporting health statistics
- that the programme was explicitly clear that Hospital Standardised Mortality Ratios (HSMRs) indicated the number of deaths compared to what might be expected statistically and it did not suggest that those deaths were necessarily avoidable
- that the fact that the Department of Health continues to use HSMRs and that being an outlier in HSMRs was one of the criteria that was used in determining which Trusts Professor Keogh should enquire into, and the fact that the vast majority of Trusts examined by Professor Keogh were put into special measures as a result of his inquiry, justified *Newsnight’s* references to the figures
- that the references were duly accurate and that there was no breach of impartiality.

The complaint was not upheld.

For the finding in full see pages 4 to 8.

# Appeal Finding

## Newsnight, BBC Two, 15 July 2013

Considered by the Editorial Standards Committee at its January 2014 meeting.

### 1. Background

On 16 July 2013 Professor Sir Bruce Keogh, NHS Medical Director for England, published a report into the quality of care and treatment at 14 hospital trusts in England.

The evening before publication, *Newsnight* broadcast a debate into standards of care in NHS England, asking at the start of the programme, "Why is the NHS now failing so many patients?"

The programme featured a number of guests, including Professor Sir Brian Jarman. The programme introduced him as follows

"Sir Brian Jarman, an advisor to the Keogh review, who is here tonight, has said there were 13,000 excess deaths at the 14 Trusts between 2005 and 2010."

This figure was then explored in the programme.

### 2. The complaint

#### Stages 1 & 2

The complainant said that the programme had presented 'excess deaths' as the same thing as 'avoidable deaths'. He quoted comments by Professor Keogh to support his complaint.

BBC Complaints said in response that the programme had attributed the 13,000 figure to Professor Jarman as his "own personal estimation" and "professional opinion", and the programme had also provided details as to how Professor Jarman had reached this figure.

The complaint was escalated to the Editorial Complaints Unit (ECU) and was not upheld. The ECU concluded that:

- the programme attributed the 13,000 figure to Professor Jarman and did not give any impression that the figure was to be included in the Keogh review
- whilst some experts have questioned the presentation and use of mortality data, HSMR figures were widely used by NHS Trusts to help them monitor mortality rates and give an early warning of any potential problems
- the programme focused on the serious failings identified in various NHS Trusts and the reliability or significance of HSMR figures was peripheral to that bigger and broader issue

### 3. Appeal to the Trust

The complainant believed that, as Professor Jarman's statistics were not challenged, the programme breached the BBC's guidelines on accuracy and impartiality, and he raised the following points:

- Point (A): BBC News had an obligation to consider the "merits or otherwise" of HSMRs and that not to do so "produced an impression that these figures were somehow unarguable."
- Point (B): The complainant believed Professor Jarman's 13,000 figure was not explained properly, giving a misleading and alarming impression that NHS hospitals were "terrifyingly unsafe."
- Point (C): He did not agree that the BBC had made a distinction between 'excess' and 'needless' deaths by using a careful form of words ('more deaths than would have been expected'). This was evidenced by looking at the next day's press headlines and by the BBC's own reporting which had created a "toxic soup of ambiguity and inference" in which 'more deaths' and 'poor care' had become entangled
- Point (D): The complainant considered that, as HSMRs were not challenged, the BBC was 'taking a side in this debate'.

[An additional appeal point was not taken by the Trust. See the following decision in this bulletin]

### 4. Applicable Editorial Guidelines

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

### 5. 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 News and the complainant.

#### Points (A), (B), (C), (D)

The Committee began by considering the relevant sections of *Newsnight*. It noted that the programme began with presenter Kirsty Wark saying:

"Uncaring, cruel, inadequate, lax. Why is the NHS now failing so many patients? ...Once celebrated as the envy of the world tomorrow an inquiry into high death rates at 14 hospital trusts in England is expected to be brutal."

The programme went on to state:

"The Mid Staffs scandal was a terrible moment for the NHS. People prayed it was a one off but it was not. Tomorrow, the investigation led by the NHS medical director, Sir Bruce Keogh, will report on 14 other trusts with high mortality rates. Sir Brian Jarman, an advisor to the Keogh review, who is here tonight, has said there were 13,000 excess deaths at the 14 Trusts between 2005 and 2010."

The presenter then asked Professor Jarman:

"Just briefly, these 13,000 excess deaths, what does that mean? It is such a horrific number."

Professor Jarman replied:

"Well over those seven years the number of deaths in those 14 hospitals exceeded the number that would have taken place had they had the national death rate for age, sex, diagnosis and so on. So it is a number compared with what would have been expected by the national death rates."

Kirsty Wark followed by saying, "So it's a stark sum." Professor Jarman confirmed, "It is quite a stark sum."

Later, in a filmed package, *Newsnight's* health correspondent Susan Watts stated:

"Tomorrow Sir Bruce Keogh will publish his verdict on care at the 14 hospital trusts. But *Newsnight's* had access to all of the figures showing numbers of deaths above those expected statistically. Basildon and Thurrock is the worst with just over 1600 excess deaths. Tameside also ranks badly with 833. In total, this analysis suggests some 13,300 more patients died across the 14 hospital trusts than would be expected."

The Committee went on to consider HSMRs and the debate surrounding their use.

The Committee noted that HSMRs seek to establish whether hospital mortality is higher or lower than expected by comparing the levels of deaths of patients in hospitals (hospital mortality) in different years, or between different groups of patients or ailments in the same year. In order to compare mortality between different hospitals, the calculation method also takes account of differences in case mix, and makes adjustments for variables which aren't directly related to the quality of treatment and care provided in a particular hospital – for instance, age, ethnicity and the levels of deprivation in the local area. HSMRs are calculated by dividing the number of actual deaths by the number of expected deaths, multiplied by 100. The HSMR results for each hospital are grouped into three categories: "high", "within the expected range" and "low mortality".

The Committee noted that HSMRs have been the subject of debate, with the main areas of concern being:

- historic inconsistencies in coding, data entry, and data management by hospitals
- the validity of the adjustment methods and the lack of adjustment for other variables: for instance a lack of palliative care might increase the number of deaths in a hospital in that area

- the potential for HSMRs to be used in isolation as a measurement of the quality of care available in a hospital, when variables have been used in the calculation which are not directly related to the quality of treatment and care
- the use of HSMRs without considering statistical caveats with the resulting risk that hospitals are incorrectly categorised as providing poor quality care. Critics warn that patient confidence in the NHS is thereby undermined.

The Committee noted that much of this controversy came to light during the Public Inquiry into the Mid Staffordshire NHS Foundation Trust (the Francis Report) and the previous, First Inquiry. The report, published in Feb 2013<sup>4</sup> considered HSMRs in detail.

“5.1 The presentation and use of mortality data has caused a considerable degree of confusion for the public and, more importantly, distress to the loved ones of those patients who died under the care of the Trust during the period under review. The first inquiry and the evidence before this Inquiry uncovered an alarming lack of consensus on the reliability and significance of patient death rates. As a result, to this day, there is no generally accepted means of producing comparative figures, and unjustifiable conclusions continue to be drawn from the numbers of deaths at hospitals and about the number of avoidable deaths.”

However, the Committee noted that the report concluded “there were few obviously better alternatives available” (5.191) and that:

“5.192 There is now a consensus that significantly high HSMR/SHMI results should trigger a serious consideration of whether poor care is an explanation for them, whatever other steps are also taken.”

The Committee noted that HSMRs continue to be used by the Department of Health, alongside the Summary Hospital-Level Mortality Indicator. The comparative information is produced for the Department of Health by Dr Foster Intelligence, which focuses on what it calls “outliers”: hospitals where the results lie outside the normal range.

The Committee noted that in February 2013 the Prime Minister announced that Professor Sir Bruce Keogh had been asked to review the quality of care and treatment provided by those NHS trusts and foundation trusts that were persistent outliers on mortality indicators. A total of 14 hospital trusts were investigated as part of the review on the basis that they had been outliers for the previous two years on either the SHMI or the HSMR. Professor Keogh’s report stated that the mortality measures were used as a “warning sign” or “smoke alarm” for potential quality problems, and his investigation looked at the quality of care and treatment provided at those trusts. As a result of the review, 11 of the 14 trusts were placed into special measures.

The Committee noted that the complainant quoted Professor Keogh as having said that mortality figures were “clinically meaningless and academically reckless”. The Committee noted that this quote was drawn from Professor Keogh’s letter to the Secretary of State for Health<sup>5</sup>, in which he explains that his concerns are about using mortality data as a means of quantifying **actual** deaths:

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<sup>4</sup> <http://www.midstaffpublicinquiry.com/sites/default/files/report/Volume%201.pdf>

<sup>5</sup> <http://www.nhs.uk/NHSEngland/bruce-keogh-review/Documents/outcomes/keogh-review-final-report.pdf>

“However tempting it may be, it is clinically meaningless and academically reckless to use such statistical measures to quantify actual numbers of avoidable deaths. Robert Francis himself said, ‘it is in my view misleading and a potential misuse of the figures to extrapolate from them a conclusion that any particular number, or range of numbers of deaths were caused or contributed to by inadequate care’”

The Committee noted the complainant’s view that BBC News had an obligation to consider the “merits or otherwise” of HSMRs when quoting the 13,000 figure. The Committee noted that the Accuracy guideline 3.4.21 states that:

“We should report statistics and risks in context and avoid worrying the audience unduly, especially about health or crime. This may involve giving trends, taking care to avoid giving figures more weight than can stand scrutiny.”

It was the view of the Committee that, at a time when the standard of care and treatment in NHS hospitals was the subject of attention across the media, the Trust expected the BBC to be particularly responsible when reporting health statistics.

The Committee agreed that it might have been useful for *Newsnight* to have reflected the controversy over the usefulness of HSMRs, though it noted that the following evening, after publication of the Keogh report, *Newsnight* ran a follow up item which referred to this controversy and included an interview with the Health Secretary in which the presenter challenged him on how the statistics had been presented.

The Committee also agreed that it might have helped audiences to better understand the scale of the excess deaths if *Newsnight* had put the figure of 13,000 across 14 Trusts over a 5 year period into the context of the average number of deaths that might have been expected over that period. But Trustees also noted that the fact that 14 Trusts were involved and the fact that this was over a 5 year period was clearly made.

In conclusion the Committee decided that the programme was explicitly clear that HSMRs indicated the number of deaths compared to what might be expected statistically and it did not suggest that those deaths were necessarily avoidable.

The Committee also concluded that the fact that the Department of Health continues to use HSMRs and that being an outlier in HSMRs was one of the criteria that was used in determining which Trusts Professor Keogh should enquire into, and the fact that the vast majority of Trusts examined by Professor Keogh were put into special measures as a result of his inquiry, justified *Newsnight*’s references to the figures.

The Committee therefore concluded that the references were duly accurate and that there was no breach of impartiality.

**Finding: Not Upheld**

# Rejected Appeals

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

## Newsnight, BBC Two, 15 July 2013

The complainant asked the Editorial Standards Committee at its December 2013 meeting to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

### Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 23 September 2013, saying he was unhappy with the decision at Stage 2 from the Editorial Complaints Unit (ECU).

His appeal related to an edition of *Newsnight* broadcast on 15 July 2013, the day before the publication of a report by Professor Sir Bruce Keogh into the quality of care and treatment provided by 14 hospital trusts in England.

In his original complaint, the complainant said he was concerned at the reference to the report into NHS England and to "13,000 excess deaths". He noted that the figure was not part of Sir Bruce Keogh's report and wrote that Sir Bruce had referred to the figures, saying: "Not my view. Not my calculation". He was concerned that the figures had been referred to widely by the BBC and that Professor Sir Brian Jarman had not been adequately challenged about them.

The complainant stated in his appeal that the programme was seriously unbalanced, misleading and inaccurate by omission. He raised the following points to support his claim of a breach of editorial standards:

Point (A): The programme featured an interview with Professor Sir Brian Jarman, who said there were 13,000 excess deaths at the 14 trusts under investigation between 2005 and 2010. The complainant believed that BBC News had an obligation to consider the "merits or otherwise" of this method of compiling statistics, known as HSMR [Hospital Standardised Mortality Ratios] and that not to do so "produced an impression that these figures were somehow unarguable...".

Point (B): The complainant stated that Professor Sir Brian Jarman was not an independent witness. His work was part funded by the Department of Health through a company called Dr Foster Intelligence. These links were not mentioned in the programme and the complainant believed they should have been.

### The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit, the Senior Editorial Complaints Adviser and an independent editorial adviser.

The Senior Editorial Complaints Adviser (the Adviser) considered that the complainant's appeal did not have a reasonable prospect of success.

The Adviser considered the complaints against the BBC's Editorial Guidelines relating to Accuracy and Impartiality. These can be found online at <http://www.bbc.co.uk/editorialguidelines/guidelines>

### **Point (A)**

The Adviser noted that Hospital Standardised Mortality Ratios are used by the Department of Health as an indicator of healthcare quality that measures whether the death rate at a hospital is higher or lower than one would expect, taking into account factors such as the age of a patient, the severity of their condition and levels of deprivation in the local area. She noted that HSMRs have been the subject of debate. Some critics of the system have pointed to historic inconsistencies in data entry and management by hospitals. Others have warned about using HSMRs without considering statistical caveats with the resulting risk that hospitals are incorrectly categorised as providing poor quality care. These critics warn that patient confidence in the NHS is thereby undermined.

The Adviser noted that Dr Foster Intelligence produces HSMR comparative information for the Department of Health. She noted that the company's website states:

"Like all statistics, HSMRs are not perfect. If a hospital has a high HSMR, it cannot be said for certain that this reflects failings in the care provided by the hospital. However, it can be a warning sign that things are going wrong.

"Care is needed in interpreting these results. Just through chance, some hospitals will have a higher mortality rate and some a lower rate. It is inevitable that half the hospitals will have a worse than average result and that some will be quite a lot worse than the average.

"Dr Foster particularly focuses on what we call 'outliers'. These are hospitals where the results lie outside the normal range."

She noted that despite the debate, and a national review of the system in 2010, HSMRs continue to be used by the Department of Health, alongside the Summary Hospital-Level Mortality Indicator [SHMI].

In February 2013 the Prime Minister announced that Professor Sir Bruce Keogh had been asked to review the quality of care and treatment provided by those NHS trusts and foundation trusts that are persistent outliers on mortality indicators. A total of 14 hospital trusts were investigated as part of the review on the basis that they had been outliers for the previous two years on either the SHMI or the HSMR. Professor Keogh's report stated that the mortality measures were used as a "warning sign" or "smoke alarm" for potential quality problems, and his investigation looked more broadly at the quality of care and treatment provided. As a result of the review, 11 of the 14 trusts were placed into special measures.

The Adviser noted that the complainant had quoted Professor Keogh as having said that the mortality figures were "clinically meaningless and academically reckless". In fact Professor Keogh's letter to the Secretary of State for Health, from which these quotes are drawn, states:

"I selected 14 trusts for this review on the basis that they had been outliers for the last two consecutive years on either the Summary Hospital-Level Mortality Index (SHMI) or the Hospital Standardised Mortality Ratio (HSMR)...."

“Although all 14 trusts face a different set of circumstances, pressures and challenges ahead, this review has also been able to identify some common themes or barriers to delivering high quality care which I believe are highly relevant to wider NHS. These include:...

“ - the complexity of using and interpreting aggregate measures of mortality, including HSMR and SHMI. The fact that the use of these two different measures of mortality to determine which trusts to review generated two completely different lists of outlier trusts illustrates this point. However tempting it may be, it is clinically meaningless and academically reckless to use such statistical measures to quantify actual numbers of avoidable deaths. Robert Francis himself said, ‘it is in my view misleading and a potential misuse of the figures to extrapolate from them a conclusion that any particular number, or range of numbers of deaths were caused or contributed to by inadequate care’.”

The Adviser concluded that, whilst there continued to be debate about the use of HSMRs, Professor Keogh had placed sufficient weight on them to use them as a trigger for investigation. His concerns, as quoted above, related to using the figures as a means of quantifying actual deaths.

The Adviser noted that BBC programme-makers are required to work within the BBC’s guidelines on “due” accuracy and “due” impartiality, with the term ‘due’ meaning that the accuracy and impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. She therefore noted how the programme had introduced its subject matter. Presenter Kirsty Wark began by saying:

“Uncaring, cruel, inadequate, lax. Why is the NHS now failing so many patients? ...Once celebrated as the envy of the world tomorrow an inquiry into high death rates at 14 hospital trusts in England is expected to be brutal.”

The programme went on to discuss concerns about poor standards of care, problems with the complaints process, staffing levels and funding issues, pressures upon NHS staff, criticisms of the current and previous government and criticism of the Care Quality Commission. The programme drew upon contributions from clinicians, policy-makers and patients. The Adviser concluded that the presenter had made it clear that the programme was about standards of care in the NHS, rather than a debate about statistics.

The Adviser noted and supported the ECU’s finding that:

“I cannot conclude that there was a requirement in the context of this programme to explore concerns about HSMR. The programme focussed on the serious failings which had been identified in various NHS Trusts and how those Trusts had failed to address significant problems in patient care. Hospital mortality rates were an intrinsic part of identifying such concerns and any debate about the reliability or significance of HSMR figures was, to my mind, peripheral to that bigger and broader issue.”

The Adviser noted that the programme made the following references to mortality rates:

"The Mid Staffs scandal was a terrible moment for the NHS. People prayed it was a one off but it was not. Tomorrow, the investigation led by the NHS medical director, Sir Bruce Keogh, will report on 14 other trusts with high mortality rates. Sir Brian Jarman, an advisor to the Keogh review, who is here tonight, has said there were 13,000 excess deaths at the 14 Trusts between 2005 and 2010."

The presenter then asked Professor Jarman:

"Just briefly, these 13,000 excess deaths, what does that mean? It is such a horrific number."

Professor Jarman replied:

"Well over those seven years the number of deaths in those 14 hospitals exceeded the number that would have taken place had they had the national death rate for age, sex, diagnosis and so on. So it is a number compared with what would have been expected by the national death rates."

Later, in a filmed package, *Newsnight's* health correspondent Susan Watts stated:

"Tomorrow Sir Bruce Keogh will publish his verdict on care at the 14 hospital trusts. But *Newsnight's* had access to all of the figures showing numbers of deaths above those expected statistically. Basildon and Thurrock is the worst with just over 1600 excess deaths. Tameside also ranks badly with 833. In total, this analysis suggests some 13,300 more patients died across the 14 hospital trusts than would be expected."

The Adviser noted that the programme did not make any claims relating to actual deaths. Instead it discussed excess deaths compared to expected death rates, and it made the statistical assumptions clear in its questioning of Professor Jarman.

The Adviser considered that, whilst methods of measuring mortality rates are the subject of debate, HSMRs continue to be used as a standard methodology and a trigger for investigation and have played a useful role in this regard, including in Professor Keogh's review which was the spur for the programme. The subject of the programme itself was the quality of NHS care and treatment and therefore a discussion about the methods of compiling statistics was peripheral to the subject. The programme had accurately described the HSMRs and had not made claims about actual deaths when referring to these statistics. The Adviser concluded on Point (A) that there was no obligation upon BBC News to consider the merits or otherwise of HSMRs in this programme and that the complainant had provided insufficient evidence that *Newsnight* had breached editorial guidelines on accuracy and, consequently, impartiality.

### **Point (B)**

The Adviser noted that Professor Jarman was described in the programme as "an advisor to the Keogh review". On screen he was captioned "Sir Brian Jarman, Imperial College, London".

The Adviser noted that, as part of his review, Professor Keogh had established a National Advisory Group which helped guide the review process and advised on how to ensure a robust and consistent approach was taken in conducting the individual investigations. Professor Jarman was a member of this Advisory Group; his credentials for participation are listed simply as his directorship of the Dr Foster Intelligence Unit.

The Dr Foster Unit at Imperial College, London is funded by Dr Foster Intelligence Ltd and is described as having “developed pioneering methodologies that enable fast, accurate identification of potential problems in clinical performance and also in areas of high achievement”.

Dr Foster Intelligence Limited is a limited company with two shareholders: Dr Foster Holdings LLP and the Department of Health. A National Audit Office report in 2007 explained that:

“The Department of Health established the Information Centre in April 2005 to centralise the collection and dissemination of information across the NHS. The Department recognised the need to use this information to develop information products and services, which would encourage senior, strategic NHS staff to make effective use of information. On the basis of negotiations through 2005, and Ministerial approval, the formation of a joint venture company ‘Dr Foster Intelligence’ was announced by the Secretary of State for Health in February 2006. Prior to establishing the Information Centre the Department started exclusive discussions with Dr Foster Ltd, a private company already successful in health data dissemination.”

The Adviser noted that Professor Jarman did not appear from company searches to have been a director of Dr Foster Intelligence or Dr Foster Holdings. He is, however, Emeritus Professor of Primary Care at Imperial College and director of the Dr Foster Unit there.

The Adviser noted that Professor Jarman is a former Director of the British Medical Association. She noted, and supported, the ECU’s conclusion that he was a senior and respected figure and was considered an expert in his field. She noted that the programme had referred to his role as an adviser to the Keogh review and that the Keogh review had in turn referred to his role at the Dr Foster Intelligence Unit. She concluded that the programme had described his role accurately and could find no evidence for the complainant’s claim that his work had been “mischaracterised” by BBC News. She considered that his work for the Unit had involved the compilation and assessment of data and this was part of his credibility for appearing on the programme (along with his long professional standing as an expert in this field).

The Adviser considered that, whilst viewers might have found additional information about the Unit interesting, it was not essential and viewers would not have been misled as to Professor Jarman’s status by its omission. She noted that the complainant had provided no evidence that Professor Jarman made any pro-government comments on air, despite his claims that he could be considered a “government spokesman”. She concluded on Point (B) that there was insufficient evidence to support a claim that the BBC’s guidelines on accuracy or impartiality had been breached.

The Adviser did not consider the points raised had a realistic prospect of success and did not propose to put them before Trustees.

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

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

1. He asked why the BBC felt obliged to take Jarman’s side on HSMRs, or any side? That was not indicative of impartiality. He asked for an explanation of why BBC News are “seemingly committed to defending HSMRs”.

2. He felt that the BBC had not made clear the distinction between “excess” and “needless” deaths, even by using a careful form of words: “more deaths than would have been expected”.
3. He disagreed that the programme had described Professor Jarman’s role accurately or that there was no evidence that his work had been “mischaracterised” by BBC News.

He did not consider that calling Prof Jarman an advisor to the Keogh Review, or stating that he worked at the Dr Foster Unit was sufficient to inform the viewer about “this controversial figure”. He said that viewers could not be expected to think there was any cause for them to do their own investigation into the backgrounds of people who were described as independent experts: that was what news organisations such as the BBC were for.

### **The Committee’s decision**

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

The Committee noted that the complainant did not accept the reasoning given by the Trust’s Senior Editorial Complaints Adviser not to proceed with the appeal on both Points (A) and (B).

#### **Point (A)**

The Committee acknowledged the complainant’s concern in his Appeal Point (A) about the method of compiling statistics known as HSMR [Hospital Standardised Mortality Ratios] and his belief that BBC News had an obligation to consider its “merits or otherwise”.

The Committee decided that this element of the Appeal qualified to proceed for consideration.

#### **Point (B)**

The Committee acknowledged the complainant’s concern that the programme had not described Professor Jarman’s role accurately.

The Committee noted that Professor Jarman was described in the programme as “an advisor to the Keogh review”. On screen he was captioned “Sir Brian Jarman, Imperial College, London”.

The Committee also noted that Professor Jarman is a former Director of the British Medical Association and supported the ECU’s conclusion that Professor Jarman is a senior and respected figure and considered an expert in his field.

The Committee was of the view on Point (B) that there was insufficient evidence to support a claim that the BBC’s guidelines on accuracy or impartiality had been breached.

**The Committee therefore decided that one element of appeal (Point (A)) did qualify to proceed for consideration and that one element (Point (B)) did not.**

## Description of the legal status of settlements in the Occupied Territories compared to how the firing of rockets by Hamas into Israeli territory is reported, BBC News

The complainant asked the Editorial Standards Committee at its December 2013 meeting to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

### Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint. He said that BBC output is not impartial because it invariably refers to Israeli settlements as illegal under international law but does not usually say that Hamas break international law when they fire rockets at civilian population centres in Israel.

The complainant gave detailed reasoning as to why he disagreed with the Head of Editorial Compliance and Accountability who, in her Stage 2 response, had cited various bodies in support of the BBC's position on how it describes the legal status of settlements.

The complainant said:

- the UN is a political body and its resolutions do not make international law, which is instead determined by international treaties
- the British government and the EU are political bodies that do not make international law
- the International Court of Justice's [ICJ] opinion that settlements are illegal was an advisory view; Israel was not present at the hearing.

The complainant also referred in his appeal to the arguments he made at Stage 2 in support of his view that West Bank settlements are not illegal under international law:

- the 1920 League of Nations Mandate for Palestine was backed by international treaty and encouraged close settlement of the land by Jews (including what is now known as the West Bank); that treaty has not been superseded
- the subsequent armistice agreement of 1949 which delineated the "green line" was just a ceasefire with no legal consequences for any final settlement as stated in Article 2(2) of that agreement
- the West Bank is not the territory of a "High Contracting Party" and as such Article 2 and Article 49 of the 4th Geneva convention cannot apply, including the clause which says "Individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupier or not, are prohibited, regardless of their motive"
- in any event all the settlers are there because they chose to be there, not because they were deported or transferred there

- when the BBC states the settlements are considered illegal it does not say by whom, a former president of the ICJ (amongst others) reached the conclusion that the settlements are legal
- it is clear the US consider the settlements to be legal and acts accordingly; all the negotiations between Israel and the Palestinians since the Oslo Accords have been mediated by the US and have been on the basis that Israel will keep the major settlement blocks
- the statement that the settlements are illegal under international law is far too definite to state as an objective fact, given all the evidence to the contrary.

The complainant said that if BBC journalists mention (as fact) that settlements are illegal, then Hamas's acts of firing rockets from civilian positions into civilian population centres in Israel should also be described in such terms.

The complainant cited the protocol of the 1949 Geneva Convention which sets out how parties to a conflict are obliged to treat civilians. The complainant said that Hamas were clearly in breach of international law as defined in the protocol in putting their own civilians at risk and in targeting Israeli civilians. The complainant said this constituted a war crime, as noted by Colonel Tim Collins on *Newsnight* and by the UNHRC in their report on the conflict.

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

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit, and an independent editorial adviser conducted a proportionate review of the way in which BBC News covered Hamas operations during the escalation of the conflict in November 2012.

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

The Adviser noted the complainant's assertion that the BBC's Middle East coverage is "lacking impartiality". She therefore considered that the relevant editorial guidelines were the impartiality guidelines. The Guidelines can be found in full here: [www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines)

She considered first the complainant's contention that the respective terms in which BBC News referred to the legality of settlements and Hamas's conduct during Operation Pillar of Defence were capable of being tested against the editorial guidelines by the comparison of one with the other. The Adviser agreed with the Stage 2 response on this point, which was that, notwithstanding the views of Israel and some scholars, the settlements are widely considered to be illegal under international law, whereas, by contrast, war crimes are:

"...an accusation until they have been proven and it is not for the BBC to impose such a judgment unilaterally in the place of war crimes trials."

The Adviser therefore concluded that the complainant's comparison between these two aspects of the BBC's coverage of the Israeli/Palestinian conflict was neither a meaningful nor a legitimate application of the impartiality guideline. The Adviser also noted that the manner in which both issues are reflected in BBC News coverage varies substantially across the output and that the overarching requirement for all news coverage is that it is

duly accurate and duly impartial, taking into account the subject and nature of the content, the likely audience expectation and any signposting that might influence that expectation.

It would not have been in the Adviser's view a proportionate use of resources to conduct a comprehensive review of the context on each occasion in which either issue has been discussed.

With regard to the US Government's views on the legality of the settlements under international law, the Adviser agreed with the Stage 2 response that the administration's position is more nuanced than the complainant alleged and does not amount to a view that the settlements are legal.

Turning to Hamas's rocket attacks into Israel in November 2012, the Adviser noted that the inclusion or omission of specific information on any given issue is a matter of editorial judgement. As such there would be no requirement to reflect the complainant's view that the rocket attacks breached international law and constituted a war crime. However, the Adviser also noted the caution in the Impartiality guideline that the omission of an important perspective in a particular context may jeopardise perceptions of the BBC's impartiality.

The Adviser also considered whether BBC News' coverage of the conflict was duly accurate. Specifically in the context of the issue which was the subject of this complaint, the Adviser considered whether the output reflected, as appropriate to the subject and nature of the content, the character of the rocket attacks, such that it was clear that they had been targeted at civilian population centres in Israel; whether the coverage reflected the allegation that Hamas and its allies were launching rockets from civilian areas in Gaza; and whether, across the coverage during an appropriate timeframe, the BBC accurately and appropriately (subject to the nature and type of the content) reported the views of the principal parties to the conflict.

The Adviser agreed with the Head of Editorial Compliance and Accountability that it would not have been duly accurate for the BBC to have stated that Hamas was guilty of war crimes, as no charges have been laid or found proven in that regard.

In more general terms, the Adviser also conducted a search for items published on the BBC News website and noted that the coverage included repeated references to Hamas intentionally targeting civilian areas.

A sampling of the output on the website on a randomly selected two days of the conflict included the following content:

Ban Ki-Moon's press conference with Prime Minister Netanyahu on 20 November 2012 in which the UN Secretary General was broadcast saying:

"I myself visited Sderot and was able to witness myself how these people were living in the fear and terror. This is unacceptable, irresponsible and reckless. I strongly condemn these actions. Rocket attacks by Palestinian militants targeting Israel must cease immediately."

At the same press conference, Benjamin Netanyahu, was broadcast responding to the Secretary General:

"Unfortunately Mr Secretary, Hamas and Islamic Jihad and the other terrorist groups do not share your concern about the civilian casualties or about civilian casualties at all. They're deliberately and indiscriminately targeting our civilians and they deliberately hide behind their civilians. The terrorists' targets are children and they use their own children as human shields. They place explosives, weapons, other destructive weapons of any kind in schools, mosques, hospitals, universities. Now targeting civilians and hiding behind civilians as you well know is a double war crime..."

Also on 20 November, the UK Foreign Office Minister Alistair Burt who was in the region is quoted on the BBC News website saying:

"Today I have seen for myself the impact of this conflict and the terrible toll and suffering it is inflicting on families and communities across Israel. Coming here has given me a sense of what life is like for people under attack, and the appalling devastation that rocket attacks bring. The people in villages, town and cities across Israel have the right to live without the constant fear of rocket attacks."

In an interview with BBC reporter Ben Brown in Ashdod on 19 November broadcast on a number of BBC outlets, Israeli Cabinet Minister Uzi Landau said:

"We are at a time of war that we have been forced to go into just because our population is under continued barrage ... what you see here is a deliberate attempt by terrorists ... just to on purpose target our highly civilian populated centres that's a major difference (from our surgical strikes on legitimate terrorist targets) between them and between us. The other side isn't just simply launching rockets, they're doing that from the vicinity of schoolyards, from mosques, from hospitals. They are targeting not only our population but they are doing that, endangering on purpose their population..."

More generally across the output during the week of hostilities, the Adviser noted repeated references in BBC scripts to the rocket attacks by militants into Israel as being the trigger which precipitated Israeli air strikes on Gaza. She noted too the reporting of, for example, the views of the British Foreign Secretary William Hague and Prime Minister David Cameron, who both said that Hamas bore the principal responsibility for the violence in southern Israel and Gaza. And, finally, the Adviser noted the update which has now appeared across a number of BBC News web pages citing the UN report published in March 2013 suggesting that it was a Palestinian rocket that had killed the child of a BBC journalist in Gaza and not an Israeli one as was widely reported at the time.

During the random survey of coverage, the Adviser noted that the issue which the complainant said the BBC ought to have specifically mentioned, namely that the rocket attacks from Hamas territory breached international law, did not appear to have been the main message that Israeli leaders chose to focus on. Instead in the interviews they gave to the BBC and in press conferences, Israeli politicians focused mainly on what was actually happening. Consequently this was what was reported, as evidenced from the examples quoted above.

Notwithstanding this, the Adviser noted that the legal aspects of the conflict had been covered in a lengthy article, "The legal position of Israel and Hamas", published on 20 November 2012 on the BBC News website and written by Guglielmo Verdirame from the Department of War Studies at King's College London. The article covered in considerable detail the various aspects of international law which were applicable to the conflict; both

of the key points in the complainant's appeal were discussed, i.e. the firing of rockets by Hamas from civilian areas and the firing of rockets into Israeli centres of population.

Accordingly the Adviser concluded that the complaint would not have a reasonable prospect of success were it to proceed to appeal 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 repeated a point made on appeal; and the following points raised at Stage 2:

- "There is considerable disagreement amongst lawyers over whether or not Article 49 (6) of the 4th Geneva Convention 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies' means that it is illegal under international law for Israel to permit its civilians to set up home in the West Bank. There is certainly nothing in international law that forbids the building of homes or establishment of businesses in occupied territory, and there is no suggestion that Israel either deported or transferred any of those civilians who set up their homes in the West Bank. Many international lawyers are firmly of the view that the settlements are perfectly legal, for the reasons that I have already stated in my appeal."
- "In a Newsnight report Tim Collins did say that it was 'a war crime by any standard'. BBC staff reporters do not say this. In the BBC reports they never mention firing rockets at civilian population centres is a war crime, or even that it breaches international law, but clearly it is and it does."
- "Whenever BBC reports mention an Israeli settlement in the West Bank, they routinely say that the settlements are illegal or that they are considered to be illegal under international law and may say that Israel disputes this. I have seen/heard/read many BBC reports that mention Hamas rockets that were fired at Israeli civilian communities and I have never seen/heard/read a BBC report by a BBC reporter that said that such action was illegal."

The complainant alleged that there was a clear lack of impartiality, even double standards, that were not addressed by the Trust's Adviser. He claimed that the article quoted by the Trust's Adviser added nothing to her arguments.

He said that Israel has never been found guilty in a court of law of breaching the Geneva Convention with regard to the settlements and that the advisory opinion by the ICJ did not amount to proof.

He said that with regard to the rockets fired by Hamas at Israel, the overwhelming body of legal opinion was that deliberately firing rockets at civilians was a breach of international law and a war crime. He also said that Hamas could not be brought to an international court for the offence because they are not a recognised state, but that did not mean that they were not guilty of breaking international law.

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

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

The Committee noted the complainant's concern that BBC output was not impartial because in his view it invariably refers to Israeli settlements as illegal under international law but does not usually say that Hamas break international law when they fire rockets at civilian population centres in Israel.

With regard to the legality of Israeli settlements, the Committee stated that notwithstanding the views of Israel and some scholars, it would be likely to find in agreement with the Stage 2 response that the settlements are widely considered to be illegal under international law.

The Committee noted that the Adviser concluded that it would not have been duly accurate for the BBC to have stated that Hamas was guilty of war crimes, as no charges have been laid or found proven in that regard. However, the Committee also noted that attacking civilians and acts of violence whose primary purpose is to spread terror amongst civilians was prohibited by the Geneva Convention. As such, the Committee considered that in principle the BBC might choose to report that the deliberate targeting of civilians in an act of war is contrary to international humanitarian law. However, whether it did so or not was an editorial decision which rested with the Executive.

The Committee did not consider that it was appropriate to compare two specific and distinct elements of a conflict in order to assess the impartiality of the BBC's output and noted that impartiality should be measured against the coverage of the conflict as a whole.

Accordingly, the Committee decided that the arguments advanced by the complainant had no reasonable prospect of success, and that the appeal should therefore not proceed to a substantive consideration.

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

## Restoration Home, BBC Two, 21 August 2013

The complainant asked the Editorial Standards Committee at its March 2014 meeting 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 wrote to the BBC about an edition of *Restoration Home*.

He said that the programme:

- failed to warn viewers of the dangers of asbestos
- gave the impression that asbestos could be removed by an ordinary householder without any risk
- failed to warn viewers of what steps needed to be taken in order to remove and dispose of asbestos safely
- showed a stack of asbestos roofing sheets lying on the ground uncovered clearly suggesting that asbestos was harmless
- was negligent by allowing the on-site production crew to be put at personal risk of exposure to asbestos dust
- showed the architectural expert walking in ordinary clothes across the floor of the barn where he would have been disturbing asbestos dust lying on the floor.

The initial Stage 1 response sent to him stated that:

"Restoration Home is an observational documentary and, as such, the works being carried out by the owners and contractors are of their own doing. We are there in an observational capacity only and we do not advise on such issues as they are deemed as the competent people."

The complainant made a follow-up complaint on 12 September 2013 disputing the idea that an observational documentary did not have any responsibility to warn about the possible dangers of images seen on-screen. He gave the example of warnings given for many television programmes containing flash photography to support his point.

He also did not believe that his point about the dangers to those involved in making the programme for the BBC had been addressed, and in a subsequent response dated 22 October 2013, Audience Services acknowledged that they had failed to address this in their original response and sought to reassure the complainant that

"...all health and safety precautions were taken throughout the filming period at the property and that the entire team was appropriately briefed and equipped at all times."

The complaint was escalated to Stage 2 on 22 October 2013.

The Editorial Complaints Unit (ECU) found that the programme was not in breach of the Guidelines on Harm and Offence and made the following points:

- they acknowledged that it would have been better if the programme had given more information about the danger of handling asbestos-containing material, and that it would have been preferable if the single shot of stacked up roofing tiles had been accompanied by a line explaining the preferred method of storing them.

However, the sequence was very brief and they did not believe viewers would be encouraged to think that the programme was a “source of reliable advice on the removal and storage of asbestos roofing tiles”.

- the nature and scale of the work shown, coupled with the lack of “how to” advice, would make it a reasonable assumption that viewers would recognise that it was an observational programme rather than a DIY show
- the programme-makers received written health and safety advice from a company with extensive experience in advising television companies on safety issues.

### **The appeal to the BBC Trust**

The complainant contacted the BBC Trust on 20 November 2013 to ask for a review of the ECU's finding. He made the following points in his appeal:

- his central criticism of the programme was the perception it gave to the average viewer, and he rejected the ECU's view about the level of awareness the average viewer could be expected to have about the dangers of asbestos
- with regard to the issue of the removal of the roofing sheets, he said that the removal itself did not take particular skill and expertise, but the safe removal did require such expertise
- the fact that a large stack of asbestos roofing sheets was seen clearly in the programme, uncovered, gave the impression that there was no risk in a householder carrying out a similar removal on a smaller scale. He said it was notable that the ECU had said that the roofing sheets were now held in a secure indoor location, tightly wrapped in tarpaulins. Why then, were they left unwrapped when filmed? He asked whether the viewer was supposed to guess that they would be moved to a secure location subsequently. He said that to the average viewer, as shown in the programme, they would have not seemed of any greater significance in terms of risk than a pile of bricks
- he could not understand why the ECU saw little point in exploring the specific nature of the safety advice given to the householder by a “relevant expert”. Although it was not mentioned in the programme, it seemed to the complainant that any advice given would have been of clear relevance in regard to his central criticisms of the programme
- he was concerned that the ECU “rejects the necessity to explain the clean-up operation”. He wondered whether the clean-up operation described by the ECU in terms of the Health Protection Agency (HPA) guidance was ever carried out, and doubted that it had been
- he said that although he had been told that the production team were not on site when the sheeting was removed, that failed to address the point that the members of the team were walking about inside the barn, when, if it had not been professionally cleaned, there would have been asbestos dust present from the roofing sheets having been disturbed when moved
- he was concerned that the architectural expert was walking around on the site wearing ordinary day clothes without even a hard hat. He felt that alone raised

questions about the supposed health and safety advice which the production company claimed to have obtained

### **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 programme in question. She acknowledged the strength of the complainant's feelings about this matter.

The Adviser noted that the complainant had raised issues relating to the way in which safety was handled during the making of the programme which could:

- a) have left viewers with a lack of awareness of the serious safety issues concerning the handling of material containing asbestos, and encouraged them to try similar construction tasks themselves.
- b) have led to an increased risk for the on-site production team and architectural expert who were walking around without any protective clothing, and who might have been exposed to asbestos dust, as well as moving the dust around by walking in an area which had been exposed to asbestos in an unprotected environment, if a proper clean-up operation had not been carried out.

The Adviser considered the complaint against the Editorial Guidelines on Harm and Offence which relate to Safety.

#### 5.4.51

We should normally observe the law, both in the UK and other countries, unless there is clear editorial justification for not doing so. ...

#### 5.4.52

We should also show the common sense use of safety equipment wherever practical, unless there is clear editorial justification for not doing so. ...

The Adviser noted that the complainant had referenced Section 6 of the Guidelines in his complaint:

#### 6.4.31

We should not ask contributors to expose themselves to significant health and safety risks while taking part in our output unless we have completed a BBC risk assessment form and conducted rigorous fitness and psychological checks as appropriate.

She noted that the complainant had received a response from the ECU explaining that Section 6 was not intended to refer to observational documentaries such as *Restoration Home* in which the building tasks would have been carried out whether the film crew was there or not and agreed with that advice.

The Adviser also noted the Introduction to the Guidelines on Harm and Offence, which stated:

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

offence.

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

The Adviser noted that, in applying the Harm and Offence Guidelines, programme makers were required to bear in mind the expectations of the audience and how the programme was signposted.

She noted that on the BBC's webpage for the programme, it was billed with the following statement:

Following owners of crumbling historic buildings as they save them from ruin by restoring them into 21st-century dream houses

The Adviser considered the Trustees would be likely to conclude that the audience would have understood the series *Restoration Home* was not a DIY programme that was advising how to carry out a project, but was a documentary feature that was following work as it was being undertaken.

The Adviser noted that, in his response of 15 November 2013 the Complaints Director had referred to this point and had stated:

"In the case of a programme such as *Restoration Home*, which is an observational documentary rather than a DIY advice show, I am not persuaded ... that viewers would have assumed the task was one which could be undertaken by an average member of the public without appropriate health and safety measures being taken.

"Furthermore, it seems to me that the scale of the task that was described, and the obvious professional expertise of Mr [name] (who was referred to as a roofer with 20 years' experience), would have suggested that it was not a simple or straight-forward job."

The Adviser acknowledged that the complainant did not agree with the Complaints Director's reasoning in relation to the observational style of the documentary. However, given the signposting that was in place, she considered it was reasonable for the programme-makers to conclude that in general, viewers would not be likely to think they could tackle such a task without significant professional advice and would not have been likely to rely on a single programme to instruct them on how to carry out similar work.

The Adviser noted that the programme had not included footage of the roof tiles being removed, or given information about how they were removed. The Adviser noted the Complaints Director had said it would have been preferable from a health and safety point of view if the programme had included a line of script which pointed to the potential dangers of moving any asbestos-containing material (ACM). However, she believed Trustees would be likely to conclude that there was no requirement under the Editorial Guidelines for this information to be included.

Therefore, the Adviser did not consider this element of the complaint had a reasonable

prospect of success and did not propose to put it before Trustees.

The Adviser noted the complainant's points with regard to his request for information about the safety advice given to the householder, his request for confirmation of whether a clean-up operation took place or not, and his points about the safety risks which could have resulted if, as he suspected, this clean-up did not take place.

However, she 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 operational management of the BBC" is specifically defined in the Charter (article 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.

Decisions relating to the day to day management of productions including the safety of locations for the people who work in them are normally a matter for the BBC Executive and the Adviser did not believe that the complainant had made a case for the Executive to answer. Nevertheless, the Adviser was grateful to the complainant for bringing his concerns regarding health and safety to the attention of the Executive and she was sure the Trustees would wish her to thank him on their behalf.

The Adviser believed that the Trustees would be likely to conclude that the actions taken on-screen in the programme did not breach Editorial Guidelines on Harm and Offence. For these reasons she did not believe that the appeal had a reasonable prospect of success and did not propose to proceed with it to appeal.

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

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

- in 2014 in the UK 2500 people would die from asbestos related diseases. Programmes such as this edition of *Restoration Home* did great damage to the work of the British Lung Foundation who were currently running a campaign to highlight the continued dangers of asbestos
- he did not consider the Adviser's comments on creative risk taking were applicable in this instance; it was negligent programme production
- the label of 'observational documentary' was not sufficient to exonerate the producers. It could not be right that a programme of this kind was allowed not to point out the dangers of asbestos, and portrayed asbestos and asbestos exposure as safe. He said that allowing the architectural expert to walk inside the barn whilst addressing the camera and not wearing appropriate clothing, appeared in clear violation of Guideline 5
- the nature of the project: the claim that the ordinary viewer would see the programme as observational, and would not attempt to undertake such a huge project, totally missed the point. Even though viewers would be unlikely to undertake such a project, they would look at the programme and the way asbestos was portrayed in it, and believe that they could safely handle it in small projects

- if there is no infringement of the Guidelines then they should be changed.

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

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

The Committee acknowledged the complainant's concern that the dangers of handling asbestos were not emphasised, and his view that the BBC's Guidelines on Health and Safety were not followed adequately during the making of the programme.

The Committee acknowledged that the complainant did not agree with the reasoning given by the ECU in relation to the observational style of the documentary. However, the Committee agreed with the Adviser that, given the signposting that was in place, it was reasonable for the programme-makers to conclude that viewers would not be likely to think they could tackle such a task without significant professional advice. The Committee also agreed that viewers would not have been likely to rely on a single programme to instruct them on how to carry out similar work.

The Committee agreed that the complainant had highlighted an important issue regarding the dangers of asbestos, and noted that the ECU had already acknowledged at Stage 2 that "it would have been better if the programme had given more information about the danger of handling asbestos- containing material". However, the Committee did not believe that evidence had been presented which would be likely to lead it to conclude that the programme was in breach of the Editorial Guidelines on Harm and Offence relating to Safety.

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

## Vanessa Feltz, BBC London 94.9FM, 28 June 2013

The complainant asked the Editorial Standards Committee at its March 2014 meeting 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 28 June 2013 following that day's edition of Vanessa Feltz. The broadcast was made on the same day that a sermon was being delivered in mosques all over the UK about the immorality of grooming girls for sex and the necessity to report such practices to the authorities. The previous day, a group of seven Muslim men had been sentenced after being convicted of grooming and abusing a number of girls from Oxford. The programme made the point that the most recent case had come after criminal gangs had also been convicted in Rochdale, Telford and Bradford where, too, Muslim men had abused white girls.

In her complaint at Stage 1, the complainant considered that the way Muslims were portrayed in the report would "give leeway to voice private racism openly" so that the report would serve to allow racism to become "respectable".

The complainant complained that:

- the presenter gave the impression that child abuse was a mainly muslim issue
- at no stage were any statistics given which would have shown that most abusers in Britain were white and non-Muslim
- it had been clearly stated by the Metropolitan police that race was not an issue in child abuse cases
- the coverage of the issue reinforced stereotypes and might have led to tensions and racial crimes against a very visible minority
- the show was aired on the day before the English Defence League (EDL) was due to march in London. Stereotypes of Muslims used by the EDL would have been reinforced by the material broadcast on the programme.

The complaint received two responses at Stage 1 and was escalated to Stage 2. The ECU sent its provision finding on 15 October. It did not uphold the complaint.

### The appeal to the BBC Trust

The complainant appealed to the BBC Trust on 26 November. She believed the programme was in breach of BBC's Editorial Guidelines in terms of Accuracy; Impartiality; Harm and Offence; and Reporting Crime and Anti-Social Behaviour.

She made the following points in her appeal:

1. the presenter opened the programme by reading out "graphic details from a court case of Muslim men grooming young girls (infecting them with sexual diseases etc.) The details were shocking. It set the tone."
2. the wider context for the subject discussed on the programme was the planned EDL march the next day, about which the police had expressed concerns regarding possible public disorder issues.  
The complainant referred to the BBC Guidelines: Reporting Crime and Anti-Social Behaviour:

“Material likely to encourage or incite the commission of crime, or lead to disorder, must not be included in our services”

3. the presenter discussed a highly emotive subject out of context. She did not:
  - give any statistics
  - any facts
  - put the subject into a framework for her audience

The complainant said that the Complaints Director had agreed that no statistics or facts were given which would have highlighted the fact that Muslim abusers represent only a small minority of all abusers. The complainant said that the police and politicians have highlighted that fact, but the mass media still misrepresented the issue

4. instead of the facts, the audience had been presented with graphic details which were a “distortion” and this did not provide the right framework for a challenging subject. This was a breach of the Accuracy Guidelines (Introduction 3.1) and also a breach of Impartiality Guidelines as the discussion was unbalanced and distorted. She said that the presenter was well-known for “her feisty style and for interrupting callers who have a different opinion”
5. the programme had given a strong impression that child abuse is a specific Muslim vice and implied that mosques know this because they preach sermons trying to deal with the problem. The complainant felt that without proper factual context, prejudice and hatred against a minority would be perpetuated. She considered that what listeners heard could reinforce a dangerous stereotype and lead to hate crimes.  
She considered this was against the spirit of the BBC Guidelines on Harm and Offence: Portrayal, 5.4.38. She also referred to the Guidelines relating to Religion which state: “The BBC also has a duty to protect the vulnerable and avoid likely harm.”

### **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 sections of the Vanessa Feltz programme in question. She acknowledged the strength of the complainant’s feelings about this matter.

The Adviser noted that the complainant had raised concerns in her appeal that the output breached the Guidelines on Impartiality, Accuracy, Harm and Offence, and Reporting Crime and Anti-Social Behaviour. She considered the complaint against those Guidelines.

The Adviser noted that the Editorial Guidelines required output to be “duly” accurate and impartial – and indicated that programme makers needed to bear in mind the content and context of what they were broadcasting and the expectations of their audience.

In terms of the Editorial Guidelines relating to Harm and Offence, again, output producers were expected to bear in mind the likely expectations of their audiences and were expected to weigh up the editorial justification of output against any offence that may be caused.

In terms of Reporting Crime and Anti-Social Behaviour, programme producers needed to ensure that material that would encourage or incite crime was not transmitted – but this

did not restrict broadcasting information that was in the public interest.

The Adviser noted that Vanessa Feltz was a well-established broadcaster. The BBC London website described her programme with the following statement:

London's best radio talk show where Londoners get to discuss the light and shade of life in the capital.

While listeners were urged to ring in with their comments with the statement:

Have your say on the day's news with Vanessa.

Turning to the first element of the complaint, the Adviser noted the complainant had drawn particular attention to the introduction to the morning's phone in, which she considered "set the tone" for the rest of the output. The Adviser noted that the introduction included factual details of the sentencing of the seven defendants and of the crimes they had been convicted of. It drew attention to previous cases where groups of Muslim men had been convicted of grooming and abusing white girls. It stated that a sermon was due to be given in mosques and referred to the organisation behind the sermon that was reported as saying: "We have been horrified by the details that have emerged from recent court cases and as Muslims we feel a natural responsibility to condemn and tackle this crime."

This first question posed by Vanessa Feltz to encourage people to ring the programme was:

"Is it only right and proper that such a sermon IS delivered in mosques today? Or are you deeply resentful of the idea that sex grooming gangs are specifically a Muslim problem and a Muslim issue? Do you see the groomers not as Muslims, but as criminals, sadists, paedophiles, evil men whose religion is irrelevant? Do you feel offended that Imams are taking responsibility for a crime you and your fellow Muslims would never dream of committing? Or are you glad that the step is being taken and the community is being alerted to the true meaning of Islam?"

The Adviser considered Trustees would be likely to conclude that this approach – to raise different possible viewpoints about an issue – was well within the expectations of the programme's audience and would have been intended to give enough information about the subject to prompt discussion and calls. She considered she had not seen any evidence that suggested the introduction to the phone-in programme had been in breach of any of the Editorial Guidelines and considered this element of the appeal did not have a reasonable prospect of success. Therefore, she did not propose to put the first point before Trustees.

The Adviser then turned to the second element of the complaint, which related to the planned march by the English Defence League and the complainant's concern that the Vanessa Feltz programme might incite crime or disorder. The Adviser noted that the complainant considered the EDL demonstration provided the "immediate context" for the programme and felt that the EDL used stereotypes of Muslims which the complainant believed would be bolstered by the programme.

However, the Adviser noted the EDL march had not been referred to in the introduction to the phone-in and could not see evidence that would support the allegation that the programme would have incited violence or crime. She considered listeners would have been more likely to understand the context being the most recent court case which had

seen seven men imprisoned the previous day and the decision for the sermon condemning this behaviour to be given in mosques across Britain. She did not consider that Trustees would be likely to conclude there was evidence that the programme would incite crime or lead to disorder. Therefore she did not consider this element of the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

The Adviser then turned to the third element of the appeal. The complainant considered that the presenter had introduced a highly emotive subject out of context and without giving the audience relevant statistics or facts to frame the debate. The complainant considered this point had been conceded by the Editorial Complaints Unit.

The Adviser noted the Editorial Complaints Unit's response on this point, which stated:

"A range of views were featured on the programme. Imam Alyas Karmani, who was behind the sermon, put it that the crimes had been committed by 'reprehensible criminals' not driven by any values to do with any faith and was in that sense 'nothing to do with Islam'.

"In response to the observation that all the men in the recent grooming cases were Muslim, he pointed to the fact that: '92% of groomers are white, male and indigenous – and this particular model is actually linked to organised criminal gangs'.

"Asghar Bukhari, spokesperson of the Muslim Public Affairs Committee, expressed concern that the sermon gave the misleading impression that there was any link between the religion of the men in the Oxford case and their crimes. He talked about how the background of an individual – their race, their faith – might be totally irrelevant to their actions. He thought that the decision to read out the sermon was wrong, and came from fear that Muslims would otherwise be demonised.

"Listeners heard from a British Muslim caller, Don, who blamed the media for 'hyping up' the fact that the men were Muslim and said that in fact: 'It's not a Muslim issue. These people, they've got Muslim names, they probably come from a Muslim background, but they are criminals'.

"Another caller, Lynn, put it that the same sermon should be read out in Roman Catholic churches. All in all I think listeners heard a full range of views and a healthy debate on the subject.

"...As you say, most child abusers are white, but it remains a fact that in the 'street grooming' cases which gave rise to the sermon the men were British Muslims. This was acknowledged in the text of the sermon, which said that abusers can come from all backgrounds, but that:

'...With so many individuals from a Muslim background involved in such crimes we have a responsibility to condemn this.'

"It seems to me that in this context there was a very strong editorial justification for the programme's references to and discussion of issues of religion and/or race. Neither do I agree that by not including statistics on the broader topic of child abuse across the UK (as opposed to the narrower topic of these particular cases of 'street grooming' and the sermon to be read out) the matter was discussed out of context. It seems to me that listeners were given sufficient information to judge

for themselves the relevance, or not, of the men's religion and background. A number of contributors expressed the view that this was utterly irrelevant to their crimes – and Imam Karmani included the statistic I have referred to above."

The Adviser agreed with this analysis and considered Trustees would be likely to conclude that the output met the requirements for due impartiality and due accuracy as set out in the Editorial Guidelines. Therefore she did not consider this element of the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

The Adviser then turned to the fourth element of the appeal, in which the complainant considered the discussion was unbalanced and distorted. She said that Vanessa Feltz was well-known for "her feisty style and for interrupting callers who have a different opinion".

The Adviser agreed that Vanessa Feltz was known for her "feisty style" and considered that the audience expectation would be for a robust discussion in which strong views from both sides of a debate would be aired. She did not consider that there was evidence to suggest that the views put to the phone-in callers were her own views, or that she was trying to influence the callers or the wider audience by putting forward those views.

The Adviser noted that in her introduction to the programme Vanessa Feltz summarised the content of the sermon being given in mosques that day, and the question she was asking listeners to respond to.

The Adviser noted that Vanessa Feltz was not saying that sex grooming gangs were specifically a Muslim problem, but was asking whether any listeners felt resentful of such an idea being put forward in the media.

In the course of discussion with individual callers to the programme, and in the context of considering the main question of the phone-in, which was about whether it was right or wrong for the sermon to be given in the mosques that day, Vanessa Feltz asked the following questions:

"Do you think there is something endemic in Muslim culture which makes it easier somehow to exploit white women? A sort of belief, I mean it's a heinous belief but nevertheless, a sort of belief that white women are easy, that they are of dubious sexual virtue, that they don't deserve the same kind of respect, the same kind of protection as Muslim women? Is that, as far as you're aware, ever a prevalent feeling?"

"...Would you be able to say why it is that all the men found guilty of sex trafficking, gang grooming, in all these different instances in Rochdale, in Bolton, in Oxford, they have all been Muslim men? Would you say that is coincidence or would you say there is some reason behind it?"

The Adviser noted and agreed with the ECU's Complaints Director that "a range of views was featured on the programme". She also noted his comments in his Stage 2 finding:

"I do not agree that the presenter aired racist and anti-Muslim sentiments, or that the programme as a whole served to stereotype a community. The suggestion that the issue was connected to race or religion was discussed robustly and at length, but that does not in my view amount to perpetuating a negative stereotype."

The Adviser considered the presenter was posing questions that might be in the minds of some listeners in order to stimulate a robust debate. She considered Trustees would be

likely to conclude that this 'devil's advocate' technique was well established and met the requirements for due Accuracy and Impartiality set out in the Editorial Guidelines. Therefore she did not consider this element of the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

The Adviser then turned to the fifth element of the appeal. The complainant considered the programme would perpetuate "prejudice and hatred" against a minority and considered this was in breach of the BBC's Guidelines on relating to Portrayal. She also referred to the Guidelines relating to religion, noting: "The BBC also has a duty to protect the vulnerable and avoid likely harm."...

She also noted the Editorial Guidelines relating to Portrayal required programme makers and output producers to consider the editorial justification behind output that might cause offence. She considered Trustees would be likely to conclude that there was a very strong editorial justification for the subject to have been covered. She noted that the audience expectation for this kind of programme would have anticipated a wide-ranging and robust discussion of subjects that had featured in the news.

The Adviser noted the complainant's reference to the Editorial Guidelines relating to Religion ("The BBC also has a duty to protect the vulnerable and avoid likely harm"); however, she did not consider it was relevant in this context. She noted the Guidelines went on to refer to the Ofcom Broadcasting Code which stated that religious output: "must not seek to promote religious views or beliefs by stealth" nor "improperly exploit any susceptibilities of the audience". She considered this context made clear that the BBC's "duty to protect the vulnerable" related to a duty to protect vulnerable people from inappropriate religious influence.

The Adviser considered that on this final element of the appeal too, Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success and should not be put before Trustees.

With regard to the general decision by the Vanessa Feltz editorial team to cover the subject in the programme, the Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which as previously stated by the Adviser, she did not believe Trustees would consider was the case here. Decisions relating to the choice of content in a programme fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

For all the reasons set out above, the Adviser considered that 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 her appeal. She said that:

- racism and stereotyping of a highly visible minority (Muslims) in times of tension was a serious matter; clarifying the issue was in the interest of multicultural London and its various communities

- she referenced the background at the time and further articles and statistics which gave context to her complaint and which she felt highlighted “the increasingly negative stereotype of this specific minority in the media” and which indicated an increase in hate crime

Referring specifically to the Vanessa Feltz programme she made the following points:

- a trusted and popular presenter, repeated negative stereotypes in her introduction, quoting graphic details from a court case about Muslim child abusers, and linking a specific religious group with horrific child abuse. But she did not give facts, statistics or context to provide her audience with a sense of proportion
- in the interests of counterbalance, the complainant questioned the choice of the figure chosen to present the ‘other side’ of the argument. He was an Imam, a religious leader with a strong accent who was not known to listeners. He was a “a religious leader and a member of the stereotyped group: a group which is distrusted, now associated with child abuse, terrorism, extremism and the dreadful killing and shocking images of London Woolwich”
- the graphic images and language were inflammatory
- if the problem was not put into context, the truth was distorted and the rules of accuracy were breached
- she felt the BBC’s underestimation of the extent of hostility felt towards the Muslim minority was reflected in the handling of her complaint. She believed that the BBC did not give the studies and sources she had referenced in her letters to the ECU of 9 September and 26 October 2013 enough consideration.

### **The Committee’s decision**

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

The Committee noted that the Editorial Guidelines for Harm and Offence relating to Portrayal required production teams to consider the editorial justification behind output that might cause offence. The Committee believed it was likely to conclude that there was a very strong editorial justification for the subject to have been covered, and that the audience expectations for Vanessa Feltz would have anticipated a wide-ranging and robust discussion of subjects that had featured in the news.

The Committee noted the complainant’s concerns about racism and negative stereotyping and agreed that these were serious issues. The Committee noted that Vanessa Feltz did not say that sex grooming gangs were specifically a Muslim problem, but was asking whether any listeners felt resentful of such an idea being put forward in the media. The Committee noted the comments of the ECU Complaints Director in his Stage 2 finding:

“I do not agree that the presenter aired racist and anti-Muslim sentiments, or that the programme as a whole served to stereotype a community. The suggestion that the issue was connected to race or religion was discussed robustly and at length, but that does not in my view amount to perpetuating a negative stereotype.”

The Committee noted the complainant's concern about the Imam featured on the programme. The Committee considered that the decision as to who to invite on the programme was a matter for the BBC. The Committee considered that a range of views was included in the programme which met the requirements for due Impartiality.

The Committee understood that the complainant felt that without context the programme could not be duly accurate but saw no evidence to suggest that the programme failed to be duly accurate given the scope of the discussion which had been clearly established at the start.

The Committee noted the complainant's concern that the ECU had not taken into account various studies and sources, but it considered that there was no evidence to suggest that the ECU had not considered her submissions at Stage 2 appropriately.

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

## BBC Online: Learning Zone – “A Twice Promised Land”

The complainant asked the Editorial Standards Committee at its March 2014 meeting 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 was about alleged inaccuracies in a four-minute video about the origins of Zionism and the establishment of the State of Israel.

In his original complaint of 18 September 2013, the complainant stated:

“During the First World War Britain made contradictory promises to both the Palestinian Arabs and to the Jews, with the McMahon Pact and the Balfour Declaration, but in fact the McMahon correspondence was with the Bedouin rulers of Hejaz (the Husseins) and did not relate to Palestine. ...

“In the video it said that the Jews had no nation, but the Jews are and were a nation. ... They were a nation in exile. ... The international community promised a homeland for the Jews in Palestine through the San Remo Treaty and the League of Nations Mandate for Palestine which encouraged settlement of the Jews in Palestine. Only after that did significant numbers of Jews come to Palestine.”

The complaint was not upheld by the ECU.

### Appeal to the Trust

The complainant appealed to the Trust on 29 November 2013. He said it was wrongly stated in the online video that during World War One Britain had made contradictory promises to both the Palestinian Arabs and to the Jews. He contended that no promises had been made to the Palestinian Arabs, only to the Jews. Consequently the text accompanying the video was also wrong to title the item “A Twice Promised Land”. The complainant included references to historical documents to support his assertion.

The second allegation concerned a statement in the commentary that “the Jews had no nation”. The complainant rejected the view of the Editorial Complaints Unit (ECU) at Stage 2 that the item “gave a good sense of a communal identity shared across the diaspora, and the significance of that identity to the emergence of Zionism”. He said the commentary was offensive and untrue:

“The word Jew is derived from the word Judean and Jews prayers for the return to Zion continued through 2000 years of exile. The passages that we read in the Hebrew bible today and for thousands of years in the past constantly refer to the life of the children of Israel in the Land of Israel. That affinity with Israel is a significant part of our nationhood, and describing us as communities with no nation is a denial of who we are.”

### The Trust Unit’s decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser and an independent editorial adviser read the article in question and watched the relevant video.

The Senior Editorial Complaints Adviser (the Adviser) decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser considered the relevant Editorial Guidelines were those that related to Accuracy. She noted the requirements for due accuracy varied depending on the nature of the content, the audience expectation and any signposting that would influence audience expectation.

The Adviser considered first the allegation that it was wrong for the commentary to have stated that Palestine had been promised to both the Jews and to the Palestinian Arabs.

She noted the context in which the statement was made - that is, the item was a four-minute "timeline" style video introducing a school age audience to the major themes of Zionism and anti-Semitism:

- the origins of Zionism amidst late 19th century anti-Semitism in Europe
- the motivations of the early Zionists who settled in Palestine prior to World War One
- the mistrust of the Arabs in the region towards the idea of a Jewish homeland
- the Ottoman rule of the region up until World War One
- Britain's strategic interest in the region and her diplomatic approach, courting regional Arab military support and then shortly afterwards issuing the Balfour Declaration in support of a Jewish homeland.

The Adviser noted the relevant sections of commentary:

"At the outbreak of WW1 the Ottomans sided with Germany against the allies. Britain however was anxious to secure the region as it was of high strategic and economic value. The British sent a senior diplomat, Sir Henry McMahon, to make a secret deal with the Arab ruler of the holy cities of Mecca and Medina to lead a revolt against their Ottoman rulers.

"McMahon promised that if the Arabs supported Britain in a war the British government would support the establishment of independent Arab statehood in the region.

"The Arabs defeated the Ottomans and Britain took control of much of this area during WW1. But Britain made another promise in the midst of war. The British Foreign Minister Lord Balfour declared his Government's support for a Jewish national home in Palestine. The Balfour Declaration was the first significant announcement by a world power in favour of the Zionist project."

The Adviser noted how the UK Government's approach was discussed in the programme by the historian, Professor Bernard Wasserstein of the University of Chicago:

"The fact is that the British during the First World War were trying to construct a coalition. Trying to keep together a coalition against the central powers. That's to say against Germany and the Ottoman Empire and Austria-Hungary. And in order to do that they made arrangements with a number of allies. They made arrangements with the Arabs and they made arrangements with the Zionists. These were wartime expedients."

The Adviser noted the concluding commentary:

"Britain's double-sided commitment sowed the seeds of a century of conflict.

Offering support to Jews and Arabs made Palestine a twice-promised land.”

The Adviser noted the complainant’s contention that primary source material from the period and shortly afterwards clearly demonstrated that McMahon’s deal with the Sharif of Mecca had never included Palestine and that in any case the deal was made with the Arabs of Hejaz and not the Arabs of Palestine, who sided with Turkey in World War One.

The Adviser noted that in February 2013 the Trust Unit considered the merits of an appeal raising similar allegations, which was lodged by the same complainant as this appeal. She noted that the Trustees on that occasion had endorsed the Trust Unit’s decision not to proceed to hear the allegation on appeal.

The Adviser noted that the ECU cited the relevant reasoning from the Trust Unit’s decision of February 2013, in its Stage 2 finding for this complaint:

“Whatever arguments might be made for McMahon’s intentions, Husein apparently understood the promise to extend to Palestine. This fact was referred to in the decision of the BBC Trust in regard to your earlier complaint, which referred to James Barr’s account:

‘Husein made up his mind on 13 July 1915... The following day he wrote to the British high commissioner in Egypt, Sir Henry McMahon, aggressively repeating the demands ... To secure Arab friendship the British would have to recognize “the independence of the Arab countries.”’

“According to Husein, these included, in today’s terms, the entire Arabian Peninsula (except Aden, which was then British), Israel, Jordan, Iraq, Lebanon, and Syria, as well as a horizontal sliver of southern Turkey running between the Mediterranean and the Iranian border. Britain would also have to agree to an Arab caliphate, receiving preferential economic treatment in return.

“It can therefore be argued that the man who was very shortly to become ‘Sultan of the Arabs’ believed himself to be representing and acting on behalf of the Palestinian Arabs in his pursuit of an independent Arab state which he apparently believed extended to Palestine. In this context I don’t think the reference to a promise made to ‘the Palestinian Arabs’ would have materially misled audiences.”

The Adviser took the view that the material facts considered relevant to the decision not to proceed with the appeal in February 2013 applied equally to this complaint. Whilst she acknowledged that the interpretation of McMahon’s offer to the Sharif of Mecca in 1915 remains disputed, it was a matter of record that the Arabs’ understanding at the time was that Palestine was included. The Adviser noted the ECU’s inclusion of the documentary evidence for this was in its Stage 2 finding for this appeal, and its conclusion that the reference to a “twice-promised land” was “an effective and duly accurate shorthand summary of the tensions in the area prior to statehood”.

Whilst the Adviser considered, as did the Trust Unit in February 2013, the complainant’s submission of additional documentary evidence in which the British Government subsequently stated it had never been the intention to include Palestine in the deal offered to the Sharif of Mecca, this was not relevant to how the deal was interpreted at the time. She also noted that this was essentially a “timeline” video and there would have been neither the requirement nor the audience expectation that this subsequent perspective be reflected in the item.

The Adviser then considered the second allegation, that stating that the Jews had “no nation” was inaccurate and offensive. The Adviser considered that in the context it was a straightforward reference to the fact that at the time of the birth of Zionism, Jews were “spread across the world in diaspora, communities with no nation”. The Adviser did not agree that the phrase bore the interpretation that the complainant suggested it did, i.e. that it was a denial of Jews as a community or a denial of Jews’ connection to the biblical land of Israel. It was a simple statement that Jews in late 19th Century Europe had nowhere they could call a homeland and were suffering from discrimination and persecution.

The Adviser considered Trustees would be likely to conclude the video and its accompanying commentary met the requirements of the Editorial Guidelines and she did not consider the appeal had a reasonable prospect of success. She did not, therefore, 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 made the following points:

- the title itself was inaccurate in saying that the land was promised twice as was the quote from the concluding commentary: “Britain’s double-sided commitment sowed the seeds of a century of conflict. Offering support to Jews and Arabs made Palestine a twice-promised land”
- he said he gave “very considerable evidence in my ESC appeal, that taken together amounted to proof, that Palestine to the West of the Jordan river, was not promised to the Arabs by the British”
- too much weight had been given by the Adviser to “a very selective quote from Mr Barr’s book “Setting the Desert on Fire”. The quote should have been considered in its correct context
- he thought the Adviser had ignored relevant text he had provided to support his appeal
- neither Hussein nor McMahon, nor the British Colonial Office ever considered Hussein to be acting on behalf of Palestinian Arabs
- it was true that Arabists and revisionist historians have tried to claim that Palestine was promised to the Palestinian Arabs. He said that the Palestinian Arabs on the whole supported Turkey against Britain in World War 1, so the premise that the promise was made in return for their support in that war was nonsense. The statement, “During the First World War Britain made contradictory promises to both the Palestinian Arabs and to the Jews, with the McMahon Pact and the Balfour Declaration” was not true.”

### **The Committee’s decision**

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

The Committee noted that the complainant did not accept the reasoning given by the

Trust's Senior Editorial Complaints Adviser not to proceed with the appeal.

The Committee acknowledged the complainant's concern about inaccuracy and his view that he had provided considerable evidence in his appeal "that Palestine to the West of the Jordan river, was not promised to the Arabs by the British".

The Committee noted that in February 2013 it endorsed the Trust Unit's decision not to proceed to hear a similar allegation by the same complainant on appeal, and agreed with the Adviser that the material facts considered relevant to the decision not to proceed with the appeal in February 2013 applied equally to this complaint.

The Committee noted the Adviser's acknowledgement that the interpretation of McMahon's offer to the Sharif of Mecca in 1915 remains disputed, but agreed with her that it was a matter of record that the Arabs' understanding at the time was that Palestine was included. The Committee acknowledged the complainant's documentary evidence submitted in support of his complaint, but agreed with the Adviser that it was not relevant to how the deal was interpreted at the time.

The Committee agreed with the ECU's conclusion that the reference to a "twice-promised land" was "an effective and duly accurate shorthand summary of the tensions in the area prior to statehood".

The Committee did not consider that evidence had been presented that would be likely to lead it to conclude that the online video, *A Twice Promised Land*, breached Editorial Guidelines regarding due accuracy.

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

## Farming Today, BBC Radio 4, 30 May 2013

The complainant asked the Editorial Standards Committee at its March 2014 meeting 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 concerned a report in *Farming Today* on 30 May 2013.

The presenter was introducing an item about the Royal Bath and West agricultural show as follows:

"The Royal Bath and West is one of the first agricultural shows of the summer and it's also one of the oldest, celebrating its 150th anniversary this year. Up to 160 thousand visitors are expected to inspect the livestock and browse the stalls at the showground in Shepton Mallet over the next three days and for many of the farmers the hot topic of conversation will be the badger cull – because from Saturday badgers can be legally killed in a bid to reduce cases of TB in cattle. Our reporter Anna Jones has been to the showground in Somerset, one of the pilot cull zones, to hear from farmers who'll be directly affected."

The complainant considered the statement "...from Saturday badgers can be legally killed in a bid to reduce cases of TB in cattle" to be extremely misleading, and believed that farmers hearing the statement might think they were free to kill badgers on their land, which could lead to them breaking the law and also making the situation worse.

He said it should have been made clear that it was only in two selected areas of the country, where a licence had been issued, that badgers could be legally killed, and only then by licensed marksmen. He made the point that badgers are fully protected in all other areas and requested a correction be made on-air in the next edition of *Farming Today*.

The Editor, Rural Affairs, BBC Radio & Music, replied and referred to the final line in the introduction (cue) to the item: "Our reporter, Anna Jones, has been to the showground in Somerset, one of the pilot cull zones, to hear from farmers who'll be directly affected", and stated:

"It's clear from this that the legal permission for badger culling refers to Somerset in this case. I think Dairy farmers in Britain are well aware of the remit of the cull and rules [and] restrictions applying to it."

The complainant remained unhappy and considered a broadcast correction was necessary.

The Editor of Rural Affairs sent a second email the same day, stating:

"I'm sorry you found the cue misleading. I don't think it will have misled dairy farmers who are very aware of the controversy surrounding the badger cull."

The complainant then contacted BBC Audience Services to make a formal complaint adding to his original complaint that a similar statement about the legal killing of badgers had been broadcast on the 6.00 a.m. Radio 4 news bulletin on 1 June – the day the legal cull began. He received a response from BBC Audience Services on 13 June which stated:

"While I understand your point, most if not all farmers would be aware that the badger cull was in two test areas. Specifically West Somerset and West Gloucestershire hence the item coming from the Bath and West Show which as I'm sure [you are] aware was from Somerset."

The complainant was not satisfied and on 19 July Audience Services sent another response. They said they had been unable to locate a story about the badger cull in the 6.00 a.m. Radio 4 News on 30 May so they were unable to address that part of his complaint. They said they had little they could add to their previous response and referred the complainant to Stage 2 of the Complaints process.

The complainant escalated his complaint to the Editorial Complaints Unit (ECU) at Stage 2 on 4 August 2013. He said he considered his request for a correction to be made to an "obvious misleading statement" to be a perfectly reasonable one. His complaint was not upheld.

### **The appeal to the Trust**

The complainant appealed to the BBC Trust regarding the statement in *Farming Today* on 30 May 2013 that

"...from Saturday badgers can be legally killed in a bid to reduce cases of TB in cattle."

He said the statement was repeated on the 7.00 a.m. Radio 4 news bulletin on Saturday 1 June 2013: "From today it will be legal to kill badgers."

He said he had requested that *Farming Today* correct the statement in a subsequent edition, by making it clear that it was "only legal, with a licence and only in two clearly defined areas".

He said the response he had received from the Editor of Rural Affairs, BBC Radio & Music, had been "rather patronising" in suggesting that only dairy farmers will have heard the programme, "clearly many people who are not farmers would have heard it".

He said there had been plenty of time to issue a correction as the cull did not start till late August.

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

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and she did not consider that the appeal had a reasonable prospect of success.

The Adviser carefully read the correspondence that had passed between the complainant and the BBC and listened to the relevant output. 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 inaccurate and misleading and referred to the Editorial Guidelines' regarding Accuracy.

The Adviser noted that the statement which the complainant found misleading: "...from Saturday badgers can be legally killed in a bid to reduce cases of TB in cattle" was spoken during the introduction to a report on *Farming Today* about the Royal Bath and West

agricultural show.

The Adviser noted the text of the cue and also noted that the report itself included an interview with the Farming Minister David Heath. The reporter began the interview with the following question:

“The talk of this show, very much, is Saturday, the cull licence begins. The thing that I am sensing is a lot of weariness among farmers – many doubt it will even happen after it was postponed last time...”

The interview then went on to discuss how the Government considered a range of measures would be needed long term – possibly over more than two decades – to control the disease.

The Adviser considered that Trustees would be likely to conclude it was reasonable to consider the cue and the report together and that these had established that there were pilot cull zones, one of which was in Somerset, and that licences were needed for the cull.

The Adviser noted the Editorial Guidelines made clear that output producers should bear in mind audience expectations when considering where the requirement for “due accuracy” lay. She considered *Farming Today* was a very long-running and well-established, specialist, programme. She noted and agreed with the response from the ECU, which stated:

“The guidelines talk of ‘due accuracy’ that is adequate and appropriate to the output, and in my view the programme’s regular audience would have been sufficiently conversant with the issue to have understood that the cull was limited to specific areas - though as I’ve said I think the report itself made that clear in any event.”

Therefore she did not consider the appeal had a reasonable prospect of success on this point and did not propose to put it before Trustees.

The Adviser noted that the complainant had also referred to a Radio 4 News report at “0600 or 0700” on 1 June 2013 in his complaint to Audience Services. She noted that Audience Services said they had not been able to find this item in the bulletins for 30 May 2013. She believed there had been a misunderstanding with regard to the date of the bulletin being referred to by the complainant, and Audience Services had therefore not addressed this part of his complaint, thinking that he meant 30 May 2013 rather than 1 June 2013. The Adviser noted that in his letter of complaint to the ECU at Stage 2, the complainant had implied that the date of the report was 30 May rather than 1 June:

“Re my complaint about a statement on Farming Today broadcast on May 30th, and also statement on BBC Radio 4 News at either 0600 or 0700 with the same statement

This part of the complaint had not been addressed by the ECU at Stage 2.

The Adviser noted that in his appeal, the complainant again referred to a Radio 4 news bulletin which used the phrase that killing badgers was to become legal on that day (1 June 2013) and said that it was the 7.00 a.m. bulletin. The Adviser listened to the 7.00 a.m. bulletin and was able to confirm that there was no mention of the badger cull. However, she checked the bulletins either side of 7.00 a.m., and noted that the 7.30 a.m. bulletin on Saturday 1 June 2013 did refer to the cull. The newsreader stated:

“Shooting badgers becomes legal in two pilot areas today, in a scheme designed to prevent the spread of tuberculosis in cattle. The cull, in West Gloucestershire and West Somerset, is likely to begin later in the year when conditions on the ground become more suitable.”

The Adviser noted that the complainant did not believe the bulletin had made it clear that the killing of badgers was confined to only two areas: West Gloucestershire and West Somerset.

The Adviser noted that under the Complaints Framework, complaints had to be addressed by the BBC in the first instance. She noted that this element of the complainant’s appeal had not been addressed by the BBC and therefore she did not consider it appropriate to put it before Trustees. She noted too that the Complaints Framework required complainants to identify the date, time and service which their complaint referred to. She noted that the complainant had not done this and, while she thought it likely that it was the 7.30am news bulletin on 1 June that the complaint related to, she considered that – given the amount of coverage generally of the badger cull – it was possible that the complaint related to output on a different service which the Adviser had not identified.

Nonetheless, she hoped the complainant would be reassured to see that in this particular bulletin the full text of the bulletin established that the cull was restricted to “two pilot areas” and they were identified as: “West Gloucestershire and West Somerset”.

Finally, the Adviser noted the complainant considered the response he had had from the Editor, Rural Affairs, had been “rather patronising” and he stated that it suggested: “...only dairy farmers will have heard the programme, clearly many people who are not farmers would have heard it-”.

The Adviser noted that the Editor had stated in his first email of 30 May:

“I think Dairy farmers in Britain are well aware of the remit of the cull and the rules [and] restrictions applying to it.”

She also noted the Editor had stated in his second email of 30 May:

“I’m sorry you found the cue misleading. I don’t think it will have misled dairy farmers who are very aware of the controversy surrounding the badger cull.”

The Adviser did not consider that Trustees would be likely to conclude these comments suggested that only farmers would have listened to the programme. Nor did she consider the tone of the responses was patronising – she noted that he had sent prompt responses to the complainant’s emails, and that the complainant had thanked him for this. She also noted that the Editor had apologised that the complainant had found the cue misleading. The Adviser considered Trustees would be likely to conclude that the Editor, Rural Affairs, had sought to reassure the complainant about the points he raised in a timely and appropriate manner.

For all the reasons set out above, the Adviser considered the complainant’s appeal did not have a reasonable prospect of success, either on the point of a possible breach of the Guidelines on Accuracy, or on the point of complaints handling, and she decided it should not proceed to be put before Trustees.

## Request for review by Trustees

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

- he still believed that the statement on *Farming Today* and the main news bulletin could have been misleading. He did not accept that only farmers listened to the programme. It was now accepted that there was a drop in badger numbers just before culling started in August, and the statement could have given a false impression, maybe not to farmers in the areas but to others who wish to harm badgers for fun
- the statement was at the beginning of the show in isolation, it was only a bit later that the Royal and Bath show was mentioned
- he was deeply disappointed that the statement could not have been clarified in the following day's programme and would like that decision reviewed.

## The Committee's decision

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

The Committee acknowledged the complainant's concern that listeners, particularly those who were not farmers, could have been misled by the statement made during the introduction to a *Farming Today* report about the Royal Bath and West Agricultural Show.

The Committee noted the complainant's concern about the lack of context in the introductory statement regarding the badger cull.

The Committee noted the complainant's comments about it being necessary in his view to consider the introduction in isolation, but the Committee believed it was reasonable to consider the introduction (the 'cue') and the report together and was of the view that together these had clearly established that there were pilot cull zones, one of which was in Somerset, and that licences were needed for the cull. In that context, the Committee believed it would be likely to conclude that the sentence "...from Saturday badgers can be legally killed..." was duly accurate, and that it would not have materially misled listeners to the programme.

The Committee acknowledged the complainant's statement in his request for a review of the Adviser's decision that he did "not accept that only farmers listen to the programme", but it believed that it had been made clear in the responses from the Editor, Rural Affairs, and further clarified in the Adviser's decision letter, that the BBC had not suggested that only farmers were regular listeners to the programme.

The Committee agreed with the response of the ECU which stated:

"The guidelines talk of 'due accuracy' that is adequate and appropriate to the output, and in my view the programme's regular audience would have been sufficiently conversant with the issue to have understood that the cull was limited to specific areas - though as I've said I think the report itself made that clear in any event."

The Committee did not consider that evidence had been presented which would be likely to lead it to conclude that the report had breached the Editorial Guidelines on Accuracy.

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

## Out of the Ordinary, BBC Radio 4, 25 March 2013

The complainant asked the Editorial Standards Committee at its March 2014 meeting 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 concerned alleged bias in a Radio 4 programme, *Out of the Ordinary*.

This was one of three programmes whose remit was described by BBC Radio 4 as "uncovering stories off the beaten track". The programme explored Electronic Voice Phenomena (EVP), or as the introductory announcement asked, "Can the dead talk to us through our radios?"

EVP is a phenomenon whereby when an electronic recording is played back voices (or sounds) can be heard which some claim are the voices of the dead. The complainant, who was interviewed in the programme, is a parapsychologist (someone who investigates alleged paranormal or psychic phenomena) who specialises in EVP.

The complainant stated that the programme was biased in its assessment of the evidence obtained through EVP and this bias had led to unfairness. The complainant raised the following points to support her claim:

- A) the programme misquoted EVP as standing for "Electronic Voice Projection" rather than 'Electronic Voice Phenomena'
- B) the programme broadcast recordings made by the complainant, who believed that the presenter chose the weakest of the tracks made available to him, and that this was done to denigrate the subject
- C) the programme provided a "so-called expert alternative explanation" to dismiss a subject which has been studied by "personalities of high scientific and intellectual ranking".

### The Trust Unit's decision

The Senior Editorial Complaints Adviser carefully read the correspondence that had passed between the complainant and the BBC and listened to the programme in question. She acknowledged the strength of the complainant's feelings.

The relevant correspondence was also reviewed by the Trust Unit and by an independent editorial adviser who also listened to the relevant programme.

The Senior Editorial Complaints Adviser (the Adviser) decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser considered the complaints against the BBC's Editorial Guidelines relating to Accuracy, Impartiality, Harm and Offence and Fairness.

The Adviser noted that the complainant had contributed to the programme and had subsequently complained that the programme had been unfair. The Adviser noted that in this instance, the complainant had indicated the unfairness did not relate to her personally, but was related to the treatment of the subject. The Adviser therefore

considered this was not a first party complaint of unfairness, but that the appeal should be considered against the Editorial Guidelines for Accuracy and Impartiality.

#### Point (A)

The Adviser noted that the programme began by describing the work of the parapsychologist Dr Konstantin Raudive who claimed to have made many thousands of recordings of exchanges with the dead. Dr Raudive brought the recordings to the attention of the British publisher Colin Smythe, who organised a series of electronic séances in Gerrards Cross. The Adviser noted that the programme mistakenly referred to Dr Raudive as describing his experiments as “Electronic Voice Projection – or EVP”. Thereafter the programme referred simply to EVP. The Adviser noted that a full and detailed description of EVP was provided in the programme and that listeners would not have derived a pejorative meaning from the use of the word projection. While she considered it unfortunate that the programme had referred to “Electronic Voice Projection” rather than “Electronic Voice Phenomena” she considered she had not seen evidence to support a claim that the audience was misled on this point, or that this error resulted in a breach of the guidelines on impartiality. Therefore she did not consider this element of the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

#### Point (B)

The Adviser noted that the complainant had sent the presenter a copy of a CD containing 68 audio recordings which she stated were:

“...not fragments at all and need no extra words to be added to for meaning. Most of the 68 tracks contain clear replies to, or about, my questions. In a number of them there are even extracts of conversations, coherent and significant, between my communicators and me. But from all these, he deliberately picked the most ambiguous, least audible and incomplete little snatches, which I had included in the CD for the sake of fairness.”

The Adviser also noted the explanation of the presenter who stated that he chose:

“...sentences that seemed relatively self-contained and complete. They were also audible – vital for the listening audience who mostly has one opportunity to hear them.”

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 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.

The BBC’s general complaints procedure states that:

“The Trust would not ordinarily consider [an] appeal [relating to day-to-day operational issues], unless it raises significant issues of general importance.”

The Adviser noted that the inclusion of one item rather than another in a programme was an editorial decision for the BBC, and the Trust would not ordinarily consider this as a point of complaint unless it resulted in a breach of the editorial guidelines.

The Adviser noted that, whilst there was an element of humour in choosing the second clip (“there is a rabbit on your head”), the use of humour did not in itself discredit EVP as a technique. The Adviser noted that the chosen clips were consistent in their length and quality with others broadcast in the programme and to be found widely on the internet. She noted that the complainant had chosen the clips for inclusion on a CD which she had published as evidence of communication with the dead.

Whilst she noted that the complainant would have preferred other examples to have been used, the Adviser considered she had not seen evidence to support a claim that the selection of these two clips resulted in a breach of the editorial guidelines on impartiality or fairness. Therefore she did not consider this element of the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Point (C):

The Adviser noted that the programme had not categorically stated that EVP was the result of stray radio transmissions. Instead the programme had set out “the most likely explanation for EVP” as being “stray radio transmissions”.

She noted the complainant’s detailed rebuttal of this explanation, in which she stated that her radios were tuned to frequencies reserved for government and emergency use (for instance air and satellite transmissions, rescue operations etc).

The Adviser noted that the complainant had provided an article published in her own journal by an anonymous expert who concluded that “it seemed really odd that the institution in charge of the control of the radio-electric spectrum would issue somebody with an emission licence in a frequency reserved for State use, to commit a fraud”.

The Adviser noted that in Britain, Ofcom was the regulatory body which licensed the use of spectrum and liaised with its international counterparts. She noted that Ofcom was required to enforce the Wireless Telegraphy Act 2006, which contained a number of criminal offences relating to the unauthorised use of radio spectrum. She noted that Ofcom stated that “a typical illegal broadcaster will identify what they think is a clear slot” in the radio spectrum and described why illegal broadcasting was a problem: “they disrupt the vital communications of the safety of life services, particularly air traffic control”.  
<http://stakeholders.ofcom.org.uk/enforcement/spectrum-enforcement/illegalbroadcast/>

The Adviser therefore noted that despite spectrum being reserved for government use, there were frequent illegal incursions into this reserved space; she noted, for example, that Ofcom had undertaken up to 1500 operations a year relating to illegal wireless broadcasting.

The Adviser also noted the view expressed by the complainant (and in the article she provided) that stray radio transmissions could not be considered a cause of EVP because the voices answered questions put by the researchers.

The Adviser noted the programme contrasted the view of EVP practitioners who heard “clear and intelligible speech” with that of “most other people” who heard “barely audible gibberish”.

She noted that the programme provided a scientific explanation for the contradictory views of EVP proponents and critics: that with repeated listens, humans began to create order from random noises; furthermore the power of suggestion meant that if humans were given the meaning in advance they were more likely to understand the words. The programme played a number of clips provided by the Institute of Hearing Research in

which a clip was first played and sounded incomprehensible, and then was explained and repeated – at which point the meaning became apparently clear to the listener.

The Adviser noted from internet research that the main arguments against EVP fell into two categories: physical and psychological. The physical arguments included stray random transmissions and the possibility of 'capture errors', which involved the over-amplification of the radio signal as it was recorded. She noted that some had argued that it was possible for people conducting the experiments to have re-used old tapes with the erase heads incorrectly aligned, allowing previous recordings to appear as audio shadows. The psychological arguments were broadly as the programme outlined: auditory pareidolia and apophenia – in which the brain perceived patterns in random data.

The Adviser noted that a great deal of time had been given within the programme to the recordings of Dr Raudive, to his publisher Colin Smythe, to the work of the complainant and to EVP researcher Brian Jones. The programme had gone to some lengths to track down the original tapes of Dr Raudive and to play them to original participants in the session. The Adviser noted that the guidelines required the subject to be treated with objectivity given its extraordinary claims and she concluded that she had not seen evidence that suggested the audience had been misled in the way it had weighed the material facts and provided a range of views.

Therefore she considered Trustees would be likely to conclude the programme met the requirements of due accuracy and due impartiality set out in the Editorial Guidelines. It followed from this that the Adviser did not consider the points raised had a realistic prospect of success and she did not propose to put them before Trustees.

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

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

- she disagreed that the use of the word 'projection' rather than 'phenomena' was an error. She felt it was deliberate because the word 'projection' "would adapt very well to what the presenter wanted to achieve with his programme". That being the case, she believed the audience was deliberately misled and Guideline 3.2.3 had not been observed
- the full report of experiments to replicate the Gerrards Cross Findings was not mentioned in the programme, despite it being a most important document, and in order to observe due accuracy and impartiality, the complainant felt it should have been. She said the full report corroborated "the affirmations of genuineness of the voice phenomenon"
- with regard to the quality of Dr Raudive's stored tape recordings of the Gerrards Cross sessions, one of which was played on the programme, the complainant said the audience was not informed that "the magnetic tapes sticky-shed syndrome would most certainly have caused its deterioration and the consequent loss of the information it initially contained"
- [the programme included a section on William O'Neil who claimed in the 1980's to have invented a means of real-time (rather than recorded) communication with the dead by the invention of a device called Spiricom. The programme described how critics of Mr O'Neil's experiments reported that he was a practised ventriloquist who owned an electrolarynx device; they were unable to replicate his results using the

device.] The complainant was sure the presenter did not check either the original Spiricom voices or the voices produced by an electrolarynx device, because she said they bore no resemblance to each other. "Therefore, to put forward such an argument as a possible explanation for the Spiricom voices, without prior checking, is bound to lead to unfairness. That the Spiricom communication could not be replicated is of no importance since that is a characteristic of most so-called paranormal events"

- with regard to the 68 audio recordings on the CD which the complainant had sent to the presenter for his use in the programme, she noted that "...from all these, he deliberately picked the most ambiguous, least audible and incomplete little snatches, which I had included in the CD for the sake of fairness". She did not believe that a fair selection had been made
- with regard to the assertion that the most likely explanation for EVP was stray radio transmissions, the complainant felt that this hypothesis could only be properly tested with a fair selection of the examples, and this had not been the case. She said she had been called by her pet name and she also gave two examples where she and another person had been replied to
- she disputed the Adviser's assertion that the programme had provided a 'scientific explanation' in that "with repeated listens, humans began to create order from random noises; furthermore the power of suggestion meant that if humans were given the meaning in advance they were more likely to understand the words". The complainant said she strongly questioned that this was actually a 'scientific' explanation because "even if it can be true of some self-proclaimed anomalous electronic voices, it is not true for all of them". In order to allow listeners to make that distinction fairly, she felt listeners should have been given the opportunity to listen to properly relevant examples of audio clips which she had provided to the programme in good faith
- in order to honour the principles of impartiality, fairness and open-mindedness, "some exceptional clips contained in the CD, and not to be 'found widely on the internet', should also have been played to the listeners of the programme to allow them to make an unbiased judgement of a delicate and controversial subject."

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

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

The Committee noted that the complainant had raised questions regarding accuracy (including deliberate misleading) fairness, and impartiality.

The Committee noted that in this case the Fairness Guidelines applied to the way the complainant had been treated as an interviewee as opposed to how the subject matter was treated – that was a matter for the application of due impartiality. The Committee agreed with the Adviser that the Editorial Guidelines required the subject to be treated with objectivity.

The Committee noted the complainant's concern that the presenter's reference to 'projection' rather than 'phenomena' when explaining the meaning of the initials 'EVP' was deliberate rather than an error. The Committee agreed that there had been a factual error

in the use of the word 'projection', but did not agree that the error was substantial enough for the appeal to have a reasonable prospect of success. The Committee did not consider that there was evidence to suggest that the word 'projection' had been anything other than a mistake. The Committee agreed with the Adviser that the error was not substantive and that there was no reasonable prospect of success for an appeal that this error amounted to a failure to achieve due accuracy and/or was deliberately misleading.

The Committee acknowledged the complainant's views with regard to the Gerrards Cross Findings and her concern about the way in which they, and matters related to them, were presented on the programme. They noted she had wanted a report of experiments to replicate the Gerrards Cross Findings referred to in the programme.

The Committee noted the complainant's concern about the choice of audio clips included in the programme which she did not consider met the Guideline requirements for due accuracy and due impartiality. Similarly the Committee noted the complainant's concerns about the way the programme had covered the Spiricom and her view that such experiments could not be repeated and that she assumed the programme had not checked the 'original Spiricom voices' and compared them with the voices produced by an electrolarynx device.

The Committee also noted her concern that sticky-tape syndrome had been mentioned as a possible reason as to why voices could not be heard on the tapes and her argument against the explanations that were given for voices on the tapes.

The Committee noted that the decision as to what to include or exclude from the programme was a matter of editorial judgement and so a decision for BBC management alone unless the omission of a matter was a breach of standards. This was a high bar. The Committee did not consider that evidence had been submitted which would be likely to lead Trustees to conclude that the programme had breached Guidelines on Accuracy and Impartiality.

Overall the Committee concluded this appeal did not have a reasonable prospect of success.

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

## Stephen Fry: Out There, BBC Two, 14 October 2013

The complainant asked the Editorial Standards Committee at its March 2014 meeting 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 wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about *Stephen Fry: Out There*.

He did not feel that the ECU had given sufficient consideration to the points he had raised regarding:

- extreme programme bias
- inaccuracies
- demonisation of the whole heterosexual community

He felt the programme's premise was misleading.

The complainant also referred to a number of research reports he considered relevant to his complaint, and which he had requested the ECU to read when considering his complaint at Stage 2. He said the material he had quoted and supplied was lengthy and needed careful reading, which he did not believe the Complaints Director had done in the 'time frame' for his reply.

He referred to the Complaints Director's comment in the Stage 2 finding that

"Content may reflect the prejudice and disadvantage which exist in societies worldwide but we should not perpetuate it."

The complainant said that the words "should not perpetuate it"

"...should not be interpreted to mean [the BBC] should, or has the right, to couch and present information in such an inflammatory way as to incite division and disharmony or, cause viewers without hearing a (balanced counter view) to arrive at false conclusions. Otherwise this produces nothing more than a one way platform for campaign propaganda to suit a pressure group within the BBC at viewers license fee expense and is undemocratic."

### The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) watched the output in question and carefully read the correspondence that had passed between the complainant and the BBC; 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 and contained inaccuracies. She also noted that the complainant found the programme offensive. The BBC Editorial Guidelines can be found at <http://www.bbc.co.uk/editorialguidelines/page/guidelines>.

The Adviser noted that the BBC's output was required to be duly impartial and duly accurate. This meant that the requirement varied depending on the output so that, for example, a news report about a controversial subject had to meet a higher standard for

impartiality and accuracy than if the same controversial subject were referred to in a topical comedy programme. The Adviser considered this was broadly understood by the audience.

The Adviser also noted that the Guidelines required programme makers to bear in mind the audience expectations of output – including how it had been signposted.

The Adviser noted that this programme was presented from the personal viewpoint of Stephen Fry:

“This is a series about gay people and the trouble people have accepting them. Over the last two years, when time allowed, I travelled to meet some of the most notorious homophobes on the planet, to challenge their prejudice and find out where their hatred comes from.

I also had a chance to meet some of the people who are victims of this prejudice as well as those who fight against it.”

The Adviser noted, as had been explained in the Stage 1 and Stage 2 responses to the complainant, that the Guidelines explicitly allow for programmes to be made from a particular perspective:

The BBC has a tradition of allowing a wide range of individuals, groups or organisations to offer a personal view or opinion, express a belief, or advance a contentious argument in its output. This can range from the outright expression of highly partial views by a campaigner, to the opinion of a specialist or professional including an academic or scientist, to views expressed through contributions from our audiences.

She also noted that:

When content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted. Such challenging material may include, but is not limited to, strong language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, and discriminatory treatment or language.

The Adviser noted the Guideline requirement for programmes to be signposted to the audience in advance, and noted that the programme in question was billed in the following way:

Episode 1 (Broadcast 14.10.13): Stephen discovers what it means to be gay in Uganda, where it may become a capital crime. Contains upsetting scenes.

Episode 2 (Broadcast 16.10.13): Stephen discovers what life is like for gay people in Brazil, Russia and India. Contains some upsetting scenes.

The continuity announcer prefaced the programme in the following way:

“What’s it like to be gay across the globe? With some shocking accounts and scenes which viewers may find upsetting, Stephen Fry’s out there for BBC2, challenging prejudice and persecution.”

The Adviser acknowledged the complainant's concern that:

"The programme set out from the very beginning in a very emotive personal way, to include selective portrayal of extreme views and poor selective samples of scientific information, to demonise counter views as 'Homophobic'."

She noted that the Guidelines allow for programmes to be presented from a personal viewpoint and considered that Trustees would be of the view that the Guideline requirement for demonstrating "clear editorial purpose, taking account of generally accepted standards" which must be "clearly signposted", had been met.

She believed Trustees would be likely to agree with the Complaints Director's comments at Stage 2:

"...where the subject matter is controversial it should retain a respect for factual accuracy and fairly portray opposing viewpoints. I don't believe a great deal of controversy attaches to the thought that prejudice on grounds of sexual orientation causes a great deal of harm, but for the avoidance of doubt I am satisfied that the programme allowed those who hold such views to attempt to explain them."

She also noted the Complaints Director's comments in his further response of 11 December 2013. He stated that the views expressed against homosexuality in the programme were:

"...extreme and those who spoke advocated the oppression of a minority group based solely on their sexual orientation. I cannot see how it would be possible to 'demonise' such a view, when its intolerance and bigotry is plain and in the case of those interviewed was manifestly a true reflection of their attitudes."

The Adviser noted the complainant's statement in his appeal that the selected views did not represent the vast majority of the heterosexual community who "only seek to draw a line of moral sexual behaviour by not promoting a Homosexual 'Life Style', NOT by denying Human Rights that already exist under Acts, and Charters here and elsewhere".

However, the Adviser noted that the programme was presented from a personal perspective following Stephen Fry's exploration, clearly stated in the programme's introduction that he had:

"...travelled to meet some of the most notorious homophobes on the planet, to challenge their prejudice and find out where their hatred comes from."

Given the programme's premise, the Adviser considered the audience would have understood the programme was going to feature extreme views. She did not consider there was a requirement under the Guidelines for a full range of milder views to be reflected in every programme. The Adviser noted the complainant's appeal point that: "the selected views did not represent the vast majority of the heterosexual community Worldwide". She considered that it was clear from the outset that the programme was focusing on the "most notorious homophobes on the planet".

She noted that the programme had made clear that gay rights in Britain had changed enormously – Stephen Fry had stated that, having hosted the first Gay Pride march 40 years ago, London was hosting the World Pride march. The programme had also included interviews with two men who were having a civil partnership ceremony and the

significance to them of the legislation that made it possible. It had included interviews with Elton John and David Furnish about their relationship. She considered that the programme had clearly established that the situation in the UK was very different to extreme intolerance that existed in other parts of the world.

Therefore, on the first point of the appeal, that the programme: “did not represent the vast majority of the heterosexual community”, she considered the remit and approach of the programme was clear; its presenter was a very well-established figure and his sexuality was well-known. Both in the pre-transmission material and within the body of the programme, the premise of the broadcast was clear and it was not attempting to represent the views of the “vast majority of the heterosexual community”. Therefore the Adviser considered that on this point, the appeal did not have a reasonable prospect of success and should not proceed to be put before Trustees.

Turning to the second point, the Adviser noted that the complainant had stated that the causes of homosexuality remained a matter of scientific debate. She acknowledged he had provided a number of papers that he considered ought to be read alongside his appeal.

However, the Adviser noted that the complainant had not specified in his appeal what he meant by “poor selective samples of scientific information” in the programme. She considered the programmes were not addressing the cause of homosexuality, but a range of extreme responses to it across the world.

While the Adviser acknowledged the complainant intended the Trust to read the documentation he had provided, she noted that, in deciding whether to consider an appeal, the Trust had to weigh up whether the appeal raised a matter of substance, and that included a consideration of whether (in fairness to the interests of all licence fee payers in general) it was appropriate, proportionate and cost-effective to consider the appeal. She considered that it was neither proportionate nor cost-effective for the Trust to read the supplied documentation when the complainant had not specified what it was in the programme that he considered inaccurate and when the subject of the programme was not the science behind homosexuality, but different responses to it.

The Adviser acknowledged the complainant's concern that viewers could be led to “false conclusions”, but she considered that Trustees would be likely to conclude that the complainant had not provided evidence that the Guideline requirements for due Accuracy and due Impartiality had not been met.

It followed from this that she did not consider this element of the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

The Adviser turned to the final element of the appeal, that the complainant considered it was not reasonable to “make a case using dubious overseas statistics and societies for a British audience and [tarring] them with the same brush of homophobic chant...” She noted too that the complainant considered the BBC had a duty not to “present information in such an inflammatory way as to incite division and disharmony” and considered the BBC had given Stephen Fry a platform to “finger wag” at other countries, “when moral values can change”.

The Adviser considered the programme had clearly established that the examples featured on the programme were extreme cases of homophobia around the world. The programme had set out that the situation in the UK was very different to that globally – and had acknowledged that there had been significant cultural shifts over recent decades.

She noted that Stephen Fry had referred to himself as a “gay Western liberal” and in terms of British culture had stated: “It’s incredible how much has changed for gay people in Britain in my lifetime”.

She did not consider she had seen evidence that the programme was suggesting people in Britain shared the views of those in other countries who, for example, considered gay people should be sentenced to death. Nor did she consider there was evidence that the programme had acted to “incite division and disharmony”.

She considered that the programme had acknowledged there was a tension due to the cultural differences that existed between countries. For example, she noted that the Ugandan minister for Ethics and Integrity, Simon Lokodo, had stated:

“I want to tell you point blank that there is no way you can impose your attitude on me. My role... is to empower Ugandans to uphold moral values and principles.”

After the interview, Stephen Fry had stated:

“He regards my view as an imposition on his country and in a sense he’s absolutely right if he wants to look at it like that. Taking a more international, cosmopolitan approach, in terms of international human rights, I think I’m right.”

She considered the audience would have clearly understood the programme was expressing Stephen Fry’s opinions on this point and viewers would have been able to form their own views as to whether or not this was “finger wagging”. She noted that the interviewee had been given an opportunity to present his views which included maintaining his “moral values”. She did not consider there was evidence that the programme had failed to meet the requirements of the Editorial Guidelines.

Therefore, for the reasons set out above, the Adviser considered that on this point too the appeal did not have a reasonable prospect of success. It followed from this that overall 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 did not agree that the highest standards were applied to the making of the programme, and said that in his view, it was

“...highly provocative, inaccurate, and misleading from what has happened since in Nigeria. The programme was offensive, disgusting, and sneering in attitude aimed at the general heterosexual viewing community without provocation.

“It challenging [sic] moral civilized behaviour and promoted homosexuality using the BBC as a public platform, with no public instant right of reply ... to the many slanted and contrived interviews to insult and ridicule legitimately held views in the programme.”

### **The Committee’s decision**

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

programmes in question.

The Committee noted the complainant's concerns that the programme did not meet the Guideline requirements relating to Impartiality, Accuracy and Harm and Offence.

The Committee noted that the Guidelines allow for programmes to be presented from a personal viewpoint, as in this case, and noted Stephen Fry's introduction to the two programmes:

"This is a series about gay people and the trouble people have accepting them. Over the last two years, when time allowed, I travelled to meet some of the most notorious homophobes on the planet, to challenge their prejudice and find out where their hatred comes from.

"I also had a chance to meet some of the people who are victims of this prejudice as well as those who fight against it."

The Committee agreed with the Adviser that it would be likely to conclude that the Harm and Offence 'Generally Accepted Standards' requirement for demonstrating clear editorial purpose had been met.

The Committee also agreed with the comments of the ECU's Complaints Director at Stage 2 that

"...where the subject matter is controversial it should retain a respect for factual accuracy and fairly portray opposing viewpoints. I don't believe a great deal of controversy attaches to the thought that prejudice on grounds of sexual orientation causes a great deal of harm, but for the avoidance of doubt I am satisfied that the programme allowed those who hold such views to attempt to explain them."

The Committee noted the comments of the Complaints Director that the views expressed against homosexuality in the programme were:

"...extreme and those who spoke advocated the oppression of a minority group based solely on their sexual orientation. I cannot see how it would be possible to 'demonise' such a view, when its intolerance and bigotry is plain and in the case of those interviewed was manifestly a true reflection of their attitudes."

The Committee considered that it would be likely to find that the complainant's allegation that the programme was contemptuous of the heterosexual majority by promoting homosexuality and had challenged moral civilized behaviour was without foundation.

The Committee was of the view that the complainant had received full and detailed responses to his concerns, and that evidence had not been presented which would be likely to lead Trustees to conclude that the programme breached Editorial Guidelines on Impartiality, Accuracy or Harm and Offence.

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

## Reporting: “Describing the scene”, BBC Academy, BBC Website

The complainant asked the Editorial Standards Committee at its March 2014 meeting 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 was about an item which is available to view via the web pages of the BBC Academy, a micro-site within the [bbc.co.uk](http://www.bbc.co.uk) website which can be found at the following link: <http://www.bbc.co.uk/academy/journalism/article/art20130702112133458>

The content is accessible to the public and gives an insight into how the BBC manages the training and development of its broadcast staff. The item in question is in the “College of Journalism” section of the website which is primarily a training portal for BBC News staff:

“This website focuses on best practice in core skills, offers an overview of specialist areas, legal and ethical issues and a style guide. It’s a site about BBC journalism.”

The video clip sits in the “Skills” sub-section, in which some of the BBC’s most senior correspondents outline core skills:

“A series of video and text reports provide practical advice in key areas such as how to write, report, interview, present, research stories, and get the most from social media.”

The video clip in question comprised a 1’42” extract from a 2009 edition of *Panorama*. In the chosen extract, the BBC’s Middle East Editor Jeremy Bowen provides a commentary alongside images from the living area of a family home which had been hit in an explosion in which four young children died.

The complainant first contacted the BBC about the site on 21 July 2013, complaining about the lack of context given to the clip and considered it was “likely to bias new journalists”.

After an exchange of correspondence at Stage 1, the complainant escalated the complaint to Stage 2 on 13 September. The ECU did not uphold the complaint, and their decision was finalised on 10 December 2013.

### Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 18 December 2013. He stated that the clip had been taken out of context and left the viewer with the impression that the Israeli Defense Force was targeting homes in which children lived. He said an investigation which had been carried out by Israel following the incident had found that Hamas had been using families as human shields and that the family in this case had been warned that their home was in an area where there was going to be fighting that day and that they should go to a safer place:

“Without such context the clip was both inflammatory and misleading and could bias the way a young learning journalist views the Israel Palestine situation, possibly for the rest of his/her career.”

The complainant addressed the response he had received at Stage 2 from the Editorial Complaints Unit (ECU):

"The nub of my appeal is, ... that without its proper context, the clip of Jeremy Bowen would have the effect of teaching aspiring journalists 'that Israelis are child killers'. The scene that Bowen described was absolutely horrific. Anybody who has children or a sister or has any humanity whatsoever could not help but be shocked and have their heart go out completely to the family of those girls. Without knowing the context, which made the culpability for those girls deaths lay squarely at the hands of Hamas, the natural reaction to seeing that film is one of anger directed at the Israelis for killing those innocent girls... Indeed I cannot imagine any person seeing that clip, without knowing any of its original context, not drawing that conclusion.

"(The ECU) said it did not think that an emotional reaction necessarily results in an attribution of culpability, and certainly I am not saying that everybody who sees that clip without context will attribute responsibility on Israel, but in all probability most would. The emotional impact of that clip would also be long lasting in many cases and would almost certainly have a bearing on their attitude if and when they later report on Israel/Palestine."

### **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 viewed the clip in question. She acknowledged the strength of the complainant's feelings.

The relevant correspondence was also reviewed by the Trust Unit and by an independent editorial adviser, who also watched the item in question.

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

The Adviser noted the relevant guidelines were those which require that the BBC observes "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 that the clip was offered in the context of a clearly signposted sub-section of the College of Journalism micro-site, headed **Reporting: Describing the scene**. The ambition of the item was further defined in the text which accompanied the video clip:

"Describing what you see can be a powerful way to grab the audience's attention. Grab the audience's attention and keep hold of it - a point illustrated by Middle East editor Jeremy Bowen. Jeremy has been the BBC's Middle East editor since the post was created in 2005."

"At its most basic, journalism is about telling people what you've found out, what's around you, and what you can see. You're there - the audience isn't. Some of the most powerful reporting is cast in this mould.

"It's tempting, especially when you're reporting from an extraordinary scene, to overload your audience with how you feel about the events whose aftermath you're witnessing.

"It's also easy to leap to considering the causes or context. Sometimes that's important; often it gets in the way.

"Watch Jeremy Bowen as he reports from a bomb site in Gaza in 2009. His commentary on what he sees as he walks around the room is cool, clear, dispassionate, and powerful."

The Adviser considered that the audience for the clip was likely to be journalists who had been given the clear expectation - both in the direct introduction to the clip and through a broader understanding of the structure and purpose of the College of Journalism web pages - that in this module they would be learning about a particular aspect of reporting, using the pictures with dispassionate text to tell a story. The Adviser noted that the accompanying text explicitly said that

"It's also easy to leap to considering the causes or context. Sometimes that's important; often it gets in the way"

The Adviser noted, as had the ECU, that there was nothing in the clip itself which attributed any blame to Israel directly, and therefore the information provided by the complainant regarding the outcome of the Israeli investigation was not a relevant consideration. She considered that it was clear that the purpose of including the clip on the BBC Academy website was to illustrate television craft skills; the amount of surrounding context provided – that Jeremy Bowen was reporting from a bomb site in Gaza in 2009 - was therefore in the Adviser's view adequate and appropriate to the output given the subject and nature of the content.

The Adviser noted the complainant's contention that a young journalist viewing the clip would be likely to assume that Israel was targeting children and that they would therefore form a negative and misleading view of the issue and of this incident and that it would affect their future reporting of the story.

However, the Adviser considered she had not seen any evidence to support this contention. She considered that as the clip was only available in the context of a well signposted craft skills section in an established "educational" setting, it was unlikely that a journalist would use the content as a basis for their view on anything other than how to tell a story.

Accordingly the Adviser considered that Trustees would be likely to conclude the site reached the standards set out in the Editorial Guidelines and the appeal did not have a reasonable prospect of success. Consequently she did not propose to put it before Trustees for their consideration.

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

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

- it might well be true that "the clip is not used to expand journalists' knowledge of the political and military complexities of the Israeli-Palestinian conflict, but is instead used as an example of how to describe a scene well, and create a story from your

surroundings”, but that did not mean that such an emotive clip did not impact the way that journalists who do not know the facts and who view the clip look at the Israeli-Palestinian conflict from then on

- he said it was the most inflammatory clip from the 2009 *Panorama* programme “Gaza: Out of the Ruins”. He referred to a complaint he made when the *Panorama* programme was first broadcast in which he alleged that there was a risk of anti-Semitic attack resulting from that programme. The BBC Trust’s finding said “that it saw no evidence of a causal link between Panorama’s coverage of these events and the increase in anti-Semitic attacks ... after Operation Cast Lead”. The complainant ... agreed there was no causal link between this programme and the number of anti-Semitic attacks during operation Cast Lead but alleged that the programme was shown a few weeks after the operation and there definitely was a further spike of anti-Semitic incidents immediately after the programme was aired. He gave an example of an email sent at that time which referred to *Panorama* and made threats
- he said that the Adviser’s statement that there was “nothing in the clip itself which attributed any blame to Israel directly, and therefore the information provided by the complainant regarding the outcome of the Israeli investigation was not a relevant consideration”, was disingenuous. This was an Arab home where three Palestinian children had been killed by Israeli tank shells. Student journalists watching that clip would have the image of Israelis as child killers forever imprinted on their minds. The complainant said that the information he had provided regarding the result of the investigation was hugely relevant as the investigation showed that Israel had done everything possible to ensure that civilians were not in the danger area
- he believed that, for the educational purpose of describing a scene, a less contentious scene could have been selected from other war coverage which was not so liable to bias the future reporting of new journalists.

### **The Committee’s decision**

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

The Committee noted the complainant’s concern that the clip was very emotive and was likely to mislead young journalists who were not in possession of the full facts about the conflict, and this could affect their future reporting. The Committee acknowledged the complainant’s view that the information he had provided about the investigation should have been considered relevant by the Adviser.

The Committee considered the editorial justification for the clip, and took into account the educational purpose, noting this clip was specifically chosen for its factual explanation and because it did not give context as the accompanying text explained:

“It’s also easy to leap to considering the causes or context. Sometimes that’s important; often it gets in the way”

The Committee noted the complainant’s view that there were less contentious clips which could have been used by the BBC Academy that would have fulfilled the educational purpose of “describing the scene” just as well as the one at the centre of the complaint, but the Committee noted that unless the editorial content was in breach of Editorial

Guidelines, decisions relating to which clips should be used by the BBC Academy on their website was the responsibility of the BBC Executive, and was not a matter in which the Trust would become involved.

The Committee did not consider it would be likely to lead it to conclude that the Guideline requirements for due accuracy and due impartiality had not been met.

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

## 0200 News Bulletin, BBC News Channel, 12 August 2013

The complainant asked the Editorial Standards Committee at its March 2014 meeting 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 wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about an item in the 2.00 am bulletin on the News Channel which referred to "the controversial building of another 1200 new homes in occupied Palestinian land". He considered that the news report should have made clear that the Israeli homes that were being built were being constructed within existing settlements.

The complainant said this sentence from the introduction to the report was inaccurate, misleading and lacking in impartiality:

"Earlier the Israelis approved the controversial building of another 1200 new homes in occupied Palestinian land."

The complainant said the land in question:

"...is not and never has been Palestinian. It has never been their property in either the contractual sense or in terms of political control."

He argued that it is not even occupied territory as legally defined in the 4th Hague Convention, because it is not under the authority of the hostile army:

"Where these houses are to be built is in an area under civilian control, with Israeli law enforced by Israeli police."

The complainant said it had been agreed at peace talks between the Israelis and Palestinians in 2000 and again in 2008 that the specific areas where the new homes were to be built would be included within Israel in a final peace treaty and had not been earmarked as part of a future Palestinian state.

The complainant said the day after the bulletin was broadcast the US Secretary of State John Kerry said:

"Prime Minister Netanyahu was completely upfront with me and with President Abbas that he would be announcing some additional building that would take place in places that will not affect the peace map, that will not have any impact on the capacity to have a peace agreement."

### 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 item in question. She acknowledged the strength of the complainant's feelings.

The relevant correspondence was also reviewed by the Trust Unit and by an independent

editorial adviser, who also watched the item in question.

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

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 the primary focus of the report was not settlement building as such, rather it was the impact the announcement might have on the peace talks which were due to start the following week. The interviewees in the item addressed that specific issue.

The Adviser noted that the key consideration in the context of the allegation for this appeal was whether the item was likely to have left the audience with the impression that Israel was planning to build houses on land that legally belonged to the Palestinians.

The Adviser noted the sentence which the complainant had objected to was in the introduction to the item. She took the view that to test the content for "due accuracy" the item as a whole required to be considered. She noted first how the report began:

"Israel continues to build and plans to build more on the lands it captured in the war of 1967. Most countries see this sort of construction as illegal under international law, but Israel doesn't. The settlement issue is one of the most difficult in the whole peace process."

The Adviser also noted the following from later in the report:

"The Palestinians just on the other side of that fence say that Israeli development is choking off any scope for them to build a future state here."

The Adviser noted that the term used by the UN and by the British Government to refer to the West Bank and Gaza Strip is Occupied Palestinian Territories. Whilst the BBC generally refers to them only as the Occupied Territories, the Adviser considered that taken alongside the rest of the item, the audience would be likely to conclude that the reference in the item to "occupied Palestinian land" was intended to communicate that the new houses were being proposed on land that was beyond Israel's sovereign territory and which the Palestinians wanted for their future state. She did not think in this context it would lead viewers to assume that it was legally Palestinian land.

The Adviser noted the complainant's contention that the proposed houses would be built on land which is going to be part of Israel in a future peace treaty, based on agreements in 2000 and 2008 between the parties. However, the Adviser noted that talks had failed to reach agreement on all previous occasions, and also that on each occasion the detail of the scope and location of territory beyond the pre-1967 lines which might be swapped, transferred or relinquished had changed, as had many other factors, including the positions of the respective parties and the facts on the ground. Therefore, pending any final status agreement, the entirety of the Occupied Territories were considered occupied land under international law and was regarded as land which the Palestinians wanted for

their future state.

The Adviser agreed with the ECU's view that the reference in the introduction to "occupied Palestinian land" was not as precise as it could have been. But she considered Trustees would be likely to conclude that it did not in itself constitute a definitive statement about the ownership of the land. She noted and agreed with the ECU's conclusion:

"It is generally understood that there are competing claims over the territory and I do not believe that viewers would have assumed this single reference, in this context, would have carried the weight or inference you suggest."

With reference to the complainant's assertion that the land in question did not constitute occupied land in any recognised legal sense, the Adviser noted that the BBC Trust had recently rejected an appeal by the same complainant which considered the same argument as was raised here about the applicability of the definitions in the 4th Hague Convention to the Occupied Territories. The Adviser considered it was unlikely that the Trustees would reach a different conclusion on this occasion.

Accordingly, the Adviser considered Trustees would be likely to conclude that the content met the requirements for due Accuracy and due Impartiality under the Editorial Guidelines. Therefore 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 repeated points made in his appeal. He made the following points:

- it should be noted that both the British government and the United Nations are political bodies and the UN in particular has an institutional bias against the state of Israel. In both 2012 and in 2013 the UN passed more than 20 resolutions condemning Israel in the time that it passed just four condemning other nations. The fact that the UN use the term "Occupied Palestinian Land" is a good indicator that the term is biased against Israel. As with the UK government the use of the term indicates a political position rather than an actual fact
- he reiterated the point made in his appeal that the land referred to in the report is not and never has been Palestinian. By calling it "Occupied Palestinian Land" there was a definite suggestion that the land legally belonged to the Palestinians and that Israel was building in their land. He said that would imply that either that claim is new or that the land belonged to them in the past. Neither of those two situations was the case
- the term 'Palestinian land' was inaccurate, misleading and its use in this context, and in any other context that he could think of, lacked impartiality.

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

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

The Committee noted the complainant's concern that the term 'Palestinian land' was inaccurate, misleading and that its use in the bulletin demonstrated a lack of impartiality.

The Committee noted that both the Adviser and the ECU Complaints Director had already acknowledged that the reference in the introduction to "occupied Palestinian land" was not as precise as it could have been. However, the Committee agreed it would be likely to conclude that the reference did not in itself constitute a definitive statement about the ownership of the land. The Committee noted and agreed with the ECU's conclusion that:

"It is generally understood that there are competing claims over the territory and I do not believe that viewers would have assumed this single reference, in this context, would have carried the weight or inference you suggest."

With regard to the complainant's assertion that the land in question did not constitute occupied land in any recognised legal sense, and to describe it as such implied bias against Israel, the Committee noted it had rejected an appeal by the same complainant which considered the same argument raised in the current appeal about the applicability of the definitions in the 4th Hague Convention to the Occupied Territories. The Committee did not believe that evidence had been presented which would be likely to lead it to reach a different conclusion in this case.

The Committee did not consider that it would be likely to conclude that the news bulletin which was the subject of the complaint was in breach of the Editorial Guidelines.

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