

# Editorial Standards Findings

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

April & May 2014, issued July 2014

# Contents

|                                                                                |            |
|--------------------------------------------------------------------------------|------------|
| <b>Remit of the Editorial Standards Committee</b>                              | <b>1</b>   |
| <b>Summary of findings</b>                                                     | <b>3</b>   |
| <b>Appeal Finding</b>                                                          | <b>6</b>   |
| Radio Jersey                                                                   | 6          |
| The World at One, Radio 4, 27 September 2013                                   | 17         |
| <b>Rejected Appeals</b>                                                        | <b>26</b>  |
| Request for the removal of a BBC News Online article from the BBC's archive    | 26         |
| Today, Radio 4, 14 August 2013                                                 | 31         |
| Have I Got a Bit More News for You, BBC One, 6 May 2013                        | 39         |
| BBC News midnight bulletin, Radio 4, 9 October 2013                            | 46         |
| The Story of the Jews, BBC Two, September 2013                                 | 50         |
| Reporting Scotland, BBC One Scotland, 12 August 2013                           | 81         |
| Stephen Fry: Out There, BBC Two, 14 October 2013                               | 85         |
| Woman's Hour, Radio 4, 27 November 2013                                        | 90         |
| Today programme, Radio 4, 25 November 2013                                     | 94         |
| Ariel Sharon profile, BBC News Online                                          | 99         |
| Searching for Exile: Truth or Myth?/Searching for Exile: The Debate, BBC Four, |            |
| 3 November 2013                                                                | 107        |
| Springwatch, BBC One, 10–12 June 2013                                          | 113        |
| Decision of BBC Audience Services not to respond further to complaint about    |            |
| Kidulthood, BBC Two, 23 August 2013                                            | 119        |
| Decision of BBC Audience Services not to respond further to complaint about 10 |            |
| interpretations of who started World War I, BBC News Online                    | 123        |
| <b>Handling of complaints at Stage 1</b>                                       | <b>126</b> |
| Summary of finding                                                             | 126        |
| Finding in full                                                                | 127        |
| <b>Best Practice and Editorial Control in Investigative Journalism</b>         | <b>131</b> |
| Introduction                                                                   | 131        |
| Response from BBC News Executive to the Findings of the Editorial Standards    |            |
| Committee of the BBC Trust into Newsnight, 2 November 2012                     | 132        |

**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.

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.

---

<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.

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 findings

## Radio Jersey

### Summary of finding

The complainant contacted the BBC regarding the conduct of a BBC radio presenter on social media and in his private life. The complainant ("complainant 2") alleged that the presenter had engaged in cyberbullying against his adult son ("complainant 1"), who had previously complained to the BBC. He also alleged that the cyberbullying was directly linked to his son's death. Complainant 2 also alleged that neither his nor his son's complaints were properly investigated by the BBC.

The Committee concluded that:

- the BBC presenter's social media comments amounted to no more than a firm questioning of complainant 1's past conduct, motives and credibility for seeking charitable donations for the charity complainant 1 had set up.
- in the evidence it had seen there was no indication that the BBC presenter had behaved inappropriately on social media or in his private life.
- in a small island community such as the one inhabited by complainant 1 and the BBC presenter, it is almost impossible for a well-known individual to have a private personal life or for his social media to be private but the BBC presenter appeared to have been careful to ensure that his various roles did not cross over in a way that brought the BBC into disrepute.
- the BBC presenter had said nothing on air about complainant 1 which contravened the BBC Editorial Guidelines and nothing on his social media accounts which brought the BBC into disrepute. There was no breach of the Conflicts of Interest guidelines in relation to this point.
- it was properly the remit of the inquest into complainant 1's death to reach a conclusion as to the cause of the death of complainant 1 and that it was inappropriate for the Committee to do so.
- the presenter's charity work did not imply BBC endorsement for one charity or cause above others and neither did it undermine the integrity of the presenter's on-air role or the public's perception of the integrity or objectivity of the BBC. There was no breach of the Conflicts of Interest guidelines in relation to this point.
- the advice the BBC presenter had been given by the BBC regarding his involvement in the matter had been appropriate in the circumstances and that although the actions of the presenter could potentially have brought the BBC into disrepute, they did not actually do so.

- the BBC had acted in good faith and dealt fairly and openly with both complainants 1 and 2 when investigating their respective complaints. There was no breach of the Accountability guidelines.

### **Finding: Not upheld**

For the finding in full see pages 6 to 16.

## **The World at One, Radio 4, 27 September 2013**

### **Summary of finding**

The complainant contacted the BBC to complain that the programme had presented the conclusions of the United Nations' Intergovernmental Panel on Climate Change (IPCC) report as if they were controversial, which, he said, they were not. The complainant said that by offering equal prominence to Dr Robert Carter (who was not "a reputable climate scientist") and one of the authors of the report, Peter Stott, too much credence was given to marginal opinion.

The Committee concluded that:

- the BBC needed to make it clear that there was a broad scientific agreement that climate change is man-made.
- when featuring dissent from this perspective, audiences should be fully informed about the status of contributors, with details of their scientific standing and, as necessary, other details such as their financial backing.
- contributors dissenting from the generally accepted position needed to be adequately interrogated.
- listeners of the programme would not have been left with the impression that the conclusions of the IPCC were controversial.
- listeners would have understood from the context provided and the way in which Dr Carter was interrogated that he represented a marginal dissenting view.
- there had been no breach of the guidelines on Impartiality in the way in which the IPCC conclusions were presented.
- given the signposting and context provided, Dr Carter and Peter Stott had not been given equal prominence.
- the presenter adequately challenged Dr Carter on the credibility of his report when set against that of the IPCC.

- there had been no breach of the BBC's guidelines on Impartiality in the weighting given to the two contributors.
- the programme's choice of guests was a matter of editorial discretion, unless there was evidence of a resulting breach of the Editorial Guidelines. There was no evidence of a breach of the guidelines on Impartiality in this instance.
- the lack of disclosure of the identity of its donors on the Heartland Institute's website merited further investigation.
- Dr Carter had denied any industry funding and in the light of internet rumours that the Heartland Institute had contributed a large sum of money towards the publication of the NIPCC report this required additional challenge.
- the funding arrangements of the NIPCC and the Heartland Institute were important to listeners' understanding of Dr Carter's contribution.
- the internet rumours about the funding of the NIPCC should have alerted the *World at One* team to the need to thoroughly challenge Dr Carter on this issue and this had not been done.

**Finding: Part Upheld**

For the finding in full see pages 17 to 25.

# Appeal Finding

## Radio Jersey

### The complaint

The complaint related to allegations about the conduct of a BBC presenter on social media and in his private life. The complainant (complainant 2) alleged a former Radio Jersey presenter had initiated and engaged in cyberbullying against his adult son (complainant 1) and that his motives for doing so stemmed from his role in charity fundraising in Jersey. Complainant 2 also alleged that his son's death was directly related to the cyberbullying that he said had occurred during the last two years of his life. Finally, complainant 2 raised issues about the lack of impartiality in the Stage 1 handling of a complaint made by complainant 1 in October 2011 and his complaint made in September 2013.

### Stages 1 and 2

A range of arguments was raised and evidence presented by complainant 1 and complainant 2 during Stage 1 and Stage 2 correspondence. Both complainants received Stage 1 and Stage 2 responses from the BBC. Neither of their complaints was upheld by the BBC.

### Background

Complainant 1 (deceased), lived in Jersey. He ran a charity in memory of his sister who committed suicide whilst suffering from post natal depression. The stated aim of the charity was to raise awareness about post natal depression and to provide a support network for children in the island who had lost a parent or family member at a young age.

BBC Radio Jersey reported on the launch of the charity as well as various fundraising events planned by complainant 1 to raise money for it, including a fashion show featuring donated items from celebrities. The Committee noted 29 stories about complainant 1's charity fundraising plans on BBC Radio Jersey - 26 were broadcast between 10 February 2009 and 14 February 2011 and 16 included a live interview (usually on the phone) with complainant 1.

The fashion show (which was planned in more than one venue) never took place and doubts were expressed on social media as to whether complainant 1 really had received donated items for it. Other activities planned by complainant 1 also did not occur, for example a picnic, a bikini shoot and a pram race were all cancelled. Some people expressed concerns on social media about complainant 1's integrity. Others suggested he was simply trying to run events which were beyond his capability. There were reports to the police about complainant 1 but no criminal action was taken against him.

Complainant 1 set up a memorial Facebook page in memory of six Polish people (including children) murdered on Jersey in August 2011. It attracted more than 8,000 followers. It mentioned raising money for the victims' families although none was raised.

This proved a catalyst and suspicions were aroused about the identity and true motives of the administrator of the Facebook page.

A BBC presenter, who is also well known as a Jersey businessman and for raising money for charity himself on the island, queried the identity of the person behind the memorial Facebook page. When he discovered it was complainant 1 he arranged to meet with him in his private capacity (though with the knowledge of BBC Jersey, who would have been interested if a news story had emerged). The meeting was in a church and the BBC presenter had asked a photographer to secretly take a picture of complainant 1.

The BBC presenter persuaded complainant 1 to hand over the administration of the memorial Facebook page to a third party. He also asked complainant 1 to give up the donated items and suggested that the presenter could auction them for charity. However, the donated items were not provided to the BBC presenter and their whereabouts are unknown. The BBC presenter also asked complainant 1 to provide financial accounts for his charity. These were not provided.

In December 2012 complainant 1 started a civil action for libel damages against the BBC presenter and other individuals on the island. He also complained to the BBC. Complainant 1 then died. Complainant 2 (his father) complained to the BBC.

### **Appeal to the BBC Trust**

Complainant 2 appealed to the Editorial Standards Committee of the Trust requesting that it review the BBC's decision not to uphold his complaint. Complainant 2 made the following allegations in relation to the conduct of the BBC presenter on social media and to the handling of his complaint:

Point (A): that the BBC presenter initiated and engaged in cyberbullying against complainant 1 on social media sites, specifically Facebook and Twitter.

Point (B): that the death of complainant 1 in June 2013 was directly related to the alleged cyberbullying that occurred during the last two years of his life.

Point (C): that the BBC presenter's motive for alleged cyberbullying complainant 1 related to the fact that their charity fundraising efforts in Jersey were in direct competition with each other.

Point (D): that the BBC did not properly investigate the complaint from complainant 1 or complainant 2.

### **Applicable Editorial Guidelines**

The sections of the BBC Editorial Guidelines relating to Conflicts of Interest and Accountability are applicable to this case. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines/>

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

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

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and subsequent correspondence from complainant 2.

**Point (A): complainant 2's allegation that the BBC presenter initiated and engaged in cyberbullying against complainant 1 on social media sites, specifically Facebook and Twitter.**

The Committee noted that the complaint about cyberbullying was made against the BBC presenter at a time when he was the freelance presenter of a three hour show for Radio Jersey. It noted that the presenter is a well-known Jersey islander. It also noted that he referenced his role as a BBC radio presenter on his three social media profiles - LinkedIn, Facebook and Twitter - and that when he worked for the BBC he had a disclaimer on his Twitter and Facebook profiles which said: 'All of these thoughts are my own privately and not those of the BBC.'

The Committee noted that complainant 2 had provided a copy of complainant 1's Order of Justice (Claims) dated 13 December 2012 which instituted civil proceedings in Jersey's Royal Court for a libel claim against the BBC presenter. Complainant 2 said the document provided the evidence to substantiate his allegations that the presenter had initiated and engaged in the cyberbullying of complainant 1. The Committee noted that the Order of Justice included examples of public and private postings on the presenter's Facebook page as well as details of private communications between complainant 1 and the BBC presenter which took place through Facebook Messaging, email, on the telephone and at a meeting. The Committee also noted that the Order of Justice did not include any examples of Twitter postings by the BBC presenter.

The Committee noted the following statement from the States of Jersey police relating to the charitable affairs of complainant 1 and his allegation that he was being subjected to cyberbullying:

'Between September 2009 and December 2012 [complainant 1] made a number of complaints (5) to the States of Jersey Police, and a similar number (6) were made against him by various people, some of which related to concerns about financial handling of charity affairs, as well as harassment-related complaints made both by and against him.

Charges were not brought against any individual in respect of any complaints made both by and against him. In general this was owing to a lack of evidence to substantiate concerns regarding criminality, and included those concerns relating to financial dealings.

Investigations carried out by the States of Jersey Police into allegations that [complainant 1] was a victim of cyberbullying and/or harassment were also reviewed by legal advisors and it was determined that there was "no evidence of criminality".'

The Committee noted that complainant 1 first contacted BBC Complaints by phone on 24 October 2011 and said that the BBC presenter was leaving negative comments on the presenter's Facebook page about complainant 1's charity and the Jersey Fashion Show,

an event through which he was planning to raise money for his trust. It noted that complainant 1 had received responses from the BBC at stage 1 and stage 2 of the complaints process and that it had not upheld the complaint.

The Committee then noted that complainant 2 first emailed the BBC on 28 September 2013 alleging that the BBC presenter had cyberbullied complainant 1 and claiming that the cyberbullying during the last two years of his life had effectively killed him. It noted that complainant 2 had received responses from the BBC at Stage 1 and Stage 2 of the complaints process and that it had not upheld the complaint.

The Committee noted that these first party complaints mainly related to allegations about the conduct of the BBC presenter on social media and in his private life and therefore engaged the Editorial Guidelines on conflicts of interest. It agreed that the Committee's job was to determine whether the comments on social media brought the BBC into disrepute. It decided that it should only concern itself with the actions of the BBC presenter, and not the actions of anyone unconnected to the BBC, as the BBC's Editorial Guidelines do not apply to the latter. It noted that the conflicts of interest guideline says:

'The external activities of BBC editorial staff, reporters and presenters should not undermine the public's perception of the impartiality, integrity or independence of BBC output. External activities should not bring the BBC into disrepute. It is also important that off-air activities do not undermine the on-air role of regular presenters.'

The Committee noted that the Managing Editor, Radio Jersey had established that the presenter had not referred to complainant 1 on his BBC Radio Jersey programmes or on BBC social media platforms. It also noted that the Managing Editor was aware of postings on the presenter's private Facebook page but had told complainant 1 they were not a matter for the BBC. (See below for further information on this.) The Managing Editor said the BBC presenter emphatically denied any involvement in the cyberbullying of complainant 1. He also said that from his own investigations he found that while there was a robust exchange of views between the presenter and complainant 1 there was nothing that in his view constituted cyberbullying. He said the BBC presenter had told him of his meeting with complainant 1 at a local church in August 2011 to discuss a memorial page set up on social media and the organisation of various charity fundraising events and that he had shown him a message written by complainant 1 afterwards which said: "Looking back, I needed help with the grief. It wasn't an easy thing I took on...I'm very grateful for your help [BBC presenter]."

The Committee noted the evidence it considered in relation to this appeal predominantly concerned private postings on the BBC presenter's Facebook account. It noted that neither of the complainants had provided examples of comments made by the BBC presenter on the public social media platform Twitter to support their allegations of cyberbullying against complainant 1. The Committee noted two references to the BBC on the presenter's private Facebook wall. They were:

- 15 August 2011: 'Does anyone have the phone number for [complainant 1]) then? Time for an interview on the radio I think.'

- 23 November 2011: 'I have pretty much run out of patience with this guy – I've met him, tried to help him and he has even had the cheek to complain to the BBC that I'm harassing him! The Police and the press and possibly the taxation authorities must be sent all complaints with hard evidence that [complainant 1] has actually done something wrong – if they are to do something.'

The Committee noted the following comments made on his private Facebook page by the BBC presenter when he queried the identity of the person behind the setting up of the memorial Facebook page:

15 August 2011: 'This is a public call for those behind the site RIP Those Killed in St. Helier 14/08/2011" to come forward and make themselves known - It might be possible that it is a genuine FB page or another phoney attention seeking site, trading on a tragedy. Who are you? Names please. Thank you.'

The Committee noted that when the BBC presenter was informed that complainant 1 was behind the RIP Jersey Facebook page, he then arranged a meeting with him (the meeting at the local church in August 2011). The BBC presenter then posted the following on his private Facebook wall:

17 August 2011: 'Ok my friends, thank you for the support. I will be meeting with [complainant 1] tomorrow. It would not be appropriate for our discussions to flow freely if we had lots of people there, so respectfully, I believe the fair way for me to discuss the 18 pages of comments and questions you have sent me is in private, for me to be sitting down and talking it through with him without others there. It would be counterproductive to have a group in the room.'

The Committee noted that following the BBC presenter's meeting with complainant 1, the BBC presenter posted various comments on his own private Facebook wall including the following private posts:

17 August 2011: 'So, after 2.75 hours of talk with [complainant 1], some points & answers, as well as more to do. He has promised to do some things I've asked for. First of these was to remove so [sic] pictures from his Charitable Trust website, of mothers & children who don't want to be on there.' 17 August 2011: '[Complainant 1] has promised me to refund anyone he has not refunded yet from tickets bought for events that didn't happen. It is coincidence that he paid some back last night just before our meeting.'

17 August 2011: 'In response to comments ...the RIP page. A new trustworthy admin is being searched for to manage the page as it has over 7000 people on it. [Complainant 1] will then have no connection to this page. I will let you know what happens.'

17 August 2011: 'The page RIP Those Killed in St. Helier 14/08/2011 - A person (not me) with a polish speaker when required, has agreed to take over the administration of this page. The new admin will take over within the next couple of hours. [Complainant 1], the former admin has agreed to this. Please not use that page to pass comment on [complainant 1] or his various activities, but use the

page respectfully as it is intended, as a place for those wishes to express sympathies and condolences. Thanks all!

17 August 2011: 'You should know this – RIP Those Killed in St. Helier 14/08/2011 FB page. Following discussion it has been agreed with its current administrator that this page will be a static page, with no further postings or comments added. This means those who wrote their condolences will remain, rather than being deleted were the page removed. There are alternative pages for those leaving messages of sympathy should you wish to do so and a book of condolence at the Town Hall in St. Helier. Thank you.'

The Committee noted the above examples of the BBC presenter's private postings on his Facebook wall as well as a range of other Facebook comments he had made that had related to complainant 1 and his charitable endeavours.

The Committee agreed that it was its view that the BBC presenter's social media comments amounted to no more than firm questioning of complainant 1's past conduct, motives and credibility for seeking charitable donations. The Committee agreed that in the evidence it had seen there was no indication that the BBC presenter had behaved inappropriately on social media or in his private life.

The Committee agreed that in a small island community like Jersey, it is almost impossible for someone who is known equally well as a BBC local radio presenter and a business man, charity auctioneer, host and fundraiser, to have a private personal life. It was virtually impossible for his social media to be private and in fact he had a large number of Facebook 'friends'. The Committee agreed that the BBC presenter appeared to have been careful to ensure that the various aspects of his lives did not intertwine in a way that brought the BBC into disrepute. It also agreed that the BBC presenter had said nothing on air about complainant 1 which contravened the BBC Editorial Guidelines and nothing on his social media accounts which brought the BBC into disrepute.

The Committee therefore concluded that there was no breach of the conflicts of interest guidelines.

**Point (B): complainant 2's allegation that the death of complainant 1 in June 2013 was directly related to the cyberbullying that occurred during the last two years of his life.**

The Committee noted the finding of the inquest into complainant 1's death was that complainant 1 "died from a sudden cardiac death due to complications of severe coronary artery atherosclerosis." In addition, the Home Office-registered forensic pathologist gave evidence at the inquest into the death of complainant 1. He conducted complainant 1's post mortem examination and in summing up his findings from his report dated he told the inquest:

'Overall I am of the opinion that he died as a result of the effects of severe coronary artery arth[e]rosclerosis... I note the history of possible cyberbullying. It is recognised that acutely stressful events can be associated with sudden cardiac death when there is a clear temporal relationship between such an event and the sudden death. In this case it would

appear that any such stressful event was occurring over a long term basis and in my opinion there is no causal link between this and his sudden death.'

The Committee noted concerns raised by complainant 2 but agreed that it was properly the remit of the inquest to reach a conclusion as the cause of the death of complainant 1 and that it was clearly inappropriate for the Committee to do so.

The Committee therefore concluded that this part of the complaint was not a matter for the Trust.

**Point (C): complainant 2's allegation that the former Radio Jersey presenter's motive for cyberbullying complainant 1 related to the fact that their charity fund raising efforts in Jersey were in direct competition with each other.**

The Committee noted that complainant 2 said:

'[The BBC presenter] hardly showed impartiality in this case, because as a charity fund raiser himself his actions appeared as if he didn't want [complainant 1] trespassing on his turf in a small island and he also expressed a wish to get hold of the celebrity clothes [complainant 1] had got so he could auction them for "some people in real need – instead of fake events that help no-one, even those of us trying to raise funds".'

The Committee also noted that complainant 1's Order of Justice, submitted by complainant 2 as evidence to support his allegations, included two comments relating to the BBC presenter's motive for cyberbullying complainant 1. The first was made after complainant 1 had handed over admin of the Facebook Fan Page – RIP Those Killed in St. Helier 14/08/2011. It said:

'...he [the BBC presenter] continued with comments on his personal profile wall saying no one would ever trust me and that I should hand over all the donations from the celebrities, raffle and auction prizes too, to him, and that he would auction them off on BBC radio and give the money to ten of his chosen charities, worthwhile charities unlike [complainant 1's charity]. I didn't give into his demands and still have ALL the donations.'

The second comment was made after social media discussion about another fashion party being planned by complainant 1 in Devon in October/November 2011. Complainant 1 said in his Order of Justice that:

'[the BBC presenter] and [name] are clearly jealous of the support I have with the celebrity clothes as [the BBC presenter] has told me he would love to have the donations and mentions them in comments too.'

The Committee noted that the BBC presenter is well known for his role in coordinating an annual event which raises money for island families in need. His involvement has been over many years and the event has been broadcast live on BBC Radio Jersey since the presenter's involvement began, with the exception of some years when he worked for a commercial station.

The Committee also noted that the BBC presenter is known and respected in Jersey as a charity fundraiser for causes other than the annual event. Over the years he has raised considerable sums for a wide variety of charities.

The Committee noted that the Managing Editor, Radio Jersey said:

'[The BBC presenter] has never promoted his own interests, his personal appearances or his [name] appeal on his own BBC Radio Jersey programme. He does not 'work for' and is not to my knowledge 'publicly associated' with any specific Jersey charity. When he cycled for charity, we also sent a BBC journalist. [The BBC presenter] is known as the man behind the annual event, now again being broadcast on BBC Radio Jersey. This is an event raising money for the Jersey Joint Charities committee, and is connected to the Jersey Association of Charities – as such there is a huge list of benefiting charities. The proceeds are distributed by the committee, and [he] is not a member. I drew up with ITACU (Interactivity Technical Advice and Contracts Unit), Editorial Policy, and Legal the terms and conditions for the running of the auction, and made sure I went through them with [him].

Outside of work, and already in existence when re-joining Radio Jersey was [his] personal [name] appeal. While he was away from the BBC he was interviewed on air about this .... On his return we interviewed him once on the mid-morning programme about the huge amount of money he had raised and where the money was going. There was not one beneficiary[several] island charities benefited.

I had frequent conversations with [him] about his other interests and about not promoting/mentioning them on air. I also spoke to him about Editorial Guidelines and gave him a copy of the book, as we do with all new starters. [He] would usually email me, or talk to me, if he had a public appearance. They were always to support a local charity. He would always use the opportunity to act as an advocate for BBC Radio Jersey and promote the radio station. I did not log them. They were relatively infrequent. We also had a conversation to confirm that [he] would never mention his [businesses] on the radio. He never breached this.'

The Committee noted that the BBC's Conflicts of Interest guidelines say:

15.4.18 'Any work undertaken for, or in support of, a charity, charities or charitable cause should not imply BBC endorsement for one charity or cause above others. There will be particular sensitivities if the charity deals with, and/or campaigns on, matters of public policy, political or industrial controversy, or any other 'controversial subject'. BBC employees must also take care that their impartiality is not compromised by associating themselves with a charity operating in the same area as the programming on which they work.'

15.4.14 'It is important that no public speaking commitments or other public appearances are seen to undermine the objectivity or integrity of the BBC or its content, or suggest BBC endorsement of a third party organisation, product, service or campaign.

Although freelance presenters of BBC programmes may gain a proportion of their non-BBC income from off-air public appearances, they must guard against appearances which undermine their on-air role. They should not allow the use of the BBC's name or brands in connection with advertising for a public appearance. There should be no suggestion of a BBC connection or endorsement of the third party event or organisation, unless it is editorially appropriate and has been approved by the relevant head of department.'

The Committee noted that the Managing Editor, Radio Jersey was consulted about the BBC presenter's fundraising activities for a broad range of charities. It agreed that the presenter's charity work did not imply BBC endorsement for one charity or cause above others and neither did it undermine the integrity of the presenter's on-air role or the public's perception of the integrity or objectivity of the BBC.

The Committee therefore concluded that there was no breach of the conflicts of interest guidelines and it did not uphold this aspect of the complaint.

**Point D: complainant 2's allegation that the BBC did not properly investigate the complaint from complainant 1 or complainant 2.**

The Committee first noted that the BBC's Accountability Guidelines, among other things, provide that:

19.1.1: "The BBC is accountable to its audiences. Their continuing trust in the BBC is a crucial part of our relationship with them. We will act in good faith by dealing fairly and openly with them."

The Committee noted complainant 2's allegations that the BBC failed to properly investigate his complaint and that of complainant 1 about the BBC presenter's alleged cyberbullying. It noted that complainant 2 believed it was impossible for the Managing Editor, Radio Jersey to make an unbiased judgement about the complaints because of his status as a 'Facebook friend' of the BBC presenter since 2011.

Complainant 2 also said:

'I find it incredible that somebody in your position doesn't seem to comprehend that what somebody puts on their so called "private" Facebook page or on Twitter is usually far from private. It's there for the whole world to see and if they work for the BBC & it's of a bullying nature it reflects on the morality of the corporation, especially if it goes on and on and the BBC does nothing about. And it's even worse if the person concerned has a high profile BBC job such as a presenter.'

The Committee noted that the impartiality of the complaints process was also raised by complainant 2 in an email to the Controller, English Regions, BBC News dated 21 November 2013. Complainant 2 noted that the decision of the Controller, English Regions, BBC News on his complaint made no reference to his argument that the Managing Editor, Radio Jersey was unable to reach an unbiased judgement. Complainant 2 alleged that the fact that the Managing Editor, Radio Jersey was a Facebook friend of the presenter had been ignored by the Controller, English Regions because it reflected badly on the Managing Editor, Radio Jersey and on the way the investigation was handled.

The Committee noted that the Managing Editor, Radio Jersey said in response to the Trust investigation:

'I have been [the BBC presenter's] Facebook "friend" since 2011 because I was appointed Editor in the autumn of 2010, and I appointed [him] as a freelance presenter in the spring of 2011. The way I manage my social media presence is that I wait for people who work here to invite me to be their Facebook friend. I don't ask them. And they are not my 'friends' – but this is the only terminology Facebook uses when one is choosing to follow an individual's postings. I do try to follow the Facebook and Twitter postings of all BBC Jersey presenters and journalists as I believe as Editor I need to be aware of their postings.'

The Committee noted that the BBC presenter joined Facebook on 31 July 2008 and that he became 'Facebook friends' with the Managing Editor, Radio Jersey along with two of his fellow Radio Jersey presenters on 15 June 2011. As at 13 January 2014 the BBC presenter had a total of 1,944 'Facebook friends'.

The Committee noted that the Managing Editor, Radio Jersey does not ask to be friends with his staff, but accepts when he receives an invitation. The Committee was of the view that it was not uncommon for staff to ask work colleagues to connect on social media. The Committee agreed that there was no need for the Managing Editor, Radio Jersey to declare that he was a 'Facebook friend' of the BBC presenter's when he responded to complainant 2 at stage 1 of the complaints process. This did not invalidate the investigation by the Managing Editor or by the Controller, English Regions nor did it mean the Managing Editor had been unable to take an unbiased view.

The Committee noted that complainant 1 had not officially escalated his complaint to Stage 2 and that the BBC had offered to help him with that process but he declined its help. However, the BBC decided to treat the various contacts he made in November and December 2012 and early January 2013 as Stage 2 of the complaints process.

The Committee noted that in investigating complainant 1's complaint at Stage 2 the Head, Regional and Local Programmes, BBC South West visited Radio Jersey in January 2013 and spoke to the BBC presenter, who denied 'cyberbullying' or that any of his comments had been offensive. He accepted he had made comments warning people about complainant 1 and had pointed out that none of the events set up by him had ever taken place. He felt strongly that this was a public interest matter and that nothing he had said personally could be interpreted as bullying. The BBC presenter said that he had tried to help complainant 1 and that complainant 1 had even thanked him in writing for doing so.

The Committee noted that the Managing Editor, Radio Jersey had made it clear to the BBC presenter, following the complaint from complainant 1, that he should not make further comments about complainant 1 and that he risked bringing the BBC into disrepute and could face disciplinary action if he did not comply. The Committee noted that the BBC presenter did not post any comments about complainant 1 on social media after 2011.

The Committee noted that at the end of the BBC investigation the BBC concluded that whilst the BBC presenter was unwise to post comments on social media websites about complainant 1 it did not feel that the comments amounted to cyberbullying. It also noted that the BBC had made it very clear to the BBC presenter that his involvement in the

matter had been ill judged and could, potentially, have brought the BBC into disrepute, even if, as he thought, he was acting in a private capacity.

The Committee agreed that this advice to the BBC presenter had been appropriate in the circumstances and concluded that although the actions of the presenter in this case could potentially have brought the BBC into disrepute, they did not actually do so (for the reasons stated in its consideration of Point A above).

The Committee concluded that the BBC had acted in good faith and dealt fairly and openly with both complainants 1 and 2 when investigating their respective complaints. It found the Accountability guidelines had not been breached and the complaint was not upheld.

**Finding: Not upheld**

## The World at One, Radio 4, 27 September 2013

### Background

At 10am on 27 September 2013 the United Nations' Intergovernmental Panel on Climate Change [IPCC] published the conclusions of its Fifth Assessment Report. This formed the lead item in that day's *World at One* on BBC Radio 4.

The programme's opening menu stated:

"A long-awaited United Nations report on climate change has concluded it's 95% certain that human activity is the main cause of global warming. We'll hear from one of the scientists behind the report and a prominent critic:"

"No government tries to predict or stop an earthquake or a volcanic eruption. Similarly no sensible government would dream of trying to, in inverted commas, stop climate change."

The news bulletin stated:

"The latest report by the UN on climate change says scientists are more convinced than ever that humans are the dominant cause of global warming. It says the evidence has grown and experts are now 95% certain. "

A report by BBC Science correspondent Matt McGrath described "some surprisingly simple messages" in the report. "Warming is unequivocal and the observed changes are unprecedented over decades to millennia... And the report is clearer than ever that humans are to blame for the majority of the recent warming."

Presenter Shaun Ley reported that the IPCC had stated it was "extremely likely" that climate change was caused by man's actions. He introduced a clip of the Energy and Climate Change Secretary Ed Davey who said:

"This piece of evidence that we're seeing from Stockholm is probably the most robust, rigorous, most peer-reviewed piece of science in human history. I think it's put the question of whether climate change is happening beyond doubt. We've got to stop debating this issue as if we're some members of the Flat Earth Society and get on and act."

Presenter Shaun Ley then introduced the first substantial interview:

"Even some of those who support the Panel's findings though are critical about the way it operates. Lord Stern who wrote a report for the last government on the economic effects of climate change has complained about filtering and haggling leading to bland conclusions. That's nothing to the dissatisfaction felt by Bob Carter, an Australian geologist and oceanographer. He accuses the IPCC of being unscientific in its approach. He's contributed to an alternative non-government group calling itself the NIPCC."

Dr Carter went on to describe how the IPCC “goes out and looks for evidence for humans having a dangerous impact on climate. Now real science doesn’t work that way”. Instead of man-made climate change, he said “we know the real world is variable the whole time ... climate has always changed and it always will; there is nothing unusual about the modern magnitudes or rates of change of temperature, of ice volume, of sea level or of extreme weather events”.

When challenged on the “very different conclusion” of the IPCC, Dr Carter described “95% probability” as “hocus pocus science”.

The presenter challenged Dr Carter on his funding and credibility in the following sequence:

Shaun Ley: Yet isn’t it hard for you to put your counter position when you see that this report is based as it says on the work of 209 authors, 50 editors in 39 countries, 9000 peer reviewed scientific papers have been used to draw up the report. The scale of the people who have contributed to this gives it a lot of credibility [Dr Carter: Well...] I mean how many authors were involved in your work for example?

Dr Carter: There are about 47 scientists scattered around the world who’ve contributed to the NIPCC report. They are entirely without conflicts of interest, they have no relationship with government authorities or bodies, they are giving you a genuine independent if you like due diligence audit of what the IPCC is up to.

Shaun Ley: The IPCC is as you say funded by governments, it’s funded by public organisations of various kinds who help to pay for the scientists and so on, you can’t do this off your own bat, you have to get help and support. What sort of help and support do you get?

Bob Carter: It is largely done off our own bat. The organisation who prints and edits and organises it is a think tank in Chicago, a libertarian think tank called the Heartland Institute and they accept donations from family foundations specifically to fund the NIPCC exercise. There is no industry money in it; even more importantly there’s no government money in it or environmental lobby group money in it.

The programme went on to interview Peter Stott from the Met Office who was one of the IPCC’s lead authors. Mr Stott described the “extraordinarily scientific” process of compiling the report, “based on thousands and thousands of peer-reviewed literature ... and over 50,000 review comments that have been made over the drafts of this report”.

He was challenged on the “filtering and haggling” process cited by Lord Stern and stated that one key message had come through “clear and strong” which was man’s influence on the climate. When asked about the recent 15 year “pause” or slow-down in warming, Mr

Stott noted that the seas had warmed during this period, there had been record low Arctic sea ice and rainfall patterns had changed.

The presenter reminded Mr Stott that one of the conclusions of the previous report, relating to the vanishing of Himalayan glaciers, had had to be corrected. Mr Stott confirmed that the assessment process had been “really rigorous” with “the scientists continually presenting the depth of the evidence”.

## **The complaint**

### Stages 1 & 2

The complainant contacted the BBC to complain that the programme had presented the conclusions of the IPCC as if they were controversial, which they were not. By giving Dr Robert Carter (who was not “a reputable climate scientist”) equal prominence with one of the authors of the report, Peter Stott, the programme had created a “false balance”.

[This was a reference to comments by Professor Steve Jones in an impartiality review of the BBC’s coverage of Science undertaken for the Trust and to the Trust’s conclusions which referred to Steve Jones views on “false balance”:

[http://www.bbc.co.uk/bbctrust/our\\_work/editorial\\_standards/impartiality/science\\_impartiality.html](http://www.bbc.co.uk/bbctrust/our_work/editorial_standards/impartiality/science_impartiality.html)

The complainant also argued that Dr Carter should have been challenged about the financial benefits he received from the Heartland Institute, and about the funding of this organisation.

BBC News replied, stating that across the breadth of BBC Radio 4’s output that day, the vast majority of interviewees had spoken positively about the IPCC’s conclusions and that over 80% of the programme’s audience would also have heard *Today* or *PM*. BBC News said the programme had reported the IPCC’s conclusions in its introduction, had included a clip of the Energy and Climate Change Secretary Ed Davey, and had given the last word to Peter Stott, one of the authors of the report.

BBC News stated that a small number of scientists believed that changes in the climate were a result of natural variation and it was therefore appropriate to broadcast an interview with Dr Carter, and that his credibility was challenged by the presenter, Shaun Ley.

The complaint was escalated to the Editorial Complaints Unit (ECU). The ECU said it did not believe that the programme had given undue weight to Dr Carter’s views. The programme had reported the conclusions of the IPCC and included the comments of Ed Davey and Peter Stott. Dr Carter was introduced as someone who disagreed with the IPCC’s conclusions. This made it clear that he was at odds with an official report compiled by authors in 39 countries and backed by governments around the world.

The ECU stated that the presenter had challenged Dr Carter on the funding of the organisation he represented. While this may not have gone into as much detail as the

complainant would have liked, the ECU concluded that listeners would not have been in any doubt that Dr Carter and the organisation he represented expressed opinions “well outside the mainstream scientific view” and that listeners to the programme “would be able to judge his contribution accordingly”.

### **Appeal to the Trust**

The complainant appealed to the Trust on 11 February 2014. He stated that he would not go “over all of the same ground again [in his appeal] because he did not believe he could put it more cogently; however, he reiterated his complaint that the programme gave undue weight to the contribution of Dr Carter and demonstrated “false balance”.

By way of reminder, the complainant had previously raised the following points in relation to the impartiality of this item:

Point (A) The programme presented the conclusions of the IPCC as if they were controversial, which they were not.

Point (B) By giving Dr Carter equal prominence with Peter Stott, one of the authors of the report, the programme had created “a false balance”.

Point (C) There were reputable climate scientists who were able to present a nuanced difference of opinion on the impacts and speed of climate change rather than the “strongly contrarian view” of Dr Carter.

Point (D) The presenter should have challenged Dr Carter more strongly on the financial support he received from the Heartland Institute and on its funding.

### **Applicable Editorial Guidelines**

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

### **The Committee’s decision**

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

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

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

The Committee began by setting out its considerations relating to impartiality when debating climate change.

The Committee agreed with the complainant that there is an overwhelming majority view amongst climate scientists that climate change is man-made.

The Trustees noted a previous ESC finding and the conclusions of the Trust Review of Impartiality and Accuracy of the BBC's Coverage of Science, published in 2011, both of which dealt with impartiality and climate change. In the 2011 Review Professor Steve Jones expressed concern about what he saw as an "over-rigid" application of the Editorial Guidelines on impartiality, which failed to take into account what he regarded as the "non-contentious" nature of some stories and the need to avoid giving "undue attention to marginal opinion". Professor Jones cited the existence of man-made climate change as an example, concluding that "the factual argument, even for activists, appears to be largely over but parts of the BBC are taking a long time to notice".

In its response at the time the BBC Executive stated: "There will of course be occasions when a scientific story should be presented as a debate purely and simply within the scientific community. There will be others when it is appropriate to broadcast a range of views, including some from non-experts, because science cannot be divorced from the social, political and cultural environment in which it operates."

The BBC Trust concluded at that time:

"The Trust agrees with Professor Jones that 'there should be no attempt to give equal weight to opinion and to evidence....' It also supports the Executive's observation that 'due impartiality' should be applied in different ways depending upon the nature and context of a story. Appropriate, flexible use of these guidelines is essential and it is important to consider factors such as individual remit and audience as well as the distinction between well-established fact and opinion.... They must also clearly communicate this distinction to the audience. A 'false balance' (to use Professor Jones' term) between well-established fact and opinion must be avoided. This does not mean that critical opinion should be excluded. Nor does it mean that scientific research shouldn't be properly scrutinised: as Professor Jones states 'the expert is sometimes wrong' and robust research will stand up to this analysis."

The Committee reiterated its 2010 position that scientific consensus:

"does not mean that the debate should be closed down or that the sceptic's view should not be given air time."

The Committee noted that the interview was the first Radio 4 sequence programme (that is a programme containing more discursive items on the day's news and topical current affairs) to be broadcast about the report after it was published at 10am that day.

The Committee noted that the BBC's Editorial Guidelines and Ofcom's Broadcasting Code were drafted in the light of the Human Rights Act 1998 and the European Convention on Human Rights, which recognise the right to freedom of expression, including the audience's right to receive information and ideas without interference, subject to restrictions in law.

The Committee agreed there was widespread scientific acceptance of man-made climate change, but concluded it was not for the BBC to suppress the voice of opposition.

The Committee stressed the need for the BBC to make it clear that there was a broad scientific agreement. However, when featuring dissent from this perspective, the Committee felt that audiences should be fully informed about the status of contributors, with details of their scientific standing and, as necessary, other details such as their financial backing. The Committee emphasised the need for the BBC to ensure that contributors dissenting from the generally accepted position, were adequately interrogated.

**Point (A) The programme presented the conclusions of the IPCC as if they were controversial, which they were not.**

The Committee did not consider listeners of the programme would have been left with the impression that the conclusions of the IPCC were controversial.

The Committee noted that Dr Carter's comments were placed in a context in which the opening headline presented the report's conclusion that it was 95% certain that climate change was man-made, the news bulletin presented this conclusion in more depth, the opening programme cue stated it was "extremely likely" that man's actions were the principal cause of climate change, and the Secretary of State for Energy and Climate Change stated that the report had "put the question of whether climate change is happening beyond doubt." The Committee concluded that listeners would have understood from this context, and from the way in which Dr Carter was challenged about the credibility of his own report, that Dr Carter's work stood outside the scientific mainstream and that he represented a marginal dissenting view.

The Committee concluded there had not been a breach of the BBC's guidelines on Impartiality.

Point (A) Finding: Not upheld

**Point (B) By giving Dr Carter equal prominence with Peter Stott, one of the authors of the report, the programme had created "a false balance".**

The Committee noted the complainant's view that the programme demonstrated "false balance" because it gave Dr Carter (who was not "a reputable climate scientist") equal prominence with Peter Stott, one of the authors of the IPCC report.

"The balance on The World at One was not appropriate, given the time and prominence associated with the Carter interview."

The Committee noted that while the two interviews were of similar duration, the BBC's guidelines on Impartiality do not require that different perspectives are covered in equal proportions. It noted that Dr Carter was the first substantial interview to be featured in the programme and, while it could be argued that this gave him prominence over Peter Stott, it could equally be argued that Mr Stott was given the "final word".

The Committee noted the complainant's view that Dr Carter was inadequately qualified in the field of climate science. It also noted from a submission by BBC News that Dr Carter had a PhD from Cambridge University and his work had been published in numerous scientific publications.

The Committee noted the findings of a recent opinion poll that over one-fifth of the public think climate change is not man-made and it agreed that BBC News had a duty to reflect appropriately and with due weight that these views existed.

The Committee considered whether the BBC had clearly distinguished between opinion and fact when allowing Dr Carter to air what the complainant calls his "strongly contrarian views", and whether the presenter had challenged Mr Carter appropriately on the evidence behind his views.

The Committee noted that Dr Carter was introduced as a "prominent critic" and was described as a geologist and oceanographer who accused the IPCC of being unscientific. The Committee noted that Dr Carter was challenged on the "very different conclusion of the IPCC", which the presenter described as being based "on the work of 209 authors, 50 editors in 39 countries, 9000 peer reviewed scientific papers". The Committee noted that the presenter compared Dr Carter's work to the scale of the IPCC report, asking, "how many authors were involved in your work for example?"

The Committee did not think that the BBC had breached impartiality guidelines by featuring Dr Carter on the programme, and did not think he had been given equal prominence with Peter Stott, given the signposting provided to the audience and the context within which the interview with Dr Carter was placed. The Committee concluded that listeners would have understood from the context that Dr Carter represented a marginal dissenting view. It also concluded that the presenter challenged Dr Carter on the credibility of his report when set against that of the IPCC. The Committee concluded there had not been a breach of the BBC's guidelines on Impartiality.

Point (B) Finding: Not upheld

**Point (C) There were reputable climate scientists who were able to present a nuanced difference of opinion on the impacts and speed of climate change rather than the "strongly contrarian view" of Dr Carter.**

The Committee noted the complainant's view that there was a debate to be had about the IPCC's conclusions, and that this debate would have been a scientific one about the speed and impact of climate change, rather than a debate between anthropogenic climate change and natural variation:

"There are reputable climate scientists able to more properly represent a view distinct from the IPCC Report, typically reflecting nuanced differences around the rate of warming, or around the speed and nature of natural feedback mechanisms."

The Committee acknowledged this would have been a legitimate subject for debate, but it did not agree that this was the only necessary point of debate. For example there were important policy decisions to be had on what actions to take.

The Committee concluded that the programme's choice of guests was a matter of editorial discretion, unless there was evidence of a resulting breach of editorial guidelines. Having already concluded that BBC News had a duty to reflect the existence of sceptical views appropriately and with due weight, and having concluded that due weight was achieved in this instance, the Committee concluded that there was no evidence of a breach of the BBC's guidelines on Impartiality, and that the choice of guests in this instance was for the BBC to determine.

Point (C) Finding: not upheld

**Point (D) The presenter should have challenged Dr Carter more strongly on the financial support he received from the Heartland Institute and on its funding.**

The Committee noted the complainant's statement that Dr Carter failed to declare that he and the other lead authors of the Nongovernmental International Panel on Climate Change (NIPCC) report received a monthly salary from the Heartland Institute. He also stated that, contrary to Dr Carter's assertions that there was "no industry money" behind their work, the Institute had a close association with the oil industry. He stated:

"The Institute's accounts and memos show a close association with the oil industry. It received a donation of \$200,000 in 2011 from The Charles G Koch Foundation (which derives its money from Koch Industries, an oil, gas and chemical conglomerate). The Institute expected another donation of \$200,000 in 2012 from the same source. Over the years it has received large donations from Exxon Mobil. In all, the Institute has paid \$388,000 towards the publication of the NIPCC report, including payments to its lead authors and editors, which include Dr Carter."

The Committee noted that the NIPCC states on its website that:

- "it is funded by three organisations, one of which is the Heartland Institute.
- the NIPCC was set up by a group of scientists who were concerned about flaws in the organisation and procedures of the IPCC.
- its reports have been "vigorously attacked by some environmentalists and global warming alarmists who view it as a threat to their claim of a 'consensus' in favor of their extreme views."

The Heartland Institute describes its mission as "to discover, develop, and promote free-market solutions to social and economic problems. Such solutions include ... market-based approaches to environmental protection."

The Committee noted that The Heartland Institute does not divulge the identities of its donors:

“For many years, we provided a complete list of Heartland’s corporate and foundation donors on this Web site and challenged other think tanks and advocacy groups to do the same. To our knowledge, not a single group followed our lead.

Regrettably, listing our donors in this way allowed people who disagree with our views to accuse us of being ‘paid’ by specific donors to take positions in public policy debates, something we never do. After much deliberation and with some regret, we now keep confidential the identities of all our donors.”

The Committee considered that this lack of disclosure merited further investigation.

The Committee noted that the sources cited by the complainant were easily found by internet searches and appeared to constitute a leaked memo and draft projected budgets for the Heartland Institute in 2012. Whilst the veracity of the documents could not be confirmed, the accounts were detailed and suggested that the Heartland Institute has contributed a large sum of money towards the publication of the NIPCC report and noted a large family foundation contribution. The Committee noted that internet rumours to that effect should have alerted *World at One* to the need for stringent questioning on that topic.

The Committee noted that Dr Carter had identified the Heartland Institute as a source of his funding, and had described it clearly as a libertarian think-tank. However, the Committee agreed with the complainant that Dr Carter had denied any industry funding and that in the light of the internet rumours this required additional challenge. The Committee noted the view of BBC News that:

“Clearly it would have been possible to question Dr Carter in greater detail about the Heartland Institute. But this wasn’t an in-depth investigation into the Heartland Institute. It was a report about the IPCC’s Summary for Policymakers on the Physical Science of Global Warming.”

However, the Committee concluded that the funding arrangements of the NIPCC and the Heartland Institute, in as far as it was possible to probe it, were important to listeners’ understanding of Dr Carter’s contribution. It concluded that the easily found internet speculation about whether the funding of the NIPCC was really consistent with it being unbiased (as claimed on its website) should have alerted the *World at One* team to the need to thoroughly challenge Dr Carter on the ultimate funding of the NIPCC. It did not consider that this had been done.

Whilst the Committee supported the right of the BBC to appropriately reflect dissent to the concept of man-made climate change, the Committee reiterated the need to fully inform audiences about the status of interviews featured in output.

Point (D) Finding: Upheld

**Finding: Part 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.

## Request for the removal of a BBC News Online article from the BBC's archive

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

### The complaint

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint about an article, published on the BBC News website several years ago, after his request for its removal from the online archive. He explained that the continued online presence of the article, which concerned a court case featuring his daughter, was affecting her livelihood. This followed her conviction for fraud which led to a suspended sentence. The complainant said that his daughter was trying to make a new start and a new life for herself; she was worried that a number of people had connected her name, via internet searches, with the BBC article about the court case, and had questioned her suitability as an employee. She feared that her future employment might be threatened.

The complaint went to Stage 2 and the complainant received a response from the Head of Editorial Compliance and Accountability, BBC News, dated 17 December 2013, stating that the BBC did not plan to take down the report. She explained the BBC's policy on the matter:

"The BBC considers each individual case carefully but has a very high threshold for agreeing to the removal of content relating to a formal public process which is on the record because of the value we place on BBC independence and trustworthiness; if we remove or alter content we effectively censor the past. This was a report about a court case and a crucial part of the BBC's editorial obligations is to record what goes on in our courts."

### Appeal to the BBC Trust

The complainant appealed to the BBC Trust, and made the following points in support of his appeal:

- The News report had not been a fair and balanced summary of a court case but a snapshot of part of the proceedings because a freelance journalist happened to be in court that day. No attempt was made to complete the coverage of the case.
- The article was being abused, as evidenced by the letters to his daughter's employers.
- It was normal practice for the reporting of any court case to be followed to its conclusion. The BBC did not appear to follow that discipline; if it did, readers of the case concerning his daughter would learn of matters expressed on her behalf which might persuade them against misusing the report.

- It was the view across the regional press that court cases should be reported in their entirety, and the complainant believed this was also the view of the Press Complaints Commission. He said that if it was not also the view of the BBC, he thought it should be.

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

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

She acknowledged the difficult position the complainant's daughter was in and was sympathetic to the complainant's wishes to protect her.

She noted that the complainant's primary concern at Stages 1 and 2 was that the article should be taken down because of its potential effect on his daughter's employment prospects as she tried to start a new life following the conviction.

She also noted that the complainant made points in his appeal expanding on his concerns about the editorial content of the article in terms of its accuracy at the time of publication. These concerns had been raised in his Stage 2 complaint addressed to the Director of BBC News in an email dated 20 November 2013:

"It is only a part report and does not include matters that were advanced on her behalf, or the fact that full restitution was made. I would have considered that both of these would be required to complete a fair and balanced summary of the proceedings."

The Adviser acknowledged that the complainant felt that the article was not a fair and balanced summary of the court case because the BBC had not reported on it in its entirety at the time. She noted that he believed that the Press Complaints Commission had a policy of following a case to its conclusion. She also acknowledged his view that if the BBC had followed such a policy, readers of the report concerning his daughter would have learned of mitigating factors in the case and would have had an opportunity to obtain a more balanced view of the proceedings.

The Adviser considered whether the appeal engaged the BBC Editorial Guidelines, these can be found in full here: <http://www.bbc.co.uk/guidelines/editorialguidelines>. In the light of the complainant's concerns about the original article, she considered that the relevant Guidelines were those on Accuracy and Fairness.

The Adviser noted that under the Complaints Framework, complaints about BBC content should be submitted within thirty working days of broadcast or publication. However, she noted that the Complaints Framework allowed first party complaints about material published online by the BBC to be made at any time:

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

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

The Adviser considered the complainant was acting on his daughter's behalf and this was therefore a first party complaint. For completeness, the Complaints Framework, Protocol No.1, Editorial Complaints, can be found here:

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

The Adviser noted that the complainant had raised concerns that readers of the BBC Online article may have been influenced by not having a full picture of the circumstances surrounding his daughter's conviction. The Adviser noted that the complainant's concern that the article was not a "fair and balanced summary of the proceedings" had not been addressed by the Head of Editorial Compliance and Accountability, BBC News, in her response at Stage 2.

The Adviser agreed that the article only provided a report of part of the court process; however, she noted that readers of the article would have seen his daughter's claim that she had been blackmailed and that the article had reported that his daughter had admitted stealing from her employer.

She noted that the article reported that sentencing had been delayed (to allow the mitigating circumstances raised by the complainant's daughter to be checked). She noted that, subsequently, the sentencing had not been reported by the BBC, but the complainant had stated his daughter had received a suspended sentence.

The Adviser considered that the BBC's Editorial Guidelines did not include a requirement to follow court proceedings from beginning to end.

With regard to the article's continued presence in the online News archive, the Adviser acknowledged the complainant's statement in his appeal:

"The item on the Internet is being abused, as evidenced by the letters to my daughter's employers."

The Adviser had not been provided with evidence that the article on the internet was "being abused", and had not seen any of the letters mentioned in this context by the complainant, but she noted from the correspondence at Stage 2 that the complainant had stated in his email to the Director of BBC News dated 20 November 2013:

"My main point, however, was that this item is hindering my daughter's prospects. She is now working for [an employer] that was aware of her circumstances before employing her. She is making a real contribution but unfortunately her role requires her to occasionally appear in the local press. On a number of occasions the connection has been made between her name and the item on the Internet and [her employer] has received letters questioning whether she is a fit person to work for [them]. She fears that the embarrassment may eventually threaten her continued employment."

The Adviser considered that the BBC was not responsible for the way search engines such as Google worked. With regard to the original complaint about the BBC's decision not to take down the article at the complainant's request, the Adviser noted that the BBC's policy on archived news reports had been stated at Stage 2 by the Head of Editorial Compliance and Accountability, BBC News:

“The BBC considers each individual case carefully but has a very high threshold for agreeing to the removal of content relating to a formal public process which is on the record because of the value we place on BBC independence and trustworthiness; if we remove or alter content we effectively censor the past. This was a report about a court case and a crucial part of the BBC’s editorial obligations is to record what goes on in our courts.”

The Adviser was sorry that the complainant did not feel that his complaint had been dealt with in an understanding or compassionate way, and the complainant may wish to be aware that the existence of online archives was the subject of ongoing discussion. However, she considered that Trustees would be likely to conclude the BBC had operated within the Editorial Guidelines. Therefore she considered the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He made two additional points in support of his complaint:

- The Adviser had justified the BBC’s reporting by saying it complied with BBC guidelines. The complainant believed the guidelines were inadequate if they allowed for “sloppy management of news”.

He said the BBC was only aware of the outcome of proceedings involving his daughter because he told them. News managers had not taken any action or initiative to satisfy themselves that their coverage was fair and balanced. If the reporting was fair and balanced, then it happened by accident.

- The Adviser had noted that she had not been provided with evidence of letters to his daughter’s employers which he had mentioned. He said that if the Adviser doubted that this evidence existed, then he would ask why this evidence was not requested. He thought that perhaps it was glibly convenient not to ask for it, and he requested that this observation by the Adviser be ignored.

### **The Committee’s decision**

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

The Committee acknowledged the complainant’s concerns about the continuing presence in the BBC News online archive of an article which he believed was potentially damaging to his daughter’s employment prospects.

With regard to the original complaint about the BBC’s decision not to take down the article at the complainant’s request, the Committee noted that the Head of Editorial Compliance and Accountability, BBC News, had explained the BBC’s policy on archived news reports at Stage 2:

“The BBC considers each individual case carefully but has a very high threshold for agreeing to the removal of content relating to a formal public process which is on the record because of the value we place on BBC independence and trustworthiness; if we

remove or alter content we effectively censor the past. This was a report about a court case and a crucial part of the BBC's editorial obligations is to record what goes on in our courts."

With regard to the complainant's concern that the article at the time of publication had not been a fair or balanced summary of the court proceedings, the Committee noted the complainant's further comments in his challenge to the decision not to proceed with his appeal, and agreed that this point had not been addressed at Stage 2 of the complaints procedure.

The Committee noted that the article only reported on part of the court proceedings, but confirmed the Adviser's view that it would be likely to conclude that the BBC had operated within the Editorial Guidelines. The Committee also noted that although the complainant was of the view that the Press Complaints Commission followed a different policy from the BBC, this was not the case.

The Committee was sorry to learn that the complainant felt that his complaint had not been dealt with in an understanding or compassionate way, but noted the high public interest in maintaining an accessible archive of online news stories.

The Committee confirmed the view of the Adviser that it would not be likely to conclude that the online article breached Editorial Guidelines either at the point of publication or in terms of its continued presence in the BBC News archive.

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

## Today, Radio 4, 14 August 2013

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

### The complaint

The complainant wrote to the BBC about an item on the *Today* programme ahead of the resumption of peace talks between Israel and the Palestinians.

She considered that the programme should have included more information about the release of Palestinian prisoners and the extent to which prisoners who were released might be rearrested. She considered the report should have made clear that Israeli settlements were illegal and in particular she complained about how land was described. She wrote:

The headlines in the Today programme this morning repeatedly described the land on which Israel had approved further building as land "which the Palestinians want for a future Palestinian state," [the actual phrase used in the broadcast was "land the Palestinians want for a future state" ] while this is strictly accurate, it does not inform listeners that this land is currently part of the OPT [Occupied Palestinian Territories] and implies that it is simply land to which the Palestinians aspire.

The complainant was sent a response from the programme's Assistant Editor on 2 September 2013. The response noted that the programme reported frequently about developments in the Middle East and stated:

It is impossible [...] to reflect every viewpoint each time we report from the region or to incorporate every detail - especially in a headline. We have discussed on many occasions the Israeli settlements in the occupied territories and their impact on the peace process and on the people living there. The fate of the Palestinian prisoners is also a story which recurs from time to time according to the state of relations between Israel and the Palestinians. Equally negotiations have started, broken down and resumed between the two sides many times over the years.

Context is important. But equally it is important that we clarify stories rather than over complicate them.

The complainant remained dissatisfied and following further correspondence the complaint was passed to stage 2.

The ECU responded on 18 December 2013 and did not uphold the complaint.

### Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 13 January 2014. She stated that references in the programme to the territory as "land the Palestinians want for a future state" did not adequately reflect the history.

The complainant cited definitions of "Settlements" from National Public Radio in the US and from a Palestinian NGO, The Palestine Monitor. She noted that these bodies included facts in their guides which had been omitted from the BBC's coverage on this occasion,

including that the settlements have been built illegally in the Palestinian territories on land that was seized by Israel during the 1967 war.

In answer to the response she received from the ECU at Stage 2, the complainant said:

Saying that someone wants something does indeed imply "something not currently in your possession", but it also implies that it has never been in your possession. When the reference is to wanting something that was formerly in the speaker's possession, we are more likely to say that we want it back, or want it restored, or in some other way reflect that the object referred to is already ours.

The complainant quoted from the BBC Guideline on Accuracy which states that "Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should also be weighed to get at the truth." The complainant contended that the phrasing had been misleading and that the BBC had failed to adhere to its guidelines.

The complainant noted that in rejecting her complaint the ECU had referred to a finding by the BBC Trust in 2012 which had considered the use of the word "want" in a similar context as that which was used here and had concluded on that occasion that it was:

...simply being used in the "conditional, aspirations sense of the word" to imply something not currently in your possession, in this case, statehood.

The complainant said the circumstances were not the same on this occasion, and that elsewhere in the report which had been the subject of the 2012 complaint the correspondent had noted that the settlements were in breach of international law.

She concluded:

In not making the status of the Occupied Palestinian Territories absolutely clear whenever they are referred to, the BBC is failing to convey "all the relevant facts and information" and thereby may not be ensuring that listeners are fully aware of the reasons for the problems between Israel and Palestine.

The complainant also complained about the handling of her complaint. She noted that in his Stage 1 response the Assistant Editor of the Today programme suggested that their coverage should be "judged over time, not on the basis of any single report". The complainant said:

While this is a seemingly reasonable request, listeners or viewers who wish to complain are advised to complain about "an item", and not to talk about "multiple issues". It seems unreasonable that if the audience must restrict themselves to talking about single items, the BBC can respond to the criticism by taking coverage of an issue in general... If I must restrict my complaint to a single issue, then surely the response should be constrained in the same way?

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

The Trust's Senior Editorial Complaints Adviser (the Adviser) acknowledged the complainant's view that the content had been misleading and in breach of the Editorial Guidelines. The complainant considered that, by omitting to include further context about the status of the land in question, the item failed to weigh all relevant facts and information.

The Adviser noted the overarching guideline requirement that content must be “duly accurate” and “duly impartial”. The Adviser noted how the Editorial Guidelines defined “due accuracy” and “due impartiality”:

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 content which was the subject of this allegation was within an item which was largely about the release of 26 Palestinian prisoners ahead of the resumption of peace talks. The reporter was interviewed live on the *Today* programme and filed her report for the news bulletin from Ramallah, which was the scene of the celebrations welcoming the prisoners home.

The Adviser considered it would have been clear to the *Today* audience that the focus of the report was on the release of Palestinian prisoners. She considered this would have had a bearing on the amount of context they would have expected to hear about the land that had been earmarked as a site for further Israeli settler homes.

There nevertheless remained the requirement that what information was included on the settlement announcement was duly accurate. The Adviser noted the complainant’s acknowledgement in her Stage [1] submission that the phrase (land which “the Palestinians want for their future state”), was strictly accurate, but the complainant believed that, by failing to also include that the land was part of the Occupied Palestinian Territories, it implied that it was simply land to which the Palestinians aspired.

The Adviser noted the complainant’s view that it was land that was already Palestinian and had been taken from them and that nothing in the item informed the listener this was the case.

The Adviser noted that this was a complex issue, and that while there was an international legal consensus that Israeli settlement activity in the Occupied Territories was illegal, the status of the land itself remained to be determined by a final status agreement. She considered that Trustees would be likely to conclude that it was therefore not unreasonable to characterise it as land the Palestinians wanted for their future state, given that the state did not yet exist in law or in fact.

The omission of the specific information which the complainant contended ought to have been included would only have been a matter for consideration under the guidelines if it had led to a failure of due accuracy or due impartiality.

The Adviser concluded this was not likely to have been the case. She considered that the audience of the *Today* programme were likely to be aware that the West Bank had been occupied by Israel since 1967 and that the settlements which Israel had built on land in the West Bank were considered illegal under international law.

The Adviser noted that the announcement of new settlement activity was clearly presented in the item and interview as provocative, and a possible obstacle to the resumption of peace talks. In the Adviser’s view this information would have been likely to have been sufficient in this particular context to meet the requirement for due accuracy and due impartiality.

The Adviser then considered the allegations relating to the handling of the complaint.

The Adviser noted the complainant's view that her complaint had taken too long to be considered and that she had the impression that the BBC had been trying to "out-manoeuvre" her. The Adviser noted the basis on which the complainant made these allegations was that the BBC had access to all the broadcast material as well as former judgements and that it followed "slightly different rules" in terms of response times and reference to "coverage...over time".

The Adviser noted the complainant had now received a copy of the relevant content and that in the course of her complaint the BBC had included detail in its responses clarifying which material it was considering. The Adviser did not therefore feel that the complainant had been put at any disadvantage in framing her complaint.

With regards to the time it had taken to receive responses at various stages, the Adviser noted the response from the Head of Accountability for BBC News at Stage 2 which noted that the first Stage 1 response was two days late but that the complainant received a follow-up response within the target 20 working days as outlined in the Complaints Framework. The Adviser also noted that the responses had been courteous at all times and that the complainant had been given clear indications of timescales and had been properly and fully advised of the complaints procedure. The Adviser did not consider there was anything substantive on this issue either which could be tested against the Editorial Guidelines.

The Adviser noted that it was appropriate that the BBC consider, where relevant, previous judgements by the BBC Trust, in formulating its response to editorial complaints, and also that those findings are published on the BBC website and freely accessible to the public. Decisions of the Editorial Standards Committee of the BBC Trust are binding on the BBC and it is therefore appropriate that those findings are taken into account at Stages 1 and 2 when reaching a decision on whether a subsequent complaint should be upheld. The Adviser noted that the complainant had been provided with a link to the website in which the earlier finding had been published and that her comment on its applicability to the allegation raised here had been taken into account in reaching her decision.

The Adviser noted too that the complainant had copied part of her stage 1 correspondence to the Editorial Complaints Unit after she had not had a response from the *Today* programme. She noted that the Complaints Manager had sent her details of the BBC's complaints website and indicated that complaints sent to programmes would not necessarily receive a response. The Adviser noted this was in line with the Complaints Framework which stated that all complaints should be made via Audience Services as otherwise: "the BBC cannot guarantee that your complaint will be replied to". The Adviser hoped the complainant would understand that this system allowed the BBC to respond in a timely way to the one million complaints and contacts it received each year.

Finally the Adviser considered the allegation that it was unfair that complainants were asked to focus on a single broadcast item whereas the BBC could respond to allegations by taking coverage of an issue in general. The Adviser noted that the complainant had received a response to this allegation from the Head of Accountability for BBC News at Stage 2, in which she stated:

...it seems to me to be fair that, with a complaint about bias by omission, a legitimate defence may well be on grounds of overall coverage. The complaints process is not the correct mechanism for conducting impartiality reviews but we

often look at complaints which refer to a number of reports in support of a contention of a particular bias.

The Adviser noted that the allegation on this occasion concerned a specific item in a particular programme and therefore the question of multiple issues did not arise. The Adviser noted also, as discussed above, that she had not relied on broader coverage of the dispute over settlements elsewhere in the BBC output to reach her conclusion not to proceed with this allegation on appeal. For the avoidance of doubt, her view had been that in the context of an item which was primarily about a Palestinian prisoner release the content in relation to settlements was duly accurate and duly impartial.

The Adviser acknowledged that the concerns raised by the complainant, that the procedure had the appearance of favouring the BBC, had been made in good faith. She hoped that, by setting out her reasoning and explaining the complaints procedure in a little more detail, the complainant would be able to better appreciate the basis on which she had formed her view.

Accordingly the Adviser considered that both in terms of the editorial substance of the complaint and the complaints handling element of the complaint, Trustees would be likely to conclude that the BBC had operated within the Editorial Guidelines. Therefore she did not consider the complaint 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 her appeal. She made the following points:

- She refuted the Adviser's assertion that the description of land the Palestinians want for a future state was duly accurate because the audience of the *Today* programme were likely to be aware that the West Bank had been occupied by Israel since 1967 and that the settlements which Israel had built on land in the West Bank were considered illegal under international law.

The complainant said she found that "the general public – including those who are generally well-informed on other political issues – are surprisingly ill-informed on the matter of Israel and Palestine and contend that this ignorance is compounded by the way in which this issue is reported, particularly by the BBC. Most people, when shown maps illustrating how the land has been redistributed over the last 60+ years are genuinely surprised to see how little land is now considered 'Palestinian land' and how the little land they now have is surrounded and controlled by Israel."

She considered that the BBC Editorial Guidelines on Accuracy make it clear that:

Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should also be weighed to get at the truth.

- She could not see why "the land which Israel has occupied/stolen etc. cannot consistently be referred to in a way which makes its status explicit. I am sure that a succinct phrase could be arrived at to replace the current phrasing ('land [which] the

Palestinians want for a future state,' or similar) which would ensure that all listeners were made aware of the reasons why the settlements are so contentious."

- The complainant said that when the Adviser stated that she did not agree with the complainant that the legal status of the Occupied Territories required to be stated on each occasion that seemed to be simply the Adviser's personal view. She asked that her view be reconsidered by the Trustees.
- The assertion by the Adviser that "the settlements were not the main focus of the item" seemed extraordinary. The complainant said that to many people, Israel's announcement of new settlement building on the eve of peace talks had seemed like a deliberate act of provocation intended to destabilise the talks, and could hardly be regarded as a side issue.
- She said she was puzzled by the Adviser's comment that implied it was the complainant's personal opinion rather than historical fact that the land on which Israeli settlements are built "was land that was already Palestinian and had been taken from them and that nothing in the item informed the listener that this was the case". She asked whether the BBC held the view that the land on which Israeli settlements were built was NOT Palestinian land. If so, she said that would suggest that the BBC was not impartial on the matter. She said she would like the Trustees to consider the possibility of changing this particular wording simply to ensure that all listeners better understand the situation.
- She re-expressed her dissatisfaction that when complaining about a particular item, listeners were expected to judge coverage of a particular issue "over time". She said her concern was "in fact the BBC's coverage of this issue 'over time'. While there are occasional reports and items which do explain the Palestinian perspective, I do not feel the general reporting of this issue is fairly balanced. I would like to have the opportunity to complain about 'coverage...over time,' but there seems to be no way that viewers and listeners are able to do this. We are therefore constrained to complaining about individual items. Given that this constraint is imposed on your audience it seems unfair that your response should be allowed to refer to a broader range of material."

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

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

The Committee noted the complainant's concern that the programme item was misleading and did not meet Guideline requirements for due accuracy and due impartiality. The Committee acknowledged the complainant's view that references in the programme to "land the Palestinians want for a future state" did not accurately or impartially convey the history of the area. The Committee noted that the complainant acknowledged that the phrase ("Land the Palestinians want for a future state"), was strictly accurate, but the complainant believed that, by failing to add that the land was part of the Occupied Territories, it implied that it was simply land to which the Palestinians aspired.

The Committee noted the Adviser's view that it would have been clear to the *Today* audience that the focus of the report was on the release of 26 Palestinian prisoners ahead of the resumption of peace talks, and that this would have had a bearing on the amount

of context they would have expected to hear about the land that had been earmarked as a site for further Israeli settler homes.

The Committee noted that the terminology which the complainant objected to in the *Today* item had previously been considered in relation to a previous complaint, which the Committee considered relevant to the complainant's concerns. The relevant section of the finding on that occasion is given below:

The Committee concluded that the use of the word "want" in this context did not imply any judgement on the legitimacy of the Palestinian claim to the land and agreed with the programme makers that it was simply being used in the "conditional, aspirational sense of the word" to imply something "not currently in your possession", in this case, statehood.

The Committee noted that this finding, and its applicability to the current complaint, had been taken into account by the Adviser when reaching her decision not to proceed with the appeal. The Committee agreed with its previous reasoning that the use of the word "want" did not suggest any particular point of view on the Palestinians' right to the land. The Committee agreed with the Adviser that, while the *Today* programme suggested their coverage of the issue should be "judged over time", this was not necessary in this case, as the sentence complained about had not presented a particular point of view, and accordingly there was no other opinion that needed to be referenced in that item or in another item in the same or in a later programme..

The Committee agreed that the use of language in Middle East reporting is critical and noted that where the BBC does present one point of view on a controversial subject in its Middle East coverage it should be clearly signposted, acknowledge a range of views exists and the weight of those views and should not misrepresent them. However, it agreed with the Adviser that this was not the case for this item.

With regard to the Guidelines on Impartiality, the Committee acknowledged the complainant's comments regarding the requirement for coverage to be judged "over an appropriate time frame across our output as a whole", and noted that the Adviser had not relied on the wider coverage of the issue to reach her decision on this occasion.

However, the Committee also noted the response of the Head of Accountability, BBC News, at Stage 2:

"..it seems to me to be fair that, with a complaint about bias by omission, a legitimate defence may well be on grounds of overall coverage. The complaints process is not the correct mechanism for conducting impartiality reviews but we often look at complaints which refer to a number of reports in support of a contention of a particular bias."

The Committee wished to note its view that, where the BBC does use a defence of "overall coverage" to respond to a complaint of "bias by omission", the BBC should give examples of the items it is relying on (for example up to five), explain the time frame it is using and provide the items if requested to the complainant. It should also be open to the complainant to raise a limited amount (for example five items) in an appropriate time frame of wider output to support his or her contrary belief that the overall coverage points to bias. However, on this occasion, the Committee agreed with the Adviser that it was not necessary to consider wider coverage than the item complained of, as the item complained of was duly impartial within itself. For the above reasons, the Committee concluded that there was no reasonable prospect of it deciding that the programme had

breached the Editorial Guidelines on Accuracy or Impartiality in relation to this complaint. Therefore, the Committee decided not to consider this complaint on appeal.

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

## Have I Got a Bit More News for You, BBC One, 6 May 2013

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

### The complaint

The complainant first contacted the BBC on 9 May 2013. He complained about an excerpt of *Have I Got a Bit More News for You*, (an extended version of the satirical news quiz *Have I Got News for You*) in which the presenter referred to "UKIP members going to visit a multi-ethnic area" and viewers were then shown footage of a coach full of people: "wearing full protective suits, goggles, gas masks and helmets". The complainant considered the message from this was: "UKIP members think contact with ethnic people is contamination. They are racists." The complainant considered this was slanderous and added that he did not consider the matter was "light-hearted banter" as he did not believe it could be humorous to call someone racist.

The complainant received a response from Audience Services on 28 May which included the following comments from the programme team:

It's important to note that the humour for HIGNFY is extremely well established and that the show takes an irreverent look at the week's news. We did spend a while discussing not only UKIP,...but the elections and the battle between UKIP and the Tories was by far the biggest news story in England that week so it certainly wasn't unreasonable.

Throughout the segment we offered positive comments, as well as the jokes, and this is the price (or reward) of becoming a serious political force - UKIP should expect more of the same, as we do with all major political parties.

It's also worth noting we only commented on things that had either been said or done by individual members themselves - other than the opening photo with the gas masks, which we felt was justified following individual members pronouncements.

The complainant remained dissatisfied and renewed his complaint. A further response from Audience Services noted that the party campaigned prominently on the subject of immigration and stated that the programme had been using an established stereotype about the party, and had also referred to a UKIP candidate who had been suspended by the party because he was alleged to have made a Nazi salute.

The complainant remained dissatisfied, and in a further letter to Audience Services of 4 July he stated:

Vague claims about unidentified supporters making unspecified "embarrassing comments" get us nowhere. If you have evidence that UKIP is a racist party please produce it.

The complaint was escalated to the Editorial Complaints Unit on 18 July. He received a substantive response on 24 September which, in addition to information about that week's coverage of the suspension of a UKIP candidate, referred to a further three

recent incidents in which UKIP activists or candidates had been the focus of press coverage for behaviour that could be considered offensive. The complaint was not upheld.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the response received from the Editorial Complaints Unit at Stage 2 and the BBC had not answered the questions he had raised about the allegation that "UKIP is a racist party". In his initial response to the ECU finding, he stated that, as the party had 30,000 members, he considered the BBC would need to prove 15,000 were racist before it could be referred to as a racist party. In addition to his substantive complaint, he said the length of time taken by BBC staff to respond to his complaint was also unacceptable.

The complainant raised the following points at appeal:

- The BBC had "slandered UKIP by representing the party as racist when it is not".
- The examples given by the BBC to support its stereotype of UKIP as a racist party had not substantiated this view. The BBC had "ignored explicit statements from the party that it will have no truck with racism and will eject anyone who supports it..."
- The BBC was "supposed to be impartial and this item was [a] violation of this basic rule" and its rules on impartiality. "...the fact that this programme was supposed to be entertainment does not justify" this claim or invalidate the BBC's responsibilities.
- The complainant was concerned at the length of time it had taken to receive a response from the BBC.

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

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and watched the relevant parts of 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 viewed the programme in question.

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

The Adviser noted that when considering this case, the ECU felt that the most applicable Guideline was the section dealing with Harm and Offence. In this case, the particular section dealing with the general principles of Harm and Offence and Generally Accepted Standards was applicable as well as the Guideline relating to Portrayal.

The Adviser noted that the complainant considered the broadcast also raised issues against the Editorial Guidelines relating to Accuracy and Impartiality.

The Adviser noted that the complainant did not consider that the Editorial Guidelines were relevant or had any role to play in deciding on the fairness of this case. However, she considered that all BBC output was required to meet the standards set out in the Editorial

Guidelines and the Complaints Framework made clear that output would be assessed against these standards.

The Adviser noted that the Guidelines relating to Accuracy and Impartiality required that all output should be “duly” accurate and impartial – but that this requirement varied according to the nature of the programme. This meant, for example, that there was a greater demand for impartiality and accuracy if a serious subject was considered in a documentary than if the same serious subject were addressed in a topical news comedy programme. The Adviser considered that audiences broadly understood this.

In considering due accuracy and impartiality, output producers were also required to bear in mind the audience expectations of the programme. The Adviser noted that [the regular version of the series under appeal], *Have I Got News for You*, had been a regular part of the television schedules for more than 20 years and that its BBC website described the programme as the “Comedy quiz show that grills celebrity contestants on the week’s top stories and news”. She noted that responses at both Stage 1 and Stage 2 had drawn attention to how well established the programme’s format and style was and agreed that audiences would be well aware of the nature of its output.

She noted that in the week preceding the programme’s broadcast, UKIP had chosen to expel one of its candidates after the publication of a photograph which apparently showed him making a Nazi salute.

She noted that in April 2013 the party’s leader, Nigel Farage, had given an interview to the BBC in which he referred to difficulties the party faced in terms of vetting those who wished to stand for election as UKIP candidates and had stated:

I’ll be honest with you, we don’t have the party apparatus in a very short space of time to fully vet 1,700 people.

We have made people sign declaration forms, expressing the fact that they’ve never been part of political parties that we consider to be wholly undesirable.

By that I mean the BNP. And, you know, we ask people if there is a problem with a criminal record or whatever else it may be, please tell us.

While she acknowledged the complainant’s belief that the party was not racist, she agreed with the ECU that: “accusations of racism ... have been levelled at UKIP for a number of years.” She could not recall another political party requiring possible candidates to declare if they had previously been members of parties that were “wholly undesirable”.

In that context, the Adviser considered viewers would understand this was a humorous comment about a party that had faced accusations of racism and had itself acknowledged that it was unable to vet its potential candidates who might have previously been members of parties that were, according to the party’s leader, “wholly undesirable”. While the Adviser regretted that the complainant objected to the comment, she did not consider Trustees would be likely to conclude the Editorial Guidelines on either Impartiality or Accuracy had been breached.

In terms of offence caused by the comment, the Adviser noted that broadcasters were permitted [by the Editorial Guidelines] to broadcast challenging content which may include potentially offensive material.

The Adviser appreciated that the complainant was personally offended by the picture of people wearing anti-contamination outfits in conjunction with the statement made by the presenter: "As their election bus arrives in Leicester UKIP party workers prepare to meet people from all ethnic backgrounds". However, here too, the Adviser considered it was important to acknowledge that most viewers would consider this to be an entertainment programme and would have understood the comment in this context.

The Adviser agreed with the Complaints Manager of the ECU when she stated that *Have I Got News for You* had "a long-standing reputation for robust humour about topical events and personalities, in which any individual or organisation in the public eye is considered fair game and generally lampooned in a hugely exaggerated way for comic effect". In this satirical context, the Adviser believed that the BBC Trust would not consider that the programme raised any issues regarding editorial justification in taking this approach to a political party.

The Adviser noted that the complainant believed that the BBC was accusing UKIP of being racist when there was no foundation for this claim. The complainant disputed the examples given by the ECU about members of UKIP who had expressed views about immigration and ethnic minorities. She noted that the complainant felt that this slandered UKIP "by representing the party as racist when it was not". The Adviser felt that, contrary to the complainant's view, the public strongly associated UKIP with immigration issues, [and were aware that some] individual members (who had been subsequently expelled from the party) had been accused of using racist terms. Viewers would accept the programme content was playing with this perception and understand that a comedy programme would highlight the extreme behaviour of any political party and, as the Complaints Manager stated, this "was clearly an exaggeration for humorous purposes". Given this context, the Adviser did not believe that the BBC Trust would consider that the programme raised any issues regarding audience expectations or generally accepted standards. The Adviser noted that the complainant also considered UKIP had been slandered by the programme. She considered that it was a matter for the party or its members if it chose to seek legal remedy, but that was not a point that it was appropriate for Trustees to address.

The Adviser considered that the Trustees would be likely to conclude that the output would have been well within audience expectations for this well-established programme and met the requirements of the Editorial Guidelines. She did not, therefore, consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees on appeal.

The Adviser noted the points the complainant made regarding the delays he had experienced in making his complaint. The Complaints Framework set out timeframes to try to ensure that complaints could be handled in an efficient and timely way. She noted that the Editorial Guideline relating to Accountability stated:

Complaints should be responded to in a timely manner ... we are committed to responding to complaints within ten working days of their first receipt and to keeping complainants informed of progress

She noted that at Stage 1, the complainant had been sent an initial holding response in six working days and a substantive response ten working days after the receipt of the original complaint. She noted that correspondence had been by post and this meant she could not be clear about when the complainant would have received those responses. The complainant had renewed his complaint in a letter received by the BBC on 3 June, he had been sent a further holding reply on 19 June and a substantive response on 26 June.

After some confusion over the escalation process, the complainant's letter escalating the complaint to Stage 2 had been written on 18 July and received by the Editorial Complaints Unit (ECU) on 31 July. The complainant had been advised by the ECU that he would receive a Stage 2 response by 16 September, but the substantive response had not been sent until 24 September.

The Adviser appreciated that it was frustrating waiting for responses and was sure the Trustees would wish her to apologise for the delays he had experienced. However, she did not consider the delays amounted to a breach of the Guidelines and therefore she 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 hoped that the complainant would be reassured to know that the Trust was keeping complaints handling under close review. The complaints framework had been amended in 2012 with a view to making it faster and easier for complainants to use and the Trust had carried out a mystery shopping exercise in 2013. The Adviser thought the complainant might be interested to know that the results of that exercise had recently been published and could be found via this link:

[http://www.bbc.co.uk/bbctrust/news/press\\_releases/2014/mystery\\_shopping\\_2014.html](http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html)

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He replied to the Senior Editorial Complaints Adviser on 19 April 2014 noting that his complaint had not been directly addressed, that he had a complaint relating to complaints handling and that he wanted to note that the issues he raised have implications beyond his complaint. The complainant provided six points relating to "Issues of Principle for the Trustees", a timeline of correspondence and his original complaint of 9 May 2013. In summary he considered that:

- the initial allegation against UKIP was untrue, unchecked and unfair
- his complaint had not been dealt with according to the BBC's rules
- the item on the programme had been justified on the grounds it was funny
- the programme had failed to comply with the prohibition on political activity by the BBC and supported propaganda from UKIP's opponents.

### **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 (and enclosures) asking the Committee to review her decision.

The Panel noted the points outlined by the complainant.

Regarding the excerpt from *Have I Got a Bit More News for You*, the Committee noted the initial response from Audience Services which acknowledged that the programme was known for its irreverence and that, as a serious political force, UKIP will face robust comedy.

The Committee noted the complainant's dissatisfaction with the blurring of issues surrounding immigration with racism, together with his point that UKIP had taken measures to exclude racists from the party.

The Committee also noted the incidents in which UKIP activists or candidates had been the focus of press coverage for behaviour that could be considered offensive and the complainant's view that these were trivial incidents.

The Committee agreed with the Senior Editorial Complaints Adviser that the output needed to be assessed against the Editorial Guidelines. The Committee noted that the complainant felt that the episode of *Have I Got a Bit More News for You* contravened the guidelines on Harm and Offence as they relate to Portrayal:

When it is within audience expectations, we may feature a portrayal or stereotype that has been exaggerated for comic effect, but we must be aware that audiences may find casual or purposeless stereotypes to be offensive.

The Committee agreed with the Complaints Manager of the ECU when she stated that the approach of *Have I Got News for You* meant "any individual or organisation in the public eye is considered fair game and generally lampooned in a hugely exaggerated way for comic effect".

The Committee agreed with the Senior Editorial Complaints Adviser that UKIP was strongly associated with immigration issues and Trustees agreed that the programme was playing with the perception that UKIP was a party which was often called upon to argue for its views on immigration and had had to defend itself against allegations of racism.

Trustees agreed that it was not necessary to demonstrate that UKIP *was* racist in order to be able to editorially justify this sketch on *Have I Got a Bit More News for You* or to meet the guidelines on due accuracy and therefore expressed no opinion on this point.

Trustees noted that the complainant felt that the BBC had expressed a view and had campaigned or had been used to campaign against UKIP and so had breached the requirement to avoid political activity. However, the Trustees considered that a sketch on *Have I Got a Bit More News for You* did not amount to political activity by the BBC or a breach of the impartiality guidelines, for the reasons given by the Senior Editorial Complaints Adviser.

The Committee welcomed the complainant's feedback and review of the complaints process and noted that he had received reassurance from the Senior Editorial Complaints Adviser that the Trust was keeping complaints handling under close review. The Committee noted the Adviser's assessment of the complaints-handling aspect of the appeal. The Committee also noted the detailed analysis of the history of the complaint by the complainant. The Committee noted that when an apology has been made for delay then the Trustees normally consider the matter resolved and in such a case they would not take a complaints handling issue on appeal unless there were exceptional features to the case. Trustees agreed that the Key Performance Indicators KPIs had not been met on more than one occasion but that the complainant had in general been kept informed and apologies offered. On this basis the Committee agreed the complaint had no reasonable prospect of success. The Trustees also noted the complainant had wanted his complaint referred to the Chief Adviser Politics. The Trustees noted that this was not required under the complaints procedure set by the Trustees.

The Committee did not consider that any of the complainant's concerns amounted to a breach of the Editorial Guidelines and therefore did not have a reasonable prospect of success.

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

## BBC News midnight bulletin, Radio 4, 9 October 2013

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

### The complaint

The complaint relates to the use of figures in a report about standards of literacy and numeracy broadcast on Radio 4's midnight news on 9 October 2013. The complainant contacted the BBC on 12 October 2013 to raise his concerns about a statement made by the BBC Education Correspondent. During her report about levels of literacy and numeracy she stated, in relation to the UK, that "public spending on education doubled from £35.5 billion in 2000 to £63.9 billion in 2009". The complainant pointed out that it was inaccurate to state, using those figures, that spending had "doubled".

He was unhappy with the responses he received from BBC Audience Services at Stage 1 which he felt did not address his complaint accurately or appropriately.

The complaint went to Stage 2 and, while the Head of Editorial Complaints accepted it was inaccurate to use the term "doubling", he felt that overall the audience had not been misled.

### Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the finding of the Editorial Complaints Unit (ECU) at Stage 2.

He reiterated his concerns about an inaccuracy in the statement made by the BBC Education Correspondent that public spending on education had "doubled", when the figures she was comparing were £35.5 billion and £63.9 billion.

He said that the word she should have used was "increased", not "doubled".

He stated in his appeal:

"I drew [the ECU's] attention to the obvious inaccuracy of this broadcast basing my argument on a common sense point of view. In their responses of ... BBC Complaints/ ECU conceded that the language used had been 'an error' indeed 'a factual error', a 'mistake' and moreover 'not accurate'.

Despite conceding the inaccuracy of the broadcast, ...[the] ECU claimed the broadcast was nonetheless 'duly accurate in the sense envisaged by the BBC Editorial Guidelines' – and it is this which I find inexplicable."

The complainant considered the report failed to meet the requirement under the Editorial Guidelines that:

All BBC output...must be...presented in clear, precise language.

He stated that he raised this with the ECU; however:

"ECU wrote back to give their final response on 22/01/14, and to my astonishment made a complete volte-face claiming that their opinion of there having been no

breach of 'due accuracy' was not based upon any specific guideline after all, but upon a 'common-sense' understanding."

The complainant said he strongly disagreed with the decision of the ECU and maintained that the broadcast was "clearly inaccurate, and furthermore that this inaccuracy does indeed amount to a breach of the 'due accuracy' which the BBC is supposed to uphold."

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

The Adviser noted that the ECU did not dispute the fact that the statement made by the Education Correspondent that the UK spending figures had "doubled" was numerically inaccurate. She noted that in his provisional finding of 31 December 2013, the Complaints Director stated:

"Plainly, 'doubled' isn't strictly accurate, the increase in nominal terms being of the order of 80% rather than 100%. In its context, however, I don't think the inaccuracy would have misled listeners materially, for two reasons. Firstly, any misleading effect was immediately mitigated by the actual figures being given. Secondly, the difference between an increase of 100% and one of 80% doesn't seem to me such as to affect listeners' understanding of the point being made, which was that (according to the OED's results) the 16 to 24 age group in the UK showed no improvement over their grandparents' generation even though there had been an increase in education spending during their time at school which was very substantial by any measure."

The Adviser agreed that the context of the statement was such that the point being made in the report was that the increase in UK spending was extremely large. She also agreed that in such a context, for the reasons given by the Complaints Director, it was unlikely that the inaccuracy would have materially misled listeners to the bulletin.

The Adviser noted that the complainant considered that the ECU had rejected his own irrefutable 'common sense argument' but had made a final decision based on their own 'common sense argument' rather than a specific guideline:

"...their opinion of there having been no breach of 'due accuracy' was not based upon any specific guideline after all, but upon a 'common-sense' understanding."

She noted the complainant's view that Guideline 3.2.2 was a clear directive that all BBC output should be presented in "clear, precise language" and, in his opinion, the ECU had not based its finding on this Guideline.

She noted the full wording of Guideline 3.2.2 which states:

All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language.

She considered that the words, "appropriate to its subject and nature" were also relevant in the context of this complaint. She noted the response of the ECU Complaints Director

in his letter of 22 January 2014 which sought to explain the differentiation the BBC makes in its Guidelines between “due accuracy” and “absolute accuracy”:

“I was simply applying a common-sense test of whether or not due accuracy had been achieved – and it’s due accuracy which is the ‘foundational principle’ here, as is apparent from its place in the first sentence of 3.1 (Introduction) and as the first item under 3.2 (Principles). The reference in 3.2 to ‘clear and precise language’ therefore shouldn’t be understood as meaning that any departure from complete clarity or precision is a breach of editorial standards, as that would be to replace the principle of due accuracy with that of absolute accuracy. Although I of course agree that ‘increased’ or some equivalent term would have been more accurate than ‘doubled’ in this instance, I remain of the view that the item met the standard of due accuracy for the reasons set out in my letter of 31 December, and I’m now finalising the finding on that basis.”

The Adviser agreed with this view and believed that Trustees would be likely to conclude that the news bulletin was not materially misleading and met Guideline requirements for due accuracy.

She noted that Audience Services had apologised to the complainant in their Stage 1 response of 25 October 2013:

“[The]reference to a doubling in public spending was intended to point to the increase in general terms. However, we’re sorry if this wasn’t made clear during the report.”

She also noted that Audience Services had issued a further apology in their response of 2 November 2013:

“We apologise for the quality of the first response. You are, of course, correct and it wasn’t a case of you simply ‘believing’ that an error had occurred. We accept that on a live broadcast a factual error was made. As has been previously expressed, we strive for the highest standards of accuracy, but occasionally mistakes do occur. All we can add is that we’re sorry for the error and are grateful for you bringing it to our attention.”

She noted that the BBC Executive had accepted their error and apologised for it. She was sure the Trustees would wish her to add her apologies too. She noted that where the Executive accepted a mistake had been made and apologised for it, the Trustees normally considered the matter resolved (unless there were features to the case which suggested it was so serious that further action might have been necessary). The Adviser did not believe that this matter raised such serious issues that further action would be required. She therefore decided the complainant’s appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal, reiterating his view that it was a breach of Accuracy to broadcast that a figure had doubled, when mathematically, that figure had not doubled.

### **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 sentence in the report in question.

The Committee noted the strength of the complainant's feelings with regard to accuracy and that he considered this to be a breach of the guidelines on Accuracy. The Committee noted that, in his letter of 22 January 2014, the Complaints Director, Editorial Complaints Unit, outlined the BBC's application of the guideline to the complainant.

The Committee acknowledged that £63.9 billion is not £35.5 billion doubled. The Committee also noted that this had been acknowledged in the response from the Editorial Complaints Unit.

The Committee agreed that if it had taken this case on appeal it would be likely to decide that as the actual figures concerned were used in the report the audience were not misled.

The Committee agreed with the Complaints Director, Editorial Complaints Unit, that while using the word "increased" instead of "doubled" would have been preferable, the audience had not been materially misled. Consequently, the Committee concluded that there was no reasonable prospect of it finding there had been a breach of the Editorial Guidelines.

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

## The Story of the Jews, BBC Two, September 2013

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

### The Complaints and Appeals to the BBC Trust

Seven complainants wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold their complaints about the five-part BBC Two series, *The Story of the Jews*, presented by Professor Simon Schama, which was broadcast in September 2013.

The complainants raised the following issues:

#### General issues

1. It was not made clear the series was intended to be Professor Schama's personal view
2. There was no challenge to Professor Schama's views either within the episodes or after the series was broadcast; a balancing programme detailing the Palestinian perspective should be broadcast

#### Episodes One and Two

3. The audience was misled regarding modern Israel's connection to biblical Israel
4. It was inaccurate to state as an historical fact that the written Bible predated Babylonian conquest
5. The programme was inaccurate in how it represented the origins and development of Jewish monotheism

#### Episode Three

6. The programme had not been accurate in how it had reflected the Dreyfus Affair and the impact it had on Theodor Herzl

#### Episode Four

7. It was inaccurate to state that non-Jewish radicals did not come to the aid of the Jews during the 1905 pogroms

#### Episode Five

8. It was inaccurate to state that Israel's borders are ambiguous
9. Stating that settlements are "regarded as illegal" wrongly suggests that their illegality is a matter of opinion

10. It was inaccurate to state that 1967 was a defensive war and Israel was fighting for its existence
11. It was misleading and biased for the programme to state that the barrier was built to stop terrorists; this reflected only the Israeli narrative of its purpose
12. the figure given of 700,000 Palestinian refugees after 1948 was inaccurate, it should have been stated as 842,000
13. The programme drew a false distinction between an earlier "Zionism of necessity" and a contemporary successor more hostile to the Palestinians

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

The relevant correspondence was reviewed by the Trust Unit and the Senior Editorial Complaints Adviser (the Adviser) and an independent editorial adviser watched the programmes.

The Adviser decided that the complainants' appeals 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 also the following clauses from the Impartiality guideline as particularly relevant to the allegations raised:

#### Personal View Content

##### 4.4.29

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

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

##### 4.4.30

Additionally, when personal view programmes and websites cover 'controversial subjects', especially those concerning matters of public policy or political or industrial controversy, we should:

- retain a respect for factual accuracy
- fairly represent opposing viewpoints when included
- provide an opportunity to respond when appropriate, for example in a pre-arranged discussion programme

**1. It was not made clear the series was intended to be Professor Schama's personal view**

The Adviser considered first the allegation that the audience had not been adequately informed that the series qualified as "Personal View Content".

The Adviser noted the following points made by two of the complainants:

Its main basis appeared to be that this was a personal story by Simon Schama, although this did not appear to be clear in the way the series was presented – it was called *The Story of the Jews*, not Simon Schama's story

---

I feel the title of 'story' rather sets out the stall of it being an historical account. You claim that it is a personal version of events, if this was so it should have been clearly stated in the title.

The Adviser noted the continuity announcer's introduction to Episode 1:

Now on BBC2 the first part of an epic series with Simon Schama presenting his personal take on *The Story of the Jews*

The Adviser noted that it was clearly signposted as a series, that the remainder of the series was broadcast over the next four weeks on the same day and in the same timeslot and that on each occasion the continuity announcer signposted the nature of the content. This was the introduction to Episode Two:

From his own perspective historian Simon Schama continues *The Story of the Jews*

Episode Three:

Now Simon Schama continues his personal take on *The Story of the Jews*

Episode Four:

Now a personal journey for Simon Schama, retracing his roots he continues to tell his story of the Jews

Episode Five:

A very personal journey concludes now on BBC Two as Simon Schama guides us through the final chapter of *The Story of the Jews*

The Adviser noted too that from the beginning of Episode One Simon Schama spoke in the first person, using pronouns such as "I", "we" and "us". The Adviser noted the pre-title piece to camera in Episode One:

It's the story that made me want to be an historian in the first place, for I understood when I was quite small that there were two special things about the Jews that we'd endured for over 3,000 years, despite everything that had been thrown at us, and that we had an extraordinarily dramatic story to tell, and somehow, that these two things were connected, that we told our story to survive. We are our story.

The Adviser noted the consistency with which Simon Schama continued to thread his own experience throughout the episodes as appropriate, including filming a sequence with his friends and family during their Passover meal.

Alongside the clear signposting of his Jewish identity, the Adviser noted that Professor Schama also advised the audience that he was a Zionist. This was how he introduced Zionism in Episode 3:

Now Zionism has become a heavily loaded term, for some people even a tragically loaded term, but not for me. I'm a Zionist, I'm quite unapologetic about it, because it comes down to this, was Herzl who had a sense of a catastrophic event just around the corner, telling the truth or wasn't he, about whether it was possible still to live the Enlightenment dream here in the German world? Of course he was. With that knowledge, with that sense of the Jews having never had the power of their own national home, how could you not be a Zionist?

The Adviser noted that in Episode 5, the programme which dealt with the most recent and arguably the most controversial content of the series, Professor Schama reminded the audience from the outset that this was a personal journey. The episode began in Israel with the minute's silence to mark Holocaust Memorial Day and Professor Schama stood alongside his fellow Jews in respect and the broadcast footage showed him evidently moved by the experience. This was how he ended that sequence:

Everybody standing by their truck or their car or in the street just knows it could have been us. (LONG PAUSE) It's still heartbreaking.

The Adviser was therefore satisfied that Simon Schama, as an historian, a Jew and a Zionist signposted his credentials to the audience in advance and that *The Story of the Jews* qualified to be regarded as personal view content within the definition of 4.4.29 of the Impartiality guideline.

- 2. There was no challenge to Professor Schama's views either within the episodes or after the series was broadcast; a balancing programme detailing the Palestinian perspective should be broadcast**

The allegation was made in similar terms by a number of complainants. The following was how one complainant presented the allegation and is broadly representative of the range of points made by the complainants included in this consolidated decision:

*The Story of the Jews* is overwhelmingly concerned to make the case for Zionism, out of all proportion to the subject's place within Jewish history. Thus:

- 3 of its 5 episodes explicitly promote Zionism, and cover events of the last approx. 270 years (roughly 11% of the timespan of Jewish history)
- by contrast the development of Rabbinical Judaism – the process at the heart of Jewish history, lasting approx. 1,500 years (roughly 60% of the timespan of Jewish history) – is covered in about half of one episode
- elsewhere the series asserts the veracity of key elements of the Bible story (essential to the Zionist claim to Palestine) and omits discussion of widespread conversion to Judaism over the ages (which would undermine that claim).

The series title is therefore a misnomer – *The Story of the Jews* in fact constitutes an extended apology for Zionism, on a scale probably unprecedented in BBC output of the past 25 years. By broadcasting it the BBC has given immense weight to a contested view of the Israel/Palestine conflict, one of the most bitter disputes in the world today. And – in a clear breach of its editorial guidelines - the BBC has manifestly failed to ensure that other (non-Zionist) viewpoints in relation to that conflict are presented “in output of a similar type and weight and in an appropriate timeframe”<sup>4</sup>.

(The Channel Executive for BBC Two) claims that a “wide range of voices and opinions” on Middle Eastern issues have been included in recent output. But it is specifically coverage of the Israel/Palestine conflict that I have questioned. He is unsure of what kind of subject matter I have in mind to redress the imbalance of perspectives. Palestinian views on Israel's legitimacy? Absolutely. A non-Zionist account of Jewish history? Perhaps, although Palestinian history would be a higher priority. My point is simply that the coverage of non-Zionist viewpoints should be of a comparable depth/extent to that which *The Story of the Jews* gives to Zionist ones.

He writes that “although *The Story of the Jews* was authored, it did reflect a range of views”. But if viewpoints are to be correctly presented they must be voiced by their advocates, not by commentators who are hostile to them. Thus, Prof Schama notes that many experts reject any link between the Bible story and the facts of history, but he makes no attempt to explain their views. Likewise, he briefly interviews a Palestinian refugee but this is no substitute for a proper presentation of the crimes ascribed to Zionism by its detractors.

(The Channel Executive) gives a vague assurance that future output will present “a wide range of ideas and opinions”. This is not good enough. The length of the “appropriate timeframe for reflecting other perspectives”<sup>5</sup> must be defined if it is to be more than a convenient get-out clause. Yes, there have now been one or two relevant offerings - *Searching for Exile: Truth or Myth?* and *5 Broken Cameras* - but 5

<sup>4</sup> <http://www.bbc.co.uk/editorialguidelines/page/guidelines-impartiality-personal-view/>

<sup>5</sup> <http://www.bbc.co.uk/editorialguidelines/page/guidelines-impartiality-controversial-subjects/>

months on I still see no sign of the depth of treatment of non-Zionist viewpoints that should have accompanied Prof Schama's series.

Another complainant made the following additional points:

- *The Story of the Jews* presented Professor Schama's view as definitive
- there is no basis for the ECU's claim that because audiences would have been aware that the series was presented from a Zionist perspective they "would have been able to judge the content accordingly":

...when audiences are explicitly denied information about alternative perspectives, when key facts are excluded because they do not fit with that (Zionist) perspective, when we are dealing with a contested history of which only the victor's version (Israel's) is widely known – how can audiences possibly judge?

- In giving Professor Schama an uncontested platform the BBC is spreading a view which shackles Jewish identity to Zionism and the Israeli state, providing ammunition for anti-Semites who want to spread precisely this misguided belief

A third complainant said:

Simon Schama's "Story of the Jews" was constructed so as to deceive the viewers in order to justify the Zionist Jews' invasion, armed conquest, ethnic cleansing and colonisation of Palestine... I do not deny the historian Simon Schama's right to tell the authentic history of Palestine/Israel, but he gave himself the right to change it.

The Adviser noted the Stage 1 response which was sent to a number of the complainants stating that the series was not intended to be a "current affairs" analysis of the modern Israel:

Rather, it discussed the creation of Israel in the context of the wider history of the Jewish people. Even given this focus, it was not possible to cover the subject comprehensively in the time available and difficult decisions had to be made on which elements to include.

The film gives what is clearly a personal interpretation, but Simon Schama's own views were made explicit and he did not ignore - far less attempt to refute - the legitimate questions and criticisms that many people have about the situation in Israel. He honestly confronted many of these criticisms and was able to share those difficult moments with viewers.

The Adviser also noted this from the same Stage 1 response:

It is worth noting that the recent history of the conflict will be examined in more detail and from a Palestinian perspective in an upcoming documentary.

She noted a further response in which a complainant was advised:

We cannot get into any more detail at this stage about the documentary referred to in (the previous) response. It will be broadcast when it is ready and scheduled. Publicity and billings will come into play as they do with any other programme at the appropriate time.

The Adviser noted how the ECU responded to the general allegation challenging the way in which Professor Schama presented *The Story of the Jews*:

Professor Schama was entitled to offer his thoughts and opinions, and to choose the information which he wanted to present, in order to put across his personal view (so long as he retained a respect for factual accuracy). The nature of any historical analysis is that it is open to question and debate; others may take a different view but that doesn't negate the right of a particular historian to advance an argument or a theory about what happened and why they believe those things happened.

The Adviser noted the clause most relevant from the Impartiality guideline was 4.4.30 which relates to the requirements when covering "controversial subjects" within personal view programmes (as quoted in full in the pre-amble above).

The Adviser noted the first bullet point of 4.4.30, that content must retain a respect for factual accuracy. The Adviser took the view that this requirement was most appropriately considered where complainants had alleged specific inaccuracies in the content, as discussed in points 3-13 below. The broader allegation that the entire series was a distorted view of Jewish history seen purely through a pro-Zionist perspective was, however, covered under this point.

The Adviser noted the second bullet point [of guideline 4.4.30], that opposing viewpoints, when included, must be fairly represented. The Adviser noted that although there was no requirement within personal view content that alternative views are presented, there were a number of occasions that other perspectives were reflected or where the commentary noted the facts were disputed. The Adviser noted that none of the complainants had alleged in any of their appeals that opposing views had been misrepresented.

The Adviser noted that for the majority of complainants who alleged the series had breached the BBC's impartiality guidelines it was on the basis that the view articulated across five hours of primetime television by Professor Schama required explicit balancing either within the series or in a specifically commissioned programme. As noted above, clause 4.4.30 of the Editorial Guidelines states that in personal view content covering controversial subjects programme makers should

...ensure that a sufficiently broad range of views and perspectives is included in output of a similar type and weight and in an appropriate timeframe

The Adviser noted that those complainants who raised this specific issue argued there were two main omissions:

- Palestinian views on Israel's legitimacy
- an alternative view to challenge Professor Schama's "Zionist interpretation" of Jewish history

The Adviser noted a response to one of the complainants by the Channel Executive for BBC2 and BBC4 which listed a range of recent programming on Middle East issues. The response continued:

You make a specific point however in suggesting that there should have been an “accompanying” programme to *The Story of the Jews* and this is rather harder to address. The word “accompanying” could mean, for example, that an alternative *Story Of The Jews* should have been broadcast and presented by a non-Zionist Jew. Or it could mean that other aspects of contemporary conflicts and issues should have been broadcast to capture non-Zionist and/or the range of Palestinian views on, for example, the legitimacy of the state of Israel. In either case I would say firstly that, although *The Story of the Jews* was authored, it did reflect a range of views. Secondly when considering an “appropriate timeframe” it should be remembered that this can stretch to the future as well as to the past. Although it would not be appropriate for me to discuss any specific future programming I am confident that viewers will continue to be able to experience a wide range of ideas and opinions and that this will help us to meet our commitment to impartiality.

The Adviser noted two recent programmes broadcast by the BBC, the first of which (*Five Broken Cameras*) featured the video diary of a Palestinian living in a village under the Israeli occupation and the second of which (*Searching for Exile – Truth or Myth?*) discussed an alternative narrative to the traditional story of Jewish exile, challenging the widely held view that today's Jews are descended from those who lived in the biblical land of Israel. The Adviser noted that both programmes were acknowledged by the first complainant whose allegation is summarised above.

The Adviser agreed with the Stage 1 and 2 responses which stated that *The Story of the Jews* was the story of the Jewish people from Simon Schama's perspective as an historian, a Jew and a Zionist and that it was not intended to be, nor was it, a history of Israel either in the billing or the telling. The Adviser agreed with the BBC Channel Executive's response at Stage 2 about the difficulty of establishing what a “similar type” of programme might be. She also did not take the view that an explicitly linked programme from the Palestinian or other non-Zionist perspective was necessary or appropriate in order for the BBC to meet its editorial standards on impartiality.

The Adviser considered that of more relevance to her consideration of due impartiality of the series overall was the extensive broader BBC coverage across the output as a whole of those issues which featured in the series and which are considered the most contentious, some of which have been noted above. She noted also the inclusion in the final episode of what she considered appropriate context reflecting two of the most controversial aspects of the Palestinian story. The Adviser noted the sequence with a dispossessed Palestinian in the former Arab village of Lifta and the acknowledgement in Professor Schama's commentary that Israel's gain had been at the expense of the Palestinians:

For the Arabs of Palestine, Israel's War of Independence had meant Nakba – catastrophe. The displacement, sometimes violently, of hundreds of thousands of Palestinians from towns and villages like Lifta on the outskirts of Jerusalem.

By the time of the 1949 armistice, around 700,000 Palestinians had left, some fleeing in fear, some obeying the orders of village elders or Arab guerrillas, some driven out by force and terror.

Their towns and villages became part of Israel and they have never been able to return to their homes except occasionally as visitors.

The Adviser noted too how the commentary described the separation barrier:

The separation barrier was a response to a devastating wave of suicide bombings unleashed a decade ago in which more than 500 Israelis died. Today, it cuts Israel off from the West Bank except where it snakes deep into the Occupied Territories to protect some of the larger settlements, shredding Palestinian territory and making life for the Palestinians a daily ordeal.

The Adviser noted next the assertion that the series was used by Professor Schama solely as a vehicle to make the case for Zionism and that this skewed his presentation of Jewish history. The Adviser acknowledged that because Professor Schama was already widely known as an historian there would be likely to be an expectation that his *Story of the Jews* would be an authoritative account of that history as opposed to, for example, a partial account by a known campaigner who identified with a specific viewpoint. However, in the Adviser's view Professor Schama presented a mainstream view of key events in the Jewish timeline and she saw no evidence to support the allegation that Professor Schama's identification as a Jew and a Zionist had distorted his telling of the Jewish story. But it had in her opinion managed audience expectations as to the extent to which it would be a dispassionate account of an historian with no direct personal connection to the history he was presenting. In the Adviser's view, the addition of Professor Schama's emotional response and personal experience to the history he presented added to the public understanding and debate and allowed audiences to hear a fresh and original perspective, as allowed for in the Editorial Guidelines. Those occasions also explicitly allowed the audience to distinguish between Simon Schama the historian and Simon Schama, the Jew and Zionist.

The Adviser acknowledged the inevitability for competing narratives to exist across a five-part series spanning 3000 years of history: historical events are interpreted through analysing the motivation of those who shaped those events, and as such solid facts can prove elusive. And whilst this was personal view content, the Adviser noted that Professor Schama nevertheless acknowledged on a number of occasions where there was disagreement amongst historians or where the biblical story wasn't necessarily supported by the archaeological evidence. She did not therefore agree with the complainant who asserted that it was presented as the definitive story. In her opinion audiences would have been well aware that a range of views exist for any historical account, and that particularly when it had been clearly signposted as the presenter's personal view, it was likely that other equally respected historians might hold differing views.

The Adviser then considered the following assertion by one of the complainants:

In giving Professor Schama an uncontested platform the BBC is spreading a view which shackles Jewish identity to Zionism and the Israeli state, providing ammunition for anti-Semites

The Adviser noted that while the Israel-Palestine conflict remains unresolved and the legality of Israel's ongoing settlement programme and treatment of Palestinians inside Israel and within the occupied territories continues to be widely criticised, Israel is nevertheless a legitimate sovereign state.

The Adviser acknowledged that within the Jewish community worldwide there are those who do not support some of the Israeli state's policies, and some who do not consider themselves Zionists, that is they do not support the existence of the state of Israel as a homeland for the Jewish people. While Professor Schama could have chosen to mention this latter group, in the Adviser's view he was under no obligation to do so. However, the Adviser noted that the final episode of the series documented some of the tensions within Zionism both at its establishment and today. She noted for example how the programme reflected the differing visions amongst its founders of how the Arab population of mandate Palestine should be treated. In relation to more contemporary tensions, the Adviser noted a series of sections in which the audience witnessed Professor Schama's attempting to reconcile his support for Zionism with what he saw as a departure from some of the early ideals, as here when he met with a settler:

Meeting Tzvi was not easy for me. I recognise the sincerity of his views but profoundly disagree with them. A sense of territorial entitlement prescribed by the Bible is not a development of the Zionism of necessity but a threat to it. For the Bible is many things, but a blueprint for peace in this land it is not.

The Adviser noted his explicit challenge to the settler's view that the whole of the biblical Holy Land is the Jewish people's by right:

All the rather beautiful things you speak eloquently about may indeed be felt, if not with a biblical text, by the Palestinians as well.

The Adviser noted how the opening of the programme established the moral dilemma which the programme went on to explore:

I've always thought that Israel is the consummation of some of the highest ethical values of Jewish tradition and history. But creating a place of safety and defending it has sometimes challenged those same ethics and values.

He discussed the separation barrier and how it appeared to him to represent the antithesis of the Jewish ideal:

In some senses, if you don't live in Israel, I don't live in Israel, you're morally obliged to be nearly silent, nearly silent. All the same, I also want to add to that huge moral caveat this: The Bible is full of encounters between men and God, between men and other men, between even enemy brothers. It's very difficult for me to sort of stand here and say that that kind of Judaism, the Judaism of openness of encounter, has a chance of a true life here. This is a Judaism, a Jewishness, that looks, scurries beneath the shadows of these towers for safety. It's not ultimately a Judaism of bravery. It's not ultimately a Judaism of life.

The Adviser concluded that there had been appropriate challenges and context within the series itself such that there was no requirement for any specific complementary programming on this occasion. She was further satisfied that across the BBC output there was both specific programming and ongoing coverage of contentious issues. She noted that the BBC monitors its output of issues relating to the Israel/Palestine conflict on an ongoing basis to ensure that its requirements for due impartiality are met. Accordingly she did not consider the allegation had a reasonable prospect of success and that it should not therefore proceed to appeal.

## Episodes One and Two

### 3. The audience was misled regarding modern Israel's connection to biblical Israel

The Adviser noted the following allegation by one complainant:

The series asserts the veracity of key elements of the Bible story essential to the Zionist claim to Palestine.

She noted another complainant's allegation that Professor Schama was "encouraged"

...to elaborate on his Zionist narrative designed to strength the alleged connection between the days of the biblical Israelites and the modern Israeli state.

The Adviser noted the following as a representative summary of the detailed points supporting the allegation as stated in complainants' letters of appeal:

- the programme implied the Moses story was true by describing the liberation from slavery in Egypt as the "story of stories" and stating that archaeologists had not yet found any trace
- the programme gave undue weight to discredited archaeology in the Judean desert
- by omitting any discussion of conversion to Judaism the programme implied that most Jews are/have been descended from the ancient Judeans

The Adviser noted the essence of this allegation was that the programme had given undue weight to what the complainants consider is unproven and dubious evidence of direct links between the Jewish people of the Bible and those who have claimed the right to "return" to the modern day State of Israel. The Adviser noted the complainants' view that this had the effect of distorting the facts on what is a highly controversial issue and making a "false" case for Zionism.

The Adviser considered the arguments used by the complainants to support their assertion. She considered first the allegation that the programme implied that the biblical story of Moses descending from Mount Sinai with the ten commandments represented an episode which was literally true.

The Adviser noted the scepticism and disbelief expressed by Professor Schama in Episode 1 at what he regarded as the lack of objectivity of the 19<sup>th</sup> century expedition by a group of Christian evangelists seeking to link events in the book of Exodus with topographical features in the Jordan Valley. The Adviser noted Professor Schama's conclusion:

But the archaeologists who followed in the century and a half since have had to tell a more sober story. Despite a lot of digging, no hard evidence has yet come to light to make the exodus, or the wandering in the wilderness, an historical reality. Not a stone, not a clay fragment, not a scrap of papyrus or parchment.

The Adviser did not share the complainants' view that his use of the phrase "no hard evidence has yet come to light" implied that Professor Schama thought the story of Moses was literally true. She noted that in a subsequent sequence in discussion with Yossi Garfinkel, the archaeologist, Professor Schama expressed support for the archaeologist's view that the Bible is a series of metaphors, reflecting historical processes rather than literal truth. Professor Schama concluded:

...the Bible has an echo of some sort of reality is a wonderful way to put it

She noted too Professor Schama's disagreement with the settler, Tzvi, in the final episode (as also noted above):

Meeting Tzvi was not easy for me. I recognise the sincerity of his views but profoundly disagree with them. A sense of territorial entitlement prescribed by the Bible is not a development of the Zionism of necessity but a threat to it.

The Adviser noted that the comments by Professor Schama were an explicit rejection of the idea that biblical links strengthen Jewish claims, the opposite of the views which complainants assert he promoted.

Next the Adviser considered the assertion that the programme gave undue weight to discredited archaeology. She noted the introduction to the relevant section with the Israeli archaeologist, Yossi Garfinkel:

To find some of the first solid archaeological evidence for the Jewish story you have to fast forward a couple of centuries from the traditional date of the Moses epic, and come here to the valley of Elah in present day Israel.

She noted the programme's inclusion of Professor Garfinkel's claim that the site was an important city in Judea and the information that no pig bones had been found there, with the implication that the occupants had to be of the Jewish faith. She noted too the mention that the location and carbon-dating of the site fitted in with the timeframe of when and where in the Bible David is said to have had his stand-off with Goliath.

The Adviser noted one complainant's allegation in his letter of appeal:

(Professor Schama) champions ... Yosef Garfinkel, and implies the latter's views are moderate

The Adviser noted the detail of the allegation which was included in the complainant's correspondence at Stages 1 and 2. She noted it was supported with references to a critique of Professor Garfinkel's work by Professors Finkelstein and Fantalkin of Tel Aviv University who had criticised Professor Garfinkel's methodology and interpretation<sup>6</sup>. The Adviser noted the complainant's conclusion that Professor Schama had "swallowed" Garfinkel's theory whole.

The Adviser acknowledged that there is an ongoing debate about the conclusions reached by Professor Garfinkel following seven years of excavation of the site, most vociferously by those who are sceptical of interpreting archaeological evidence with reference to stories from the Bible. She noted that Professor Finkelstein, cited by one of the complainants, is foremost amongst the archaeologists identified with this position and that

---

<sup>6</sup> I Finkelstein & A Fantalkin Khirbet Qeiyafa: An Unsensational Archaeological & Historical Interpretation (Tel Aviv Univ 2012)

professional rivalry between his University and Professor Garfinkel's Hebrew University of Jerusalem on the matter began long before the excavations in the Valley of Elah.

The Adviser considered she was neither qualified nor required to reach a judgement on the merits of Mr Garfinkel's conclusions. Rather she was required only to establish whether the way in which the programme reflected the debate could be considered duly accurate and duly impartial within the guidelines.

The Adviser considered therefore whether the programme placed undue weight on the interpretation of the significance and interpretation of the finds at Khirbet Qeiyafa to the extent that the programme failed the requirement that personal view content retain a respect for factual accuracy. She noted the following as relevant to her decision:

- while there remained an ongoing debate about how to interpret the finds, even Professor Finkelstein agreed that Khirbet Qeiyafa was an "elaborate" and "well-fortified" 10<sup>th</sup> century BC site.<sup>7</sup>
- the programme accurately reflected the conclusions reached by Professor Garfinkel and the evidence on which those conclusions were based.
- the Adviser was not aware of an alternative explanation which has disproved the theory that an absence of pig bones suggests the occupants did not eat pork and were therefore Jewish; it therefore remained a valid theory.
- it also appeared to remain a valid theory that the empty model shrines which had been found by Professor Garfinkel's team might have represented the empty holy of holies in the High Temple.
- the programme noted both Professor Garfinkel's interpretation of his finds in the biblical context and also that there are those who disagree entirely that the Bible has anything to say about what really happened, as in the following sequence:

Professor Schama:

Things got more intriguing when the site was carbon dated to around 3,000 years ago, a period traditionally associated with the reign of King David, that shepherd boy with the deadly aim.

For many archaeologists today, the Bible is a distraction with nothing useful to say about what actually happened and when.

But Yossi Garfinkel takes a more nuanced view.

Professor Garfinkel

So it's not really important if David and Goliath are historical figures, but they representing a process, 200 years of struggling over the border, this is I think the biblical tradition, trying to tell us, and not people taking, you

---

<sup>7</sup> Ibid (in the same place as footnote 3)

know, the story literally. You have metaphors here about much longer and much more stronger historical processes... That's the way I understand it.

Professor Schama:

Yes. No, the Bible has an echo of some sort of reality is a wonderful way to put it.

The Adviser concluded that the content relating to this allegation would likely have met the standards required for due accuracy and due impartiality.

The Adviser considered the assertion regarding the omission of any discussion about conversion to Judaism. She noted that the choice of what to include or omit in any context is a legitimate matter of editorial judgement by the programme makers, and this was particularly so where the content had been clearly signposted as representing a personal view.

Accordingly, the Adviser did not consider the allegation would have a reasonable prospect of success and should not proceed to appeal.

#### **4. It was inaccurate to state as an historical fact that the written Bible predated Babylonian conquest**

The Adviser noted the commentary from Episode 1 relevant to this allegation:

The Bible started to be written down around 2700 years ago

The Adviser noted one complainant's submission that there was no evidence for a written Bible prior to Babylonian conquest and the same complainant's submission at Stage 2 that precision in the matter was important. She noted the complainant's assertion that an early date for the bible prior to the Babylonian conquest would aid those who:

...desire to rescue at least a part of the biblical story as historical fact...  
championed by those with a great emotional investment in the Bible's historicity,  
i.e. religious people (though not all of them) and Zionists.

The Adviser noted the estimated date of around 2700 years ago stated in the programme was derived from the dating of the two tiny silver scrolls which were found in 1979 just outside the old city of Jerusalem containing short portions from the Book of Numbers. The Adviser noted the prevailing view amongst academics is that they were written in 586 BCE, i.e. 2600 years ago. Whilst this was not precisely the same as in the programme, the Adviser noted that beyond giving the estimated date of "around 2700 years ago" the commentary did not ascribe any specific relevance to the date and in relation to the allegation in this appeal it did not attempt to use the dating to demonstrate any significance in relation to biblical interpretation.

She noted also the weight the programme gave to a major phase of the written Biblical tradition during the Persian exile:

But Jewish identity did not disappear in this alien land. Beneath the shadow of the Ishtar Gate, Jewish scribes continued the collective endeavour of Bible writing and Bible editing, making God's laws clearer, tougher, fiercer.

And so, when the Persians defeated the Babylonians and released the captive Jews, the exiles returned to Jerusalem with the Bible that bound Jews evermore closely to its rules and its commands.

The Adviser therefore considered that in the context of a programme for a general audience, of which the dating of the first parts of the written Bible was neither stated with precision nor assigned any particular relevance, the content would likely be considered duly accurate. Accordingly, the Adviser did not consider the allegation would have a reasonable prospect of success and should not proceed to appeal.

#### **5. The programme was inaccurate in how it represented the origins and development of Jewish monotheism**

The Adviser noted the commentary from Episode 1 describing one of the finds in the Valley of Elah:

The most intriguing finds at the fortress of Elah give us our first glimpse of a figure who looms very large in our story, the Jewish god...

In cult rooms... Garfinkel's team discovered a little altar to sacred offerings, and two model shrines, or arks.

Tantalisingly, they are empty, prefiguring the empty holy of holies in the High Temple, the chosen dwelling place on earth of that extraordinary religious innovation, the faceless, formless God of Jewish monotheism.

That singular god was slow to emerge from the crowd of rival gods adored in the rest of the ancient world. And from the abundance of fertility deities cupping their breasts found at many sites, it's clear that it took centuries for the ancestors of the Jews to accept their god as the one and only god.

Also from Episode 1, the Adviser noted the description of Ezra, the spiritual leader of the Jews newly returned to Jerusalem from Babylon, addressing his people:

At one of the city gates, the repaired walls behind him, he assembled all the Jews of Jerusalem... and there, he read to them from the Torah, the law which had been brought from Babylonia where it had been edited for five generations, its monotheistic edge refined to a new sharpness.

The Adviser noted the commentary from Episode 2 relevant to the allegation:

It was the Jews who had first given the idea of one god to a pagan world that believed in many.

The idea was taken up by others. First Christians... and then Muslims

The Adviser noted how one complainant framed the allegation in his letter of appeal:

(Professor Schama) implies that Jewish monotheism developed independently of outside influence

She noted further detail from his submission at Stage 1:

Schama acknowledges Hellenistic influence on the Judeans, but implies that the latter's monotheism was generated without reference to the beliefs of outsiders. This is not tenable. The Bible's motifs and chronology bear the heavy imprint of Mesopotamian and Hellenistic ideas. Thus Judaism began through Palestine's encounter with the thought-systems of regional empires

The Adviser noted another complainant's assertion that it was not the Jews who first had the idea to worship a single God; that the origins of monotheism were in Zoroastrianism. The Adviser noted how the complainant framed the allegation in his original complaint:

There exists very strong evidence that Judaic Monotheism was very much influenced by Persian Zoroastrianism. Most scholars believe pre-exilic Judaism was not 'strictly Monotheistic' and this was a later development due to contact with the Persians. For the BBC to endorse the above statement shows a bias towards the Jewish reading of history. The possibility that this came from the Persia [Sic] is not acknowledged at all.

Having considered the range of ways in which the series reflected Judaic monotheism the Adviser concluded that the programme was more nuanced than the allegations imply. She had in mind in particular the following from Episode 1:

That singular god was slow to emerge from the crowd of rival gods adored in the rest of the ancient world...it's clear that it took centuries for the ancestors of the Jews to accept their god as the one and only god.

The Adviser considered that this acknowledgement, considered alongside the reference to Ezra's address to the newly returned Babylon exiles, would have accurately informed the audience that monotheism was a development of Judaism and that the concept had solidified during the Persian exile. The Adviser did not accept the assertion that the programme left the impression that Judaism was monotheistic from the outset.

The Adviser then considered the assertion that the programme should have included the "strong evidence" that Judaic monotheism was strongly influenced by Persian Zoroastrianism.

The Adviser acknowledged the evidence submitted by one complainant, that the prevalence of Zoroastrianism in Persia at the time of the Jewish exile there might have been a reason for monotheism's refinement "to a new sharpness" during that period. However, the Adviser noted there was nothing in the programme that precluded the notion and no requirement that it be reflected. In the Adviser's view the presentation of Judaic monotheism in the programme and what detail to include would have been a legitimate exercise of editorial judgement. She concluded that the omission of the additional context on Jewish monotheism's possible Zoroastrian origins, whilst undoubtedly interesting, would not have misled the audience.

Accordingly, the Adviser did not consider the allegation would have a reasonable prospect of success and should not proceed to appeal.

### **Episode Three**

## 6. The programme had not been accurate in how it had reflected the Dreyfus Affair and the impact it had on Theodor Herzl

The Adviser noted the allegation made by a number of complainants that the programme had been wrong to assert that the Dreyfus affair had been a central event in developing Theodor Herzl's thesis that the Jews of Europe needed a homeland of their own.

She noted too the allegation that Professor Schama had misunderstood the story: rather than a case study of why Jews could never be truly assimilated into European society, the Dreyfus Affair and his eventual exoneration demonstrated precisely the opposite.

The Adviser noted this passage from the sequence as particularly relevant to the detail of the allegation:

Simon Schama

Not everybody in the crowd at the Ecole Militaire that January day was baying for Dreyfus' blood. There were some among them who were acutely moved by his plight, his torment, and that was because they were themselves Jews. And one of those Jews was a young journalist from Vienna, Theodor Herzl, acutely conscious that perhaps the assimilation route of being a Jew in modern Europe was never going to work out. Something snapped in Herzl as that sword was broken over the officer's knee. Something which told Herzl there had to be another future, another way for Jews to survive in the modern world.

She noted the following allegation from one complainant:

The Dreyfus Affair did not play a part in shaping the thinking of Theodor Herzl. He simply used it. He knew that anti-Semitism was necessary to promote Zionism, at a time when Jews were in the process of happily assimilating into Gentile European society. Zionists had to create anti-Semitic movements and incidents: The anti-Dreyfusards/"anti-Semites" served his purpose. Incidentally, they were not a majority in France.

The Adviser noted a summary of the allegations of another complainant:

- the absence of any mention of Emile Zola or Dreyfus' eventual exoneration demonstrates bias
- the commentary stating "When someone was revealed to be passing secrets that someone had to be a Jew", was inaccurate because the evidence did initially point to Dreyfus
- the anti-Semitic tirade only began after the cover-up on the General Staff (when they realised they had the wrong man)
- Herzl's claim to have been moved by the degradation of Dreyfus is based on an alleged memo he wrote in 1899 but this was not published until 1920 and no trace of the original remains

The Adviser noted the allegation that the account in the programme of the Dreyfus Affair was inaccurate because it omitted relevant wider context. The Adviser noted that the obvious point of including the episode in the film was that Theodor Herzl was present at the trial and degradation of Dreyfus as a reporter for an Austrian newspaper. At the degradation Herzl would have witnessed the shouts of "death to the Jews" which were

recorded in eye witness reports at the time. The Adviser noted that the following year Herzl published his booklet "The Jewish State" which outlined his conclusion that Jews were a nation in need of a home.

Given the purpose of including the Dreyfus episode was to illustrate Professor Schama's view that it had a profound effect on Herzl, the Adviser did not think there was any requirement that the programme reflect what happened after the degradation, i.e. the subsequent revelation of the real spy, Zola's J'Accuse letter in the French press or Dreyfus' eventual exoneration in 1906, 12 years after he was convicted.

She acknowledged that taking the long view the episode might be viewed as an example of French tolerance of Jews rather than intolerance. But given the context, i.e. how it was said to have affected Herzl at the time, the Adviser did not accept that this required to be reflected in the programme.

The Adviser noted the assertion in the programme that the Affair was a turning point for Herzl. She noted that Herzl is quoted as having said in 1899 about the Dreyfus Affair:

The Dreyfus case embodies more than a judicial error; it embodies the desire of the vast majority of the French to condemn a Jew, and to condemn all Jews in this one Jew. Death to the Jews! howled the mob, as the decorations were being ripped from the captain's coat.... Where? In France. In republican, modern, civilized France, a hundred years after the Declaration of the Rights of Man. The French people, or at any rate the greater part of the French people, does not want to extend the rights of man to Jews. The edict of the great Revolution had been revoked.

The Adviser acknowledged that in recent years Herzl historians have questioned this "belated" reference to the centrality of the Dreyfus trial in forming Herzl's vision of Zionism given that no mention of his thoughts on the matter appeared in his diaries at the time. However, while she accepted this was a valid opinion, she agreed with the ECU it was no more valid than taking Herzl's 1899 comments at face value. The Adviser concluded that in the context of personal view content the programme had retained a respect for factual accuracy.

The Adviser noted also, as did the ECU, that the programme did not suggest that the Dreyfus Trial alone was responsible for inspiring Theodor Herzl. She noted in particular this passage in the programme which followed the statement in the commentary that Herzl had left France and returned to Vienna:

But now, in the middle of the 1890s, Vienna was becoming a very different place. Anti-Semitism was a toxin at the centre of municipal politics. The mayor, very popular Karl Leuger was an intensely demagogic anti-Semite. Vienna regularly sent anti-Semitic deputies to the parliament. So Herzl was having a profound change of heart. He was coming to the conclusion that anti-Semitism could not be cured or defeated, you just had to get out of the way of it. And the problem for the Jews was that they were a nation without a home. So in 1895 he wrote his little book, a booklet really called 'Der Judenstaat'. The Jewish State, and this is what he said in it: "We have sincerely tried everywhere to merge with the nations in which we live, seeking just to preserve the faith, the religion of our fathers. But this has not been allowed to us. It has been in vain that we have tried to enhance the fame of our countries in arts and sciences. It is in vain that we've tried to

increase its wealth by commerce and trade. We are still in the place where we've lived for centuries decried as aliens, and often by people who were not even here when the sighs of our fathers had been heard for centuries". Now thus was born Zionism.

Accordingly, the Adviser did not consider the allegation would have a reasonable prospect of success and should not proceed to appeal.

## Episode Four

### 7. It was inaccurate to state that non-Jewish radicals did not come to the aid of the Jews during the 1905 pogroms

The Adviser noted the relevant commentary:

SIMON SCHAMA

In the morning of November 6th, 1905, people all over Britain were reading this in their Guardian newspaper as they ate their bacon and eggs. "The events in the suburbs of Moldavanka, Slobodka and Bugaieoka last night were of a most terrible nature. Immense bands of ruffians accompanied by policemen invaded all the Jewish houses and mercilessly slaughtered the occupants. Men and women were barbarously felled and decapitated with axes. Children were torn limb from limb. The streets were littered with corpses hurled out of windows. The houses of murdered Jews were then systematically destroyed. In this way, the Jewish population of the district was wiped out."

SIMON SCHAMA

The morning that the reporter visited the hospitals of Odessa there were at least 3,000 people in the emergency wards. It was by any standards of outrage the most appalling atrocity in the entire blood-stained history of the Russian pogroms.

SIMON SCHAMA

For many Jewish intellectuals this was the moment that shocked them out of the complacency that they might ever attain equal rights in Tsarist Russia.

SIMON SCHAMA

**One of the illusions was that non-Jewish leftists would come to their defence, but they hadn't**, and this bitter lesson threw them in DIFFERENT directions. Some would rush even further into the arms of socialist revolution. Others, like Lilienblum and Pinsker, would acknowledge the death of those dreams.

The Adviser noted the allegation, detailed in one complainant's submission at Stage 2:

Professor Schama clearly states that 'non-Jewish radicals' did not come to the aid of the Jews... He is wrong...

In Odessa alone Bolshevik organiser Ivan Avdeev spoke for thousands when he told his coworkers in the railway workshops that "the Russian worker values civil freedom and liberty and does not become a Black Hundred or a hooligan. On the

contrary, he is capable of not only protecting his own interests but those of other citizens”<sup>8</sup>

Workers of the railway workshops were among the many that formed armed self-defence units to combat the city's pogromists. Their example was followed across the Pale of Settlement - it is a simple matter of record.

Yes, I do accept that the self-defence units (Jewish and non-Jewish) were largely unable to stop the pogroms. That is why the Russian Revolution of 1905 failed. The proto-fascists of the Black Hundreds were very effective. I do not see how this “would tend to lend weight to Professor Schama's broad interpretation” (ECU) - there is a world of difference between trying to stop the pogroms (which happened) and not trying (which Schama wrongly maintains). Furthermore Schama doesn't really offer a “broad interpretation”. He simply makes a brief throw-away comment – but it is one that reveals the shallowness of his understanding. As I have already noted, he doesn't even seem to have noticed that the 1905 pogroms took place during and because of the revolutionary struggle.

The Adviser acknowledged the source material from the complainant noting there was some opposition in Odessa to the pogromists from self-defence groups of Jews and non-Jews, students and other Russians. She noted also, however, that according to the same source these groups were “inadequately trained and organised”.

The Adviser agreed with the complainant that it would have been preferable had the commentary made the distinction between attempts to help and the ineffectiveness of those attempts rather than suggest that no-one came to the aid of the Jews in Odessa. However, she considered that the effect was essentially the same, that the experience had demonstrated to the Jews of Odessa that they could not rely on others to save them in the face of state-sponsored violence, and that was the overall point of the section.

The Adviser considered whether failing to make the distinction would have misled the audience on a material fact. She noted the terrible toll of pogroms and casualties detailed by Professor Schama in Episode 4 demonstrated that the conclusion which he had reached would not have been materially different had the commentary reflected that not all non-Jews supported the pogromists and that some had tried to help their Jewish neighbours. The Adviser considered that on this point, Trustees would be likely to conclude the programme was duly accurate in that it had reflected that the Jews of Odessa had not been able to rely on other people to protect them in the face of extreme violence from the state.

The Adviser considered that as the central point of this part of the programme was accurate, it was not a proportionate use of resources to proceed to appeal on the underlying point that there had been some attempts to protect the Jews of Odessa that had been ineffective. She considered that overall, in this episode and series, the audience would not have been misled on the focus of that section, i.e. the vulnerability of the Jews in Russia at the turn of the century. She decided therefore that it would not be appropriate, cost-effective or proportionate for the allegation on this point to proceed to be heard on appeal.

---

<sup>8</sup> R Weinberg Workers, Pogroms & the 1905 Revolution in Odessa in *Russian Review* (Lawrence, 1987)

## Episode Five

### 8. It was inaccurate to state that Israel's borders are ambiguous

The Adviser noted the detail of the complainant's allegation in his letter of appeal:

I can see no basis for a personal point of view being allowed to obfuscate what has been clearly decided in international law. The borders of Israel were drawn in black ink (not pencil) by the UN after the Six Day War, nearly 50 years ago. They are in no way "ambiguous" as Schama claimed. This is a misrepresentation of fact – it is in no way accurate.

The Adviser noted that there is only one occasion when reference is made in the programme to the "ambiguity" of the border and it is made by a contributor, the writer David Grossman. This was the full exchange:

Simon Schama

There's been a dramatic shift in Israel over the past decades. The secular, outward-looking Israel I remember from my days in Beit Haemek has been eclipsed by one that insists, in the name of religion, nationalism or security, on separation and difference. The Israeli novelist David Grossman has tackled these issues throughout his life as a writer. He believes they stem from the very roots of Jewish experience.

I mean we talked to a settler from Tekoa the other day who got a kind of dreamy look in his eye when he said "Of course, you know, where the tribe of Gad was one day and so on..." And those borders are kind of set out very extravagantly in Genesis. But they're not the borders of a defensible home. Do you think that's part of the problem?

David Grossman

These are borders of a dream, of deep religious belief. In the years that Israel exists, in the 65 almost years of our sovereignty, our borders have moved and shifted. We invaded others, there were all the time this ambiguity of where the border is. I wonder, I ask myself why it is like that? Probably it has to do something with our attraction as a people to the abstract. You know, we have invented the abstract God. But it's not only that. For two thousand years, you know, Jews lived in Spain and Morocco and Egypt and Yemen and they had their concrete everyday life there but, at the same time, the essence of their life, the essence of the meaning of their being, was in a totally different, remote place. In the end of the east there in Jerusalem, in Zion.

Simon Schama

And in the Torah.

David Grossman

In the Torah, in the Talmud, they created an enormous body of existence that was all imaginary, all in the mind, and I think part of our tragedy is that when we already came here to this place, to our home, we still flirt with this abstraction. We still, we are here but it's always possible for us to be out of here. You know, it's always possible for us to exist in the sphere of the imagination, of spirituality. Peace can root our being, can make it more solid.

The Adviser noted that the ECU clarified to the complainant at Stage 2 that Professor Schama did not refer to the “ambiguity” of the border and that it was Mr Grossman who made the statement. The Adviser noted the ECU’s comment that it was clear Mr Grossman was referring to an abstract ambiguity felt by Israelis and that it did not believe the writer was making a comment about where the boundary between Israel and a future Palestinian state is or should be.

The Adviser noted in response to the Stage 2 finding, that the complainant continued to insist he could “distinctly recall Schama saying this (ambiguity)”.

The Adviser watched the episode carefully and there was no reference to ambiguous borders by Professor Schama and the only such reference was by Mr Grossman in the context of how in his view Israelis still “flirt with the abstraction” of an imaginary biblical Zion.

The Adviser decided that regardless of whether it was Professor Schama or Mr Grossman who referred to the “ambiguity of where the border is” it was clearly in the context of attempting to understand why some Israelis hang on to the notion of borders which differ from reality on the ground. She noted that immediately prior to this section Professor Schama said he “profoundly disagreed” with the settler who expressed a sense of territorial entitlement and wanted to redraw the borders of Israel beyond the Green Line. The Adviser did not therefore believe the viewer would have been misled by how the programme presented the issue.

Accordingly, the Adviser did not consider the allegation would have a reasonable prospect of success and should not proceed to appeal.

## **9. Stating that settlements are “regarded as illegal” wrongly suggests that their illegality is a matter of opinion**

The Adviser noted the relevant section of commentary:

The international community regards these settlements, some now the size of cities, as illegal. To the Palestinians, they are part of a Trojan horse annexation policy orchestrated by the government and the military. To many Israelis, they’ve become simply a source of affordable housing.

The Adviser noted the detail of the complainant’s allegation in his letter of appeal:

The Israeli settlements on the West Bank are not “regarded” as illegal, they are de facto illegal. Describing the situation as being a matter of opinion, which the use of the term “regarded” implies, is false.

The Adviser agreed with the ECU finding at Stage 2, that the use of the word “regards” reflected the position of the majority of the international community, namely that it had decided that the building of settlements on occupied territory is illegal under international law.

The Adviser noted that Israel disputes this interpretation and the public position of the United States is that settlements are unhelpful and an obstacle to progress.

The Adviser considered the wording in the commentary would likely be considered duly accurate and that accordingly the allegation should not proceed to appeal.

#### **10. It was inaccurate to state that 1967 was a defensive war and Israel was fighting for its existence**

The Adviser noted the relevant section of commentary:

In June 1967, Israel was once again fighting for its existence with Egyptian, Syrian and Jordanian armies massing on its borders. But with a series of bold, pre-emptive strikes and swift forward actions, a war fought initially for survival became, just six traumatic days later, a military triumph for Israel that few had foreseen.

The Adviser noted how one complainant framed the allegation in his letter of appeal:

In spite of the ample evidence proving that the "Six Day War" was the outcome of long time planning, the BBC sides with the Zionist/Israeli version that it was a "defensive war", without explaining why the Golan and most of the West Bank have been annexed and the Gaza Strip has been turned into a permanent battlefield, now a real concentration camp surrounded by a "separation barrier" and a no man's land where men, women and children are regularly shot by the Israeli occupation Force.

The Adviser noted the allegations from a second complainant, quoting Israeli sources, that there wasn't a clear threat of attack:

In June 1967 we again had a choice. The Egyptian Army concentrations in the Sinai approaches do not prove that Nasser was really about to attack us. We must be honest with ourselves. We decided to attack him...

Menachem Begin, Former Israeli Prime Minister (1982)

I do not believe that Nasser wanted war. The two divisions which he sent into Sinai on 14 May would not have been enough to unleash an offensive against Israel. He knew it and we knew it.

Yitzhak Rabin, Israeli Chief of Staff (1968)

The Adviser noted further Israeli sources which the complainant said supported her allegation that Israel wasn't fighting for its existence:

The entire story of the danger of extermination was invented in every detail and exaggerated a posteriori to justify the annexation of new Arab territory.

Mordechai Bentov, member of Israel's wartime government (1981)

We were not threatened with genocide on the eve of the Six Days War, and we had never thought of such a possibility.

General Haim Bar-Lev, former Chief of Staff (1972)

There was never any danger of annihilation. This hypothesis has never been considered in any serious meeting

General Ezer Weizmann, wartime Chief of Operations (1972)

The Adviser noted the complainant supplied four additional Israeli sources which reinforced the quotes above.

The Adviser noted how the complainant summarised her allegation:

With regard to Israel fighting for its existence, there are now many indicators that this was not true and, although the BBC and others may have glibly repeated this statement over the years, this is no longer acceptable given the weight of evidence to the contrary...

Therefore, I continue to believe that it is materially inaccurate for Professor Schama to suggest Israel was fighting for its existence in 1967.

The Adviser noted that at Stage 2 the ECU quoted from an earlier decision by the BBC Trust not to proceed to hear a similar appeal from the same complainant in relation to the documentary *Facing the Future*. The allegation on that occasion related to the following commentary:

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

Israel defeated Arab armies threatening to attack (in 1967).

The Adviser noted the finding from the earlier decision which was communicated to the complainant at that time and is published on the BBC website<sup>9</sup>:

The Adviser observed that there have always been competing narratives about the extent of Israel's vulnerability and to what extent the various wars in which she has been involved could be characterised purely as defensive wars. She noted that in the last thirty years some of the strongest evidence that the situation was more nuanced than Israel's earlier writers of history allowed has come from a group of Israeli historians who became known as "revisionist". Avi Shlaim, Professor of International Relations at Oxford University, is a member of that group and is widely respected, including in Arab circles, for his authoritative and well-sourced critique of Israel's military and diplomatic history using primary documentary sources and first hand testimony from some of those most closely involved, on both the Israeli and "Arab" sides. The Adviser noted that Avi Shlaim is also one of the sources cited by the complainant.

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

The speed and scale of Israel's military victory led some observers to suspect that Israel launched the war not in self-defence but in order to expand its territory. Arab observers, in particular, were inclined to believe that Israel deliberately provoked the Six-Day War in order to fulfil its long-standing territorial ambitions. This view is without foundation. The Six-Day War was a defensive war. It was launched by Israel to safeguard its

---

<sup>9</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2013/nov.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2013/nov.pdf)

security not to expand its territory. The main enemy was Egypt. The chief aims were to open the Straits of Tiran, to destroy the Egyptian army in Sinai, and to restore the deterrent power of the IDF. Political and territorial objectives were not defined by the government when it gave the IDF the order to strike. War aims emerged only in the course of the fighting in a confused and contradictory fashion.<sup>10</sup>

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

The Adviser concluded that the reasoning behind the earlier Trust Unit decision not to uphold the complaint, as endorsed by the Editorial Standards Committee, remained valid and it was therefore unlikely that the BBC Trust would reach a different decision were the allegation to proceed to appeal on this occasion.

However, the Adviser also acknowledged the slightly different emphasis in the terms of the complaint on this occasion. She noted that in addition to alleging it was not a war of defence, complainants challenged the statement in the commentary that in 1967 Israel was "fighting for its existence".

The Adviser acknowledged the evidence submitted by the second complainant in support of that view and her conclusion that given the weight of that evidence the use of the phrase by Professor Schama was materially inaccurate.

However, the Adviser noted that this was personal view content and that Professor Schama was entitled to express his viewpoint. The Adviser's consideration was therefore whether that viewpoint, taking into account the subject and nature of the content, retained a respect for factual accuracy. She noted, as acknowledged by one complainant, that the perception amongst ordinary Israelis was that the country was fighting for survival. She noted this was in part due to some of the statements made by politicians whose armies were massing at Israel's borders:

- The Syrian Defence Minister said:

Our forces are now entirely ready not only to repulse the aggression, but to initiate the act of liberation itself, and to explode the Zionist presence in the Arab homeland. The Syrian army, with its finger on the trigger, is united...I, as a military man, believe that the time has come to enter into a battle of annihilation.

- President Nasser of Egypt after they closed the Straits of Tiran thus blockading Israel:

Our basic objective will be the destruction of Israel

---

<sup>10</sup> Shlaim, Avi *The Iron Wall* pp241-242 (paperback edition 2000)

The Adviser noted the range of Israeli sources quoted by the second complainant suggesting that Israel was perhaps in a stronger position than its own people and early historical analysis might have concluded. However, the Adviser noted that historians of that period have generally concluded that the speed, totality and scale of Israel's victory and the scope of her territorial gains were not foreseen.

The Adviser concluded that a defensive war fought from one's own borders can be legitimately characterised as a war to safeguard territory, and therefore, to some extent, a war of existence – particularly given in this case the publicly stated aims of Israel's enemies. The Adviser noted that the extent of Israel's vulnerability was not discussed in any greater detail, that the commentary correctly stated that it was Israel which launched a pre-emptive strike, and that the main aim of the sequence was to set up the subsequent section telling the story of Israeli forces entering the old city of Jerusalem for the first time.

Therefore while the Adviser acknowledged that a programme dealing with 1967 in its own right might be expected to deal with the competing narratives, she concluded that the wording in the commentary on this occasion would be likely to be considered duly accurate and that accordingly the allegation should not proceed to appeal.

**11. It was misleading and biased for the programme to state that the barrier was built to stop terrorists; this reflected only the Israeli narrative of its purpose**

The Adviser noted the relevant commentary:

The separation barrier was a response to a devastating wave of suicide bombings unleashed a decade ago in which more than 500 Israelis died. Today, it cuts Israel off from the West Bank except where it snakes deep into the occupied territories to protect some of the larger settlements, shredding Palestinian territory and making life for the Palestinians a daily ordeal...

I want to say that nobody, including me, ultimately has the moral right to say that ... the wall shouldn't have happened. Before the wall happened, hundreds of people were dying every year from terrorist attacks. After the wall happened, very, very few. In some senses, if you don't live in Israel, I don't live in Israel, you're morally obliged to be nearly silent, nearly silent. All the same, I also want to add to that huge moral caveat this: The bible is full of encounters between men and God, between men and other men, between even enemy brothers. It's very difficult for me to sort of stand here and say that that kind of Judaism, the Judaism of openness of encounter, has a chance of a true life here. This is a Judaism, a Jewishness, that looks, scurries beneath the shadows of these towers for safety. It's not ultimately a Judaism of bravery. It's not ultimately a Judaism of life.

The Adviser noted how complainants framed their allegations:

...the "Barrier" forms a perfect system to make the West Bank part of "Eretz Israel" and has nothing to do with stopping "terrorists". Instead, it allows the violent settlers to commit daily crimes against the Palestinians whose lands and

properties are under daily attacks and flooded by sewage and who are regularly wounded or killed.

Schama presents only the official Israeli view of the wall as an essential security barrier which no outsider has the right to criticise. Facts about the wall are skated over – that it has been condemned by the International Court of Justice in the Hague; that it annexes illegal Jewish settlements to the Israeli state; that it forms part of a network of checkpoints, barriers and segregated roads that blight Palestinian life and make self-determination for Palestinians a hopeless dream. Grotesquely Schama claims that since the wall's construction "there have been few deaths..." From Jan 2004 to April 2013, 1,083 Palestinian children died (27 Israelis). Source: rememberthesechildren.com. Palestinian deaths do not count, it seems.

The Adviser noted that the commentary reflected both Israel's reason for erecting the wall and also the direct impact on Palestinians living in the West Bank. She acknowledged that the programme did not discuss the number of Palestinians who had died in the conflict since the wall was erected, but that was not the role of this programme, which was telling *The Story of the Jews*, nor would such statistics relate directly to the separation barrier. The statistics quoted on the reduction in Israeli deaths from suicide bombers were, she considered, directly relevant, as they evidenced the justification Israel has given for building the wall.

She noted, as did the Series Producer in his Stage 1 response, that the second complainant appeared to have misunderstood Professor Schama's comments. The heart of his peace to camera was the moral quandary the wall represents and he was explaining that even though he understood he was not an Israeli he felt he had to say something nevertheless.

Finally she noted that the choice of what information to include on the barrier was wholly Professor Schama's choice so long as what he did say retained a respect for factual accuracy. The Adviser considered the requirement had been fulfilled on this occasion.

Accordingly, the Adviser considered the commentary would likely be considered duly accurate and duly impartial and that the allegation should not proceed to appeal.

## **12. The figure given of 700,000 Palestinian refugees after 1948 was inaccurate, it should have been stated as 842,000**

The Adviser noted the relevant section of commentary:

By the time of the 1949 armistice, around 700,000 Palestinians had left, some fleeing in fear, some obeying the orders of village elders or Arab guerrillas, some driven out by force and terror.

The Adviser noted the detail of the allegation:

Regarding figures, Simon Schama in agreement with the BBC, consistently chooses the lowest: 700,000 instead of 852,941 refugees in 1948. He ignores the 400,000 chased from their homes in the 1967 NAKSA, when the "IDF" invaded the rest of Palestine, the Egyptian Sinai and the Syrian Golan Heights.

The Adviser did not consider that the number of Palestinians who became refugees in 1967 relevant to a consideration of whether the programme reflected an accurate figure for the numbers who became refugees in 1948.

In relation to 1948, the Adviser noted the figure of 700,000 is widely quoted and as noted in Stages 1 and 2 has been sourced to the UN. The Adviser noted this sentence from the UN Conciliation Commission for Palestine Report published in 1951<sup>11</sup>:

15. The estimate of the statistical expert, which the Committee believes to be as accurate as circumstances permit, indicates that the refugees from Israel-controlled territory amount to approximately 711,000.

The Adviser noted this figure remains as the UN's estimate of the original refugee population and was published as recently as 2007 in a UNHCR document<sup>12</sup>.

Accordingly, the Adviser considered the figure would be likely to be considered duly accurate and that the allegation should not proceed to appeal.

### **13. The programme drew a false distinction between an earlier "Zionism of necessity" and a contemporary successor more hostile to the Palestinians**

The Adviser noted the relevant section of commentary during the exchange between Professor Schama and Tzvi, the Jewish settler:

Meeting Tzvi was not easy for me. I recognise the sincerity of his views but profoundly disagree with them. A sense of territorial entitlement prescribed by the Bible is not a development of the Zionism of necessity but a threat to it. For the Bible is many things, but a blueprint for peace in this land it is surely not.

The Adviser noted the full explanation of the terms of the allegation in the complainant's submission at Stage 2:

Prof Schama makes a false distinction between the nature of Zionism past and present. Visiting Israel's "security fence" in the occupied West Bank, he criticises a Zionism that now fences itself off from the outsider and claims that it is very different from the "Zionism of necessity" that brought Israel into existence. The implication is that the earlier Zionist movement had a more open and generous attitude to the Palestinians. With respect, you have not acknowledged that it is this claim – clearly made by Schama – that my complaint addresses.

It is my contention that the actions of the Zionist movement prior to 1948/9 utterly belie Schama's claim. On the contrary - the land expropriations (coordinated by the Jewish National Fund and fought for by the World Zionist Congress), the attempt to ban the employment of Arab labour by Jews (initiated by Ben Gurion's Labour Zionists) and the preparations made for the Nakba (orchestrated by Ben Gurion after agreement by the 1937 Zionist Congress to the policy of transfer) – all these activities indicate the real intentions of the movement. They carry far more weight than the stated views of figures such as

---

<sup>11</sup><http://unispal.un.org/unispal.nsf/b792301807650d6685256cef0073cb80/93037e3b939746de8525610200567883?OpenDocument>

<sup>12</sup> <http://www.unrwa.org/userfiles/2010011791015.pdf>

Weizmann, Jabotinsky and Buber, and show that the current treatment of the Palestinians arises from and is of the same character as that meted out by the Zionist pioneers.

Schama's silence on the subject of pre-1948/9 Zionist abuses does violence to the history of the period. It conceals a criminal endeavour, and in so doing makes the protests of Palestinians at the time appear irrational. Schama implies that the latter were motivated merely by nationalism, and viewers will not have understood from his account the Palestinian objection to what is presented as a benign settlement project.

The importance of the distortion cannot be overstated. By any standards the Israel/Palestine conflict is of prime importance in the world today, and the BBC has allowed its audience to be grossly misled concerning the facts of its origins.

The Adviser shared the view reached by the ECU, namely that Professor Schama was expressing a personal viewpoint on Zionism from his perspective, which he had explicitly stated as being that of an "unapologetic Zionist". Professor Schama had put forward a narrative of the reasons for the development of, and justification for, Zionism based on his interpretation of events. This was therefore entirely within the remit of personal view content. The Adviser also noted the discussion under Point Two provided a detailed reasoning in relation to some of the issues raised here by the complainant.

Accordingly, the Adviser considered the allegation would not have a reasonable prospect of success and should not therefore proceed to appeal.

For all the reasons set out above, the Adviser considered the appeals did not have a reasonable prospect of success and she therefore considered they should not be put before Trustees on appeal.

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

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

The majority of points raised in the four challenges reiterated or expanded on arguments that had already been made in the letters of appeal and which had already been covered in the Adviser's decision. The following additional points were made in response to specific comments by the Adviser:

- the Adviser's description of Israel as a "legitimate sovereign state" was a matter of opinion, not shared by Palestinians who have not been allowed to return despite it being a condition of admittance to the United Nations. The complainant said:

The state, insisting on calling itself "Jewish" is therefore illegitimate

- the Adviser's decision failed to give any consideration to what might be an "appropriate timeframe" within which the required range of perspectives should be represented:

That timeframe has surely run out by now

- the Adviser had not demonstrated in her decision that Simon Schama presented a “mainstream view of key events in the Jewish timeline”, as opposed to the complainant’s view that he used the series as a vehicle to make the case for Zionism, devoting for example just four minutes to the development of Rabbinical Judaism
- Professor Garfinkel’s interpretations of his finds in the Valley of Elah do not suggest he holds a nuanced view regarding their relation to historical accuracy, and it was wrong for the Adviser to reach that conclusion.
- The Adviser was wrong to conclude the following:

“the experience [of the pogrom] had demonstrated to the Jews of Odessa that they could not rely on others to save them in the face of state-sponsored violence”.

The complainant asserted that many Russian Jews drew the opposite conclusion and continued to participate in the Russian revolutionary movement, and indeed after the Red Army had secured control in 1921 there were no more pogroms in Russia:

Jews participated in the young Soviet state on an equal basis and attained prominent positions across the economy and professions, while secular Yiddish culture received generous state sponsorship.

### **The Committee’s decision**

The Committee was provided with the complainants’ appeals to the Trust, the response from the Senior Editorial Complaints Adviser and the complainants’ letters asking the Committee to review her decision.

The Committee acknowledged the sincerity of the complainants’ arguments and their fundamental disagreement with the views of Simon Schama and of his approach to Jewish history. Nevertheless it felt the Adviser had correctly concluded that had any of the allegations proceeded to appeal it was unlikely the complaint would have been upheld.

The Committee noted that the majority of allegations derived from complainants’ views that the thrust of Professor Schama’s argument were too partial, even allowing for his identification as a Jew and a Zionist. But it noted, as had the Adviser in her decision and the ECU prior to that, that this was clearly signposted as personal view content and that where the issue was particularly controversial Professor Schama had acknowledged the fact and had frequently included the reflection of some of those alternative views. The Committee did not agree therefore that it would be likely to conclude that such alternative views were required to be articulated by those holding them. In the Trustees’ view, the guideline requirement is only that, where such views exist, they are not misrepresented. Trustees did not consider that any evidence had been produced that this was the case.

The Committee considered that there may have been occasions identified in some of the allegations, for example on events during the Odessa pogrom or the origins of monotheism, in relation to which the Committee would be likely to conclude that the commentary could have been clearer, but Trustees agreed with the Adviser’s decision that none of these incidences would be likely to have materially affected the audience’s understanding of a material point in Professor Schama’s narrative. Trustees observed

that the presenter could have devoted more time to the development of rabbinical Judaism but accepted that, in a history which spanned more than 2000 years, inevitably difficult choices had to be made. In the Committee's opinion, there was no reasonable prospect of it finding that the audience was misled as a result of these decisions as to content.

The Committee understood complainants' desire for more detail on when and how the BBC might schedule a programme about the Palestinian experience, but did not agree that this had any bearing on whether *The Story of the Jews* met the editorial guidelines. Had it been the story of Israel, the Committee considered that it may have reached a different conclusion.

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

## Reporting Scotland, BBC One Scotland, 12 August 2013

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

### The complaint

The complainant originally raised his concerns on 13 August 2013 about a BBC *Reporting Scotland* item produced to mark the 'Glorious Twelfth' of August, the start of the grouse shooting season. He considered the report was neither accurate nor impartial.

He was not satisfied with the responses he received from Audience Services and was unhappy about the delays he experienced in getting responses to his complaint. Audience Services had apologised for the delay in their replies of 4 September and 13 October 2013 and explained that they were having difficulty in obtaining a timely response from the production division responsible for the programme.

The Editor of *Reporting Scotland* gave his first comments on the complaint in a response from Audience Services dated 25 October 2013 which stated:

"I apologise for the delay in response. Your comments were passed to the Editor who asked that I forward his response as follows:

'Thank you for being in touch. I am sorry that you were disappointed by this report. I do accept that not everyone agrees with the grouse shooting season but we also have to be aware of the importance it has to the local economy.

While I appreciate your points here I think it was a well delivered, newsworthy report."

The complainant was unhappy with this response and sent a further complaint on 30 October 2013 stating:

"I have waited more than two months for a response. When it finally came it amounted to little more than an acknowledgement of my complaint: it does not actually address the key point about balance and bias.....

"The Editor praises [the] report, saying 'it was well delivered'. Delivery is not a point of contention. The content is the issue. [The] report on 12<sup>th</sup> August was markedly one-sided. This is the second year that [the reporter] has treated the animal welfare issues arising from grouse-shooting with cursory contempt."

The Editor of *Reporting Scotland* issued further comments in a response sent from Audience Services on 7 November 2013:

"The length of time you had to wait for a response was unduly long and again I apologise for this.

You make the point here that you don't believe the report was balanced but I have watched it again and I'm afraid I can't agree. We made it clear in the report that 'not everyone agrees with this sport'. We also reported that 'Those who run Scotland's estates say grouse shooting brings in £30million per year and helps care for the land'.

I am satisfied that we reported that there are opposing views on this."

The complainant escalated his complaint to the Editorial Complaints Unit (ECU) on 24 November 2013.

The ECU did not uphold the complaint. A provisional finding was issued on 12 January 2014 and finalised on 28 January 2014.

### **Appeal to the BBC Trust**

The complainant appealed to the BBC Trust, saying that he was unhappy with the response received at Stage 2. He said the length of time taken by BBC staff to respond to his complaint was also unacceptable.

The complainant's main points of concern were:

- The report was neither balanced nor accurate. He did not object to the legal and economic arguments in favour of grouse shooting being heard; what he objected to was that *only* these arguments were heard.
- It was not enough for the BBC just to acknowledge controversy about grouse shooting; the BBC should explain *why* there was controversy.
- By not presenting any significant challenge to the myth of the 'Glorious Twelfth', *Reporting Scotland* were "complicit in the deception". The BBC had a responsibility to report the truth.

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

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she viewed the relevant section of the programme concerned. She acknowledged the strength of the complainant's feelings on the issue.

The Adviser noted that the complainant had raised concerns that the output was neither accurate nor impartial. The Adviser noted that, under the Editorial Guidelines, all BBC output was required to be both duly impartial and duly accurate.

The Adviser accepted that there was a degree of controversy over the issue of grouse shooting and she acknowledged that the views of those who opposed grouse shooting were not heard on the programme. She also acknowledged the complainant's belief that not to include such views showed a degree of inaccuracy by omission as well as a lack of impartiality.

However, she noted that the ECU Complaints Manager had explained in her provisional finding of 12 January 2014 that the Guidelines do not:

“necessarily require the range of perspectives to be covered within a single programme, provided that the controversy is clearly signposted.”

The Adviser noted the context of the report; it was a two-minute long report which marked the opening date of grouse shooting and the contribution made by grouse shooting to Scotland's economy. She noted too that, while many people were opposed to field sports, grouse shooting remained both legal and popular. She noted and agreed with the decision of the ECU Complaints Manager that the comment made by the reporter that: “Not everyone agrees with this sport...” was sufficient to establish there was an opposing opinion on the subject.

She acknowledged that the complainant felt strongly that this comment was not sufficient, and that it was not enough to state merely that there is controversy about grouse shooting; there should also have been a comment about *why* there is controversy.

However, the Adviser considered that Trustees would be likely to conclude that the item met the requirements for due accuracy and due impartiality set out in the Editorial Guidelines.

The Adviser also acknowledged that the complainant found the tone of the report, which concluded with the reporter being seen in restaurant enjoying a meal of grouse, offensive, but considered that it was relevant in the context of the complaint for the ECU to point out that the practice was legal, and that “there is nothing in the Guidelines that precludes programmes from reflecting notable events of this kind, even where there is an element of opposition to them”.

The Adviser then turned to the complaints handling aspect of the complainant's appeal. She acknowledged that there had been a significant delay of two months between the first complaint and the first comments from the Editor of *Reporting Scotland*. However, she noted that the Executive had accepted their error and apologised for it. She was sure the Trustees would wish her to add her apologies too. She noted that where the Executive do accept a breach and apologise, the Trustees normally consider the matter resolved (unless there are features to the breach which suggest it is so serious that further action may be necessary). The Adviser did not believe that this matter raised such serious issues that further action would be required. She therefore decided this aspect of the appeal did not have a reasonable prospect of success as it had been resolved.

The Adviser considered that Trustees would be likely to agree with the ECU's conclusion that the report met Editorial Guideline requirements. Therefore, the Adviser considered the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant listed his reasons for disagreeing with the Senior Editorial Complaints Adviser's decision, which included:

- *Reporting Scotland* did not signpost the controversy surrounding grouse-shooting well enough.
- The duration of the reference to an alternative view point was insufficient.

- BBC output only met the Editorial Guidelines as a minimum requirement.
- Grouse-shooting is enjoyed by a minority and is not “popular” as described.
- Who paid for the grouse that was eaten in the report? Was it an inducement?

### **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 concerns relating to impartiality in an item on grouse shooting in *Reporting Scotland*. The Committee also noted that the complainant had raised a complaints handling issue when he initially appealed to the Trust.

The Committee noted that the Senior Editorial Complaints Adviser had outlined the relevant guidelines relating to this case. It also noted the response from the Complaints Manager, Editorial Complaints Unit, explaining that the guidelines did not require a full range of views to be covered equally in every broadcast.

The Committee acknowledged the complainant’s view that the opposing perspective was not clearly signposted.

The Committee agreed with the Senior Editorial Complaints Adviser that, in a two-minute report marking the opening date of grouse shooting, the comment outlining the opposite viewpoint, while brief, was sufficient in the context.

The Committee noted the complainant’s dissatisfaction with the description of grouse shooting as popular. The Committee felt that as the item was linked to the opening of the season, it aimed to reflect the popularity of the activity and this description was not in breach of the guidelines.

The Committee noted that the provision of the grouse eaten in the item was an operational matter for the Executive and was not a matter for the Trust.

On the subject of complaints handling, the Committee noted that the responses from Audience Services were late. The Committee also noted that Audience Services had apologised to the complainant. The Committee considered this matter to be resolved.

The Committee concluded that this complaint 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 to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

### The complaint

The complainant first contacted the BBC on 27 October about *Stephen Fry: Out There*, BBC Two, 14 October 2013.

He considered the programme was biased and presented simplistic stereotypes. He considered that it carried the message that anyone who was not in favour of homosexuality was "morally responsible for the violence and hatred perpetrated against gay people". He also believed the programme did not reflect the harm that he considered was posed to society by a "gay subculture".

The complainant received two responses at Stage 1. The first response stated that the programme was "exploring the real nature of extreme attitudes against homosexuals across the world and looked at the impact it had on the lives of people." The complainant renewed his complaint and in a second response, Audience Services set out that the broadcast was an authored programme that reflected the views of the presenter, Stephen Fry. The complainant was given information about escalating his complaint to Stage 2. The complainant received a decision from the Editorial Complaints Unit on 14 January 2014 which did not uphold the complaint.

### Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 24 January 2014, saying that he was unhappy with the response received at Stage 2. He considered the programme was in breach of the BBC's guidelines regarding impartiality and offence.

The complainant raised the following points at appeal:

- The programme did not display 'due impartiality'. The presenter interviewed "ludicrous homophobes" from different cultures and he made no attempt to explore "the roots of hatred".
- The BBC did not recognise that "a significant proportion of the UK population do not share the presenter's views ... about same sex relationships". These viewers "would resent any suggestion that they were associated with such bigotry".
- "The Christian church was particularly singled out in this respect for condemnation..." but there are many who "would never condone hatred let alone violence against anyone and that is the position of the majority of mainstream Christian churches in Britain today." The programme was at risk of inciting or reinforcing hostility towards Christians.
- The presenter's depictions of sexual practices amongst homosexuals was "over-romanticised" and "quite divorced from reality".

- The programme and the ECU response did not recognise that there are many racial minority groups who do not accept homosexuality and this was overlooked to propagate the presenter's "personal agenda".

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

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

The Adviser noted that, when considering the case, the ECU had felt that the relevant Editorial Guidelines were those relating to Impartiality and, in particular, Personal View Content.

The Adviser noted that the Guidelines for both Impartiality and Harm and Offence required programme makers to take into account the expectations of the audiences. She noted that the introduction to the Guidelines on Harm and Offence gave the BBC considerable freedom to produce output of its choosing although there was a responsibility not to cause "unjustifiable offence". She noted that programme producers were required to bear in mind the editorial justification for what they were broadcasting and what signposting was in place so that audiences could make an informed decision about what they watched.

The Adviser noted that these programmes had been widely trailed beforehand and both programmes carried announcements immediately before they were broadcast which advised viewers of the nature of their content. The announcement before the first programme stated:

"What could lead you to face years in jail, torture, even death, in some parts of the world? What's it like being gay across the globe? With some shocking accounts and scenes which some viewers may find upsetting, Stephen Fry's Out There - challenging prejudice and persecution just for being who you are."

The announcement before the second programme stated:

"Challenging views now on BBC Two. There are scenes which some viewers may find upsetting as Stephen Fry continues a personal look at gay life."

At the start of both programmes, the presenter explained that this was a "series about gay people and the trouble people have accepting them". During the course of the first programme, he said he would meet "some of the most notorious homophobes on the planet to challenge their prejudice" and look at "where their hatred comes from". He said he would also meet some victims and those fighting against homophobia. He finished this two-minute introduction stating "This matters to me because I'm gay".

The Adviser considered that Trustees would be likely to conclude there was a strong editorial justification for considering the experiences of homosexual people around the world who had been subject to extreme prejudice and there was also editorial justification for reflecting on the extent to which attitudes within Britain had changed in recent years. The Adviser noted that the ECU and BBC Audience Services had both drawn the complainant's attention to the BBC Editorial Guidelines which specifically allowed

programmes to be made examining issues from a particular viewpoint, providing this was made clear to the audience. The Adviser considered that Trustees would be likely to conclude that audiences would have understood these programmes were the personal views of the presenter about a subject that was very important to him.

The Adviser noted the ECU's response had addressed the concern that the programme was partial in its approach and had stated:

"Homophobia is by definition a form of prejudice ... which is (in our society at least) socially unacceptable and in many contexts illegal. I think that the 'due' impartiality of the programme has to be considered in the light of this fact – which is to say that I see little prospect of bias arising from a critical approach to behaviour which is in opposition to the standards of our society, in which a right to equality is enshrined in law."

The Adviser agreed with the ECU that there was no requirement for the programme makers to include the views of people objecting to homosexual behaviour and, as this programme was clearly signposted as a personal view programme, she considered Trustees would be likely to conclude no evidence had been brought forward which suggested a possible breach of the Editorial Guidelines on this point.

The Adviser noted that the complainant believed that the views of people belonging to religious and racial minorities should have been sought. However, she considered the purpose of the programme had been clearly established and it was to investigate those people who held extreme views that impacted on the gay community directly in the form of violence, denial and social exclusion. The Adviser noted the ECU's response that there was no requirement within the programme "to represent views across the spectrum of intolerance". She considered on this point too, the appeal did not have a reasonable prospect of success as there was no evidence of a possible breach of the Editorial Guidelines.

The Adviser noted that the complainant believed the presenter's depictions of sexual practices amongst homosexuals was "over-romanticised" and "quite divorced from reality". She considered that in a 'personal view programme' it was inevitable and appropriate that the presenter's own opinions will be included – and these would not be likely to accord with every viewer's experiences and beliefs. The Adviser noted that in several interviews, the interviewees themselves raised the subject of physical sexual relationships. She considered that it was reasonable and editorially justified for the presenter to respond by setting out the emotional and social benefits he believed also existed in those relationships. The Adviser considered Trustees would be likely to conclude that this aspect of the programme did not raise any issues that could potentially be a breach of the BBC's Editorial Guidelines.

The Adviser noted that the complainant felt that the programme was hostile towards Christianity in particular. She noted and agreed with the response of the Editorial Complaints Unit on this point:

"I don't believe that because some who are homophobic justify it on grounds of their belief systems it can reasonably be claimed that an investigation of this kind amounts to an attack on Christians as a whole. It seemed to me that it was primarily homophobic attitudes under scrutiny, rather than the ideologies used to justify them – and in any case, many who are Christian would not agree that their faith compels them to condemn gay people. Accordingly I can't agree that the programme was biased against Christians."

For all the reasons set out above, the Adviser considered that Trustees would be likely to conclude the programme met the requirements for due impartiality set out in the Editorial Guidelines and did not breach the Guidelines for Harm and Offence. It followed from this, she did not consider the appeal had a reasonable prospect of success and she did not, therefore, propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. In his email of 23 March 2014, the complainant expressed his disappointment at "the failure so far on the part of anyone at the BBC to engage genuinely with the substantive issues raised". The complainant outlined the key points he would like to highlight for review, which included.

- Failure to distinguish between the different levels of opposition to homosexuality, implying that those critical of homosexual activity were morally responsible for violent attacks on gay people.
- Presentation of a factually inaccurate and misleading image of a homosexual subculture.
- Racist in its treatment of some interviewees and in its failure to respect the differing moral values of many in minority racial, religious and social groups.
- Prejudice against Christians and other religious people.

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

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

The Committee noted the complainant's view that the programme was biased and misleading and that the Christian Church was unfairly targeted.

The Committee agreed with the Senior Editorial Complaints Adviser that the programme had been clearly signposted as containing the presenter's views and were in line with the guidelines on Personal View Content.

The Committee noted that the programme declared at its outset the objective of interviewing "ludicrous homophobes", undertaking to investigate only the most extreme views. The Committee agreed with the Complaints Director, Editorial Complaints Unit, that there was no requirement within the programme to represent views across the spectrum.

The Committee agreed with the Senior Editorial Complaints Adviser that in a 'personal view programme' the opinions of the presenter and the interviewees would influence the portrayal of homosexuality.

The Committee agreed with the Complaints Director, Editorial Complaints Unit:

"I don't believe that because some who are homophobic justify it on grounds of their belief systems it can reasonably be claimed that an investigation of this kind amounts to an attack on Christians as a whole. It seemed to me that it was

primarily homophobic attitudes under scrutiny, rather than the ideologies used to justify them – and in any case, many who are Christian would not agree that their faith compels them to condemn gay people. Accordingly I can't agree that the programme was biased against Christians."

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

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

## Woman's Hour, Radio 4, 27 November 2013

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

### The complaint

The complaint was about an edition of *Woman's Hour* which had featured an interview with Amal Elsana Alh'jooj, an Arab-Israeli women's rights activist ("the Contributor"). The interview took place in the context of the Contributor coming to London to receive a human rights award and included discussion of her life and work.

The complainant first contacted the BBC on 3 December 2013 and expressed four main points of concern:

1. The BBC had failed to discuss the Bill on the Arrangement of Bedouin Settlement in the Negev (also known as the "Praver Plan") in the interview.
2. The Praver Plan had received a large amount of international news coverage, but hardly any by the BBC.
3. Given that the *Woman's Hour* interview was 10 minutes long, the BBC could not claim there had not been enough time to discuss the Praver Plan.
4. Not discussing the Praver Plan during the interview was an example of ongoing anti-Palestinian bias that the BBC needed to address.

In their Stage 1 response of 7 December 2013, having put the complainant's concerns to the *Woman's Hour* team and senior BBC management, Audience Services made the following points:

- The context of the interview: the interview's main purpose was for the Contributor to talk to *Woman's Hour* about her work with the Bedouin community and how it stemmed from her deep sense of injustice about the lives of Bedouin women, including herself. For that reason, a large part of the interview had focussed on her early life and how she became an activist, specifically in relation to issues affecting women. It looked at the Contributor's life from her personal viewpoint, and examined her determination to overcome the limits, as she saw them, of the society in which she was born and her hopes for the future.
- Impartiality:
  - If the interview discussion had been about resettling Negev Bedouins (a frequently-suggested consequence of the Praver Plan), then it would have included both a Bedouin representative and an Israeli government voice.
  - Given that the Contributor is an outspoken activist, she could easily have referred to the Praver Plan when the presenter posed the question to her:

"How easy has it been to continue working for better relationships between the Jewish community and the Arab community?"

The *Woman's Hour* team said they did not give directions to the Contributor to avoid talking about the Praver Plan in the interview.

The complainant felt that this reply failed to address the issues he had raised and requested a further response. He made the following additional points:

1. The Contributor was not in London to receive a standard "Human Rights Award" but one from the New Israel Fund which he said was a Zionist (albeit liberal) lobby group.
2. He asked why the presenter did not pose the question as to why an Israeli group should choose to present the award in London.
3. He disputed the wording in the reply from Audience Services which spoke of the Contributor furthering the cause of a "shared society between Arabs and Jews". He said there was currently no such "shared society" between Arabs and Jews in Israel.
4. He asked why the BBC should have required "both a Bedouin representative and an Israeli government voice" to discuss the Praver Plan when it had been happy to give Simon Schama an hour to make the "moral case" for Zionism (in an episode of his series *The Story of the Jews*) without giving the right of reply in that instance.

Audience Services sent a further response on 30 December 2013 responding to these questions. They said that:

Questions 1-3:

"....all we can really say is that the piece was set up as a personal interview with Amal to look at gender and Amal's personal story alongside her work. There are a great many questions one could ask within any interview, but the Praver Plan simply did not come up as part of the discussion."

Question 4:

"....the programme stands by its original reply. Given that the Praver Plan is a controversial and current subject, the programme would be duty bound by the editorial guidelines to ensure a wide range of significant views and perspectives would be given due weight and prominence should they choose to cover the topic."

The complainant remained unhappy and pursued his complaint to Stage 2. It was investigated by the Head of Factual Radio, BBC Radio & Music Production, who did not uphold the complaint.

### **Appeal to the BBC Trust**

The complainant appealed to the BBC Trust on 31 January 2014 and asked to take his complaint forward.

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

In reviewing the complaint, the Adviser took into account the relevant Editorial Guidelines on Impartiality.

The Adviser considered the requirement for due impartiality within the context of the interview which was the subject of the complaint. She noted that *Woman's Hour* was not a news programme and that the programme's remit, as explained by the Head of Factual Radio at Stage 2,

"...is to offer a female perspective on the world. *Woman's Hour* frequently interviews women of international importance about their life and work and talks to women in different societies about their life experience."

The Adviser noted that Audience Services at Stage 1 had explained that the programme item

"looked at Amal's life from her personal viewpoint, and examined her determination to overcome the limits of the patriarchal society in which she was born and her hopes for the future."

She agreed with the view of the Head of Factual Radio who stated in her Stage 2 response of 8 January 2014:

"Although I do understand that you would have liked the interview to include a question about the Praver Plan, I'm afraid that was not the focus of this particular item, and furthermore, as *Woman's Hour* is not a news programme I do not believe that the interview was unfair or showed bias by this omission. What *Woman's Hour* sought to do was explore the life and work of a woman who has been nominated for a Nobel Peace Prize and praised as a role model. The Praver Plan was not discussed not because there was a lack of time, nor because the programme has an anti-Palestinian bias nor indeed because Jenni Murray failed in her basic duty as a serious interviewer. What the programme was attempting to do instead was to reveal a true and accurate picture of an intriguing and important woman."

The Adviser noted that the complainant had sent a letter of response to the Head of Factual Radio stating his objections to her finding. The Adviser acknowledged his view that no "true and accurate picture of this intriguing woman" could have been produced without addressing the central human rights issues facing the Negev Bedouin. However, she did not believe that, within the context of the *Woman's Hour* interview with the Contributor, Trustees would consider that evidence had been presented which would be likely to lead them to conclude that the interview breached Guidelines on Impartiality.

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 the Adviser did not believe Trustees would consider was the case here.

Decisions relating to the questions asked within programme interviews fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. She considered this was fundamentally important as the BBC's editorial

independence was of great value and significance to licence fee payers. The Adviser considered that it would not, therefore, be appropriate for Trustees to consider this element of the complaint.

With regard to the complainant's dissatisfaction, as stated in his letter to the Head of Factual Radio dated 19 January 2014, that the questions raised in his Stage 2 complaint letter (dated 5 January 2014) regarding *The History of the Jews (episode 5)*, and *Israel at 65* had not been addressed by the BBC, the Adviser noted that these issues were the subject of separate complaints and would not be addressed as part of this appeal.

The Adviser considered the complaint did not have any reasonable prospect of success and she therefore decided that it should not be put before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the Adviser had failed to seriously address any of the issues he had raised in his original complaint and re-stated them.

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

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

The Committee noted that the complainant did not accept the reasoning given by the Trust's Senior Editorial Complaints Adviser not to proceed with the appeal. The Committee also noted the complainant's view that the Adviser had not addressed the issues he had raised in his original complaint.

The Committee noted the requirements for due impartiality in the context of this interview and that *Woman's Hour* was not a news programme. The Committee noted that the focus of the interview was not the Prayer Plan but the life and work of the Contributor.

The Committee agreed that, within the context of the *Woman's Hour* interview with the Contributor, no evidence had been presented which led to the conclusion that the interview breached Guidelines on Impartiality.

The Committee noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The Committee noted that decisions relating to the questions asked within programme interviews fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. The Committee agreed with the Adviser, therefore, that it would not be appropriate for Trustees to consider this element of the complaint.

The Committee concluded there was no reasonable prospect of success for the complainant's appeal.

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

## Today programme, Radio 4, 25 November 2013

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

The Trust received three appeals regarding Radio 4's *Today* programme of 25 November 2013 which raised the same substantive issues. The appeals were consolidated. One of the three complainants (Complainant C) asked the Editorial Standards Committee to review the decision of the Trust Unit that the consolidated appeals did not qualify to proceed for consideration by the Committee.

### The complaints

The complaints were about an edition of the *Today* programme on 25 November 2013 which included a location feature from a hospital in northern Israel. The hospital had been treating Syrian women who had not been able to receive appropriate antenatal care because of the ongoing civil war across the border with Israel. The feature was presented by Kevin Connolly, the BBC's Middle East correspondent ("the Correspondent").

None of the points raised by complainants was upheld at Stages 1 and 2.

### Appeals to the BBC Trust

Three complainants wrote to the BBC Trust in February 2014 requesting that their allegations be heard on appeal.

These were the key passages in Complainant C's appeal:

I put it to (the BBC) that [the Correspondent] portrayed Syrians as feeling suspicion and hostility towards Israel, although he provided no evidence of this. I asked if it would not have been relevant, if he was going to stress these alleged feelings, to inform listeners that Israel has militarily occupied Syrian territory since 1967, and Syrians in the Golan Heights, bordering Israel, are living under Israeli occupation. There is nothing benign in Israel's attitude towards Syria, and I made the point that it is duplicitous of [the Correspondent] to exclude the facts of Israel's occupation while including quotes from Oscar Embon, the Israeli hospital director. Embon talks about his hopes that the Syrians treated at the hospital will no longer believe their government's brainwashing about how hostile Israel is, but will think of it more positively. How can a people living under occupation think positively about their occupier?

His piece begins with the story of a Syrian woman who was in labour but couldn't be treated by her local clinic. Luckily for her, [the Correspondent]'s puff goes, she was taken in by the Israeli hospital on the other side of the border. The hospital is "brightly painted and breezily efficient". What a different experience from the armed Israeli checkpoints where so many Palestinian women in labour are forced to give birth on the dirt ground or the back seats of their cars, having being refused permission to get through the checkpoint to hospital. 10% of pregnant Palestinian women were delayed at checkpoints every year from 2000 to 2007, while travelling to give birth in hospital. These delays resulted in 69 births, and 35 infant and five maternal deaths at the checkpoints

(<http://download.thelancet.com/flatcontentassets/pdfs/palestine/palestine2011-4.pdf>) This is the reality of Israel – there is nothing humane here. Has Today ever carried reports that would inform its audience of this reality? Again, as well as never reporting on Israel's continued dispossession of the Palestinians, as detailed above, the Today programme never reports on the reality of the occupation for Palestinians, certainly not in the accepting and unchallenging way [the Correspondent] has reported on the humanitarian work being done in an Israeli hospital for 177 Syrians.

By not providing proper context or background to the situation between Syria and Israel, and by presenting this item without critique, challenge, analysis, or dissenting voices to a one-sided argument, I believe [the Correspondent] has breached BBC editorial guidelines on impartiality and I would like the Trust to look into this.

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

The relevant correspondence was reviewed by the Trust Unit and the Senior Editorial Complaints Adviser and an independent editorial adviser listened to the item in question.

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

The Adviser noted the key points in the responses at Stage 1a from the Deputy Editor of the *Today* programme:

[The Correspondent]'s piece was based on a straightforward premise. Israel and Syria have fought each other three times within living memory. It was therefore significant to find Israeli doctors and military personnel helping citizens of a country with which they were technically still at war.

Of course it isn't the only story from the Middle East. Israel's relations with the Palestinians and the future of the Golan Heights are both important in their own right and we have covered them on 'Today' in the past. But a single piece cannot encompass the breadth and complexity of an entire region. If it tried it would quickly become unintelligible.

The focus of this piece was a specific story - which had both human interest and a political dimension, and which highlighted an unexpected consequence of the conflict in Syria.

The Adviser noted additional points in one of the Deputy Editor's second responses at Stage 1b:

I have to say I cannot agree that this piece lacked context. It was clearly labelled as a 'sub-plot' to the war in Syria (the word is used twice, once in the introduction and once in the main text). There was therefore no attempt to suggest that this story was as important as the conflict itself, or the state of relations between Israel and the Palestinians.

I do think it was worth reporting however; Not because it cast one side or the other in a favourable light but because of who the patients were, where they had

come from and what had happened to them when they reached the border. It was a snapshot of the difficulties of living in a war zone; in a country at war with itself and with its neighbour. As the script pointed out, Israel and Syria are long standing enemies and a state of war has existed between the two countries for decades. The potential danger to those who returned to Syria after treatment in Israel was therefore self-evident.

There was much about the Middle East it did not mention. But as I previously tried to explain there are limits to what can be contained within a single piece. It did contain enough context however for listeners to understand why we had chosen to broadcast the item.

I accept that in recent months focus on the BBC and elsewhere has been on the war in Syria and negotiations over Iran's nuclear capacity. But there are good reasons for this. In both cases there have been significant developments which have been important to examine in some detail. But at the same time the BBC and 'Today' have also continued to report on the progress of talks to try to find a peaceful solution to the Israel/Palestinian question. [The Correspondent] himself has produced two pieces for the Today programme this year on this subject.

The Adviser noted the terms in which the item reflected the lack of diplomatic relations between the two countries:

What's happening in the hospital at Tzfat is politically remarkable. A state of war still exists after all between Israel and Syria that stretches back decades.

The Adviser did not consider that Israel's ongoing occupation of part of the Golan Heights was a relevant fact that required to be reflected in the item in order for it to achieve due accuracy and due impartiality.

The Adviser noted, as did the Stage 1 and Stage 2 responses, that the item was signposted as a "sub-plot" of the war in Syria, thus informing the audience that it was not a main theme of the ongoing war:

She was the 177<sup>th</sup> Syrian patient treated at Tzfat hospital in nine months. A surprising sub-plot to the agony of Syria's civil war.

The Adviser noted that the major developments in the war itself continued to be consistently covered across BBC output. She noted, for example, that the BBC News online page which carried this story (<http://www.bbc.co.uk/news/world-middle-east-24767571>), included links to a range of other aspects of the crisis, including specific angles on refugees. While these would be updated and currently showed more recent news items about Syria, the Adviser noted that on 1 November 2013 (just prior to the report which was the subject of this appeal) BBC News Online carried a news item about an Israel air strike on Syria and included separate background analysis by the Correspondent.

The Adviser did not agree with complainants that the item required to be considered in the context of the volume of coverage on the *Today* programme of the ongoing Israeli-Palestinian conflict. Neither did she share complainants' assertions that the treatment being given to Syrians should be contrasted with the treatment of Palestinians at Israeli

checkpoints. She considered those issues had been covered in their own right on merit, in the same way as this item was selected on its individual merits.

The Adviser did not consider Trustees would be likely to agree with the complainant who suggested that, because of the "one-sided" nature of the item, it ought to have included challenges and dissenting voices in order to achieve due impartiality.

The Adviser noted the item had included interviews with an Israeli army medic and an Israeli-Arab social worker. In the Adviser's view neither of the contributors had expressed what might be considered a contentious view. Moreover, each of the contributors was clearly identified and in the Adviser's view the audience were in a position to judge what weight to place on their contributions. The Adviser noted also this contribution from the director of the Sieff Hospital (which was the hospital featured in the programme), the only one who alluded to the wider issue of relations between Syria and Israel:

There are beautiful relationships starting between the staffs of the hospital and the people that we treat. Most of them they express their gratitude and their wish for a peace between the two countries.

I don't expect them to become lovers of Israel and ambassadors for what we do here, but in the interim I expect they will reflect on what was their experience here and that they will reflect differently on what the regime tells them about Israelis and Syrians being enemies.

Again in the Adviser's view, the contributor was appropriately introduced, thus allowing the audience to judge what weight to place on his views. Neither were his views particularly contentious and therefore in the Adviser's opinion they did not require to be challenged or put into a broader context.

For the reasons set out above, the Adviser did not consider any of the aspects of appeal stood a reasonable prospect of success and she did not propose to put them before Trustees.

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

Complainant C requested that the Trustees review the decision not to proceed with her appeal.

The complainant reiterated her points about lack of context in the piece and stated that they had not been addressed by the Deputy Editor's response at Stage 1b (as had been implied by the Adviser). She asked for them to be looked at by the Trust.

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

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

The Committee noted that the complainant did not accept the reasoning given by the Adviser not to proceed with the appeal.

The Committee agreed with the Adviser that Israel's ongoing occupation of part of the Golan Heights was not a relevant fact that required to be reflected in the item in order for it to achieve due accuracy and due impartiality.

The Committee noted that the item was signposted as a "sub-plot" of the war in Syria. The Committee also noted that the major developments in the war itself continued to be covered across BBC output. The Committee agreed with the Adviser that the item was not required to be considered in the context of the volume of coverage on the *Today* programme of the ongoing Israeli-Palestinian conflict. The Committee did not agree with the complainant's assertions that the treatment being given to Syrians should be contrasted with the treatment of Palestinians at Israeli checkpoints. The Committee agreed that those issues had been covered in their own right on merit, in the same way as this item was selected on its individual merits.

The Committee noted the contribution from the director of the Sieff Hospital and that this was the only contribution which alluded to the wider issue of relations between Syria and Israel. The Committee agreed that the contributor had been introduced in such a way that the audience could judge what weight to place on his views. The Committee agreed that his views were not particularly contentious and therefore did not require to be challenged or put into a broader context.

The Committee concluded there was no reasonable prospect of success for the appeal.

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

## Ariel Sharon profile, BBC News Online

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

### The Complaint

The complaint was about BBC News Online's profile of Ariel Sharon, the former Israeli Prime Minister, which can be found at the following address:  
<http://www.bbc.co.uk/news/world-middle-east-11746593>.

The complainant first contacted the BBC about this article on 3 January 2014. He raised two issues of complaint; firstly, that, in his view, the article referred to the deaths of Palestinians in two refugee camps (Sabra and Shatila) in 1982 and wrongly stated that the camps were under Israeli control at the time and also wrongly stated that Ariel Sharon had been found "indirectly responsible" for the deaths by an Israeli tribunal; and secondly, that, in his view, the report implied that the second intifada was the result of Ariel Sharon's visit to the Temple Mount in 2000. The complainant considered this was not the case and stated that the uprising had been planned in advance.

The complaint was not upheld at stage 1 and was escalated to stage 2. The complainant received a response from the Editorial Complaints Unit (ECU) on 17 January 2014 which did not uphold the complaint.

### Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 13 February 2014 about the online profile. The complainant repeated his allegations regarding the two issues of inaccuracy (reversing the order in which he referred to them) and alleged that it left the reader with a materially misleading impression of key facts and that it lacked impartiality.

The complainant repeated again that the first allegation concerned two sentences in the profile about a visit by Mr Sharon to the Temple Mount whilst he was leader of the opposition:

In 2000 Mr Sharon paid a controversial visit to the holy compound in Jerusalem known as the Temple Mount to Jews and Haram al-Sharif to Muslims. Palestinians rioted and the second intifada (uprising) ensued.

The complainant said the wording left the inaccurate impression that the riots were a consequence of Mr Sharon's visit. The complainant submitted evidence from a range of sources which he said demonstrated that the riots were planned and organised by the Fatah leadership, with whom the visit had been co-ordinated.

The complainant rejected as out-of-date a UN report from 2001 which had considered the underlying causes of the subsequent violence and had been cited by the ECU in its Stage 2 finding. The complainant noted the passage which the ECU had quoted<sup>13</sup> in its second response at Stage 2:

In late September 2000, Israeli, Palestinian, and other officials received reports that Member of the Knesset (now Prime Minister) Ariel Sharon was planning a visit

---

<sup>13</sup> <http://unispal.un.org/UNISPAL.NSF/0/6E61D52EAACB860285256D2800734E9A>

to the Haram al-Sharif/Temple Mount in Jerusalem. Palestinian and U.S. officials urged then Prime Minister Ehud Barak to prohibit the visit. Mr. Barak told us that he believed the visit was intended to be an internal political act directed against him by a political opponent, and he declined to prohibit it.

Mr Sharon made the visit on September 28 accompanied by over 1,000 Israeli police officers. Although Israelis viewed the visit in an internal political context, Palestinians saw it as highly provocative to them.

The complainant cited an account published some years later in a book written by Mosab Hassan Yousef, the son of a Hamas leader, in which he describes his recollection of Mr Sharon's visit and the riots which followed<sup>14</sup>. The complainant quoted the following extract in his appeal:

In planning the trip, Sharon's people had received assurances from Palestinian security chief Jibril Rajoub that his visit would not be a problem as long as he did not set foot in a mosque.

My father and I got to the site a few minutes before Sharon's arrival. It was a quiet morning. A hundred or so Palestinians had come to pray. Sharon arrived during normal tourist hours with a Likud delegation and about a thousand riot police. He came, he looked around, and he left. He said nothing. He never entered the mosque.

It all seemed like a big non-event to me. On the way back to Ramallah, I asked my father what the big deal had been.

"What happened?" I said. "You didn't start an intifada."

"Not yet," he answered. "But I have called some activists in the Islamic student movement and asked them to meet me here for a protest."

"Nothing happened in Jerusalem, so now you want to demonstrate in Ramallah? That's crazy," I told him.

"We have to do what we have to do. Al-Aqsa is our mosque, and Sharon had no business being there. We cannot allow this."

I wondered if he was trying to convince me or himself.

The complainant said an Israeli Camp David peace negotiator had confirmed at an event for Jewish Book Week in 2002, which the complainant said he had attended, that the timing of Mr Sharon's visit was arranged in consultation with the Palestinian Authority. The complainant said he recalled the peace negotiator saying the following:

The Palestinian and US negotiating team did initially say that they did not want Sharon to visit, but at that stage Arafat was not at Camp David and the Palestinians said that they would consult with him. When they did so he said that it would be OK for Sharon to visit the Temple Mount so long as he did not visit the Al Aqsa Mosque or Dome of the Rock, and he arranged the date and time of the visit with them well in advance and that was reported back to the Israeli negotiating team and agreed by them.

---

<sup>14</sup> [http://www.myepub.com/3/chapter\\_16.html](http://www.myepub.com/3/chapter_16.html)

The complainant also cited comments published in the New York Review of Books in 2002 made by former Israeli Prime Minister Ehud Barak:

Sharon's visit, which was coordinated with [Palestinian Authority West Bank security chief] Jibril Rajoub, was directed against me, not the Palestinians, to show that the Likud cared more about Jerusalem than I did. We know, from hard intelligence, that Arafat [after Camp David] intended to unleash a violent confrontation, terrorism. [Sharon's visit and the riots that followed] fell into his hands like an excellent excuse, a pretext.<sup>15</sup>

The complainant cited a range of additional Palestinian sources, including the Palestinian Authority Communications Minister and Yasser Arafat's widow, which he said supported his claim that the second intifada was planned in advance and was not a consequence of Ariel Sharon's visit to the Temple Mount.

The complainant repeated his second allegation concerning the following sentences from the profile:

The move stopped the PLO using Lebanon to launch attacks against Israel, but also resulted in the killing of hundreds of Palestinians by Lebanese Christian militiamen in two Beirut refugee camps under Israeli control.

The incidents, known as the Sabra and Shatila massacres, made Mr Sharon notorious among Palestinians, and hated.

Mr Sharon was removed from office in 1983 by an Israeli tribunal investigating the 1982 Lebanon invasion, finding him indirectly responsible for the killings.

The complainant said:

They are not in themselves untrue, but they are misleading. Saying that the tribunal found that Sharon was indirectly responsible for the massacres without saying that it had also found that "No intention existed on the part of any Israeli element to harm the non-combatant population in the camps" left the reader with the impression that it had been Mr Sharon's intention that the massacre should take place and that the entry into the camps by the Phalange had been arranged by Sharon with that in mind, or at very least that he probably had anticipated it and gone ahead with the plan anyway because he wanted such a massacre to happen. The tribunal found that that clearly was not the case. The result was that words used in the profile left intact, and indeed seemed to confirm, the impression that Sharon was indeed the butcher that he has been portrayed as by so many Palestinians in other BBC reports.

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

The Trust's Senior Editorial Complaints Adviser (the Adviser) noted the complainant's assertion that the relevant content had been misleading and had led to a breach of impartiality.

---

<sup>15</sup> <http://www.nybooks.com/articles/archives/2002/jun/13/camp-david-and-after-an-exchange-1-an-interview-wi/>

The Adviser considered that the relevant Editorial Guidelines were those relating to Accuracy and Impartiality, particularly those referring to "due accuracy" and "due impartiality".

The Adviser noted that the two sections which the complainant asserted were misleading were within a 1000 word article which reflected key events from Ariel Sharon's 60 year career as a soldier and politician, portraying him as popular but controversial, "admired and reviled in equal measure".

In relation to the first allegation, that the article wrongly implied that the second intifada was a consequence of Mr Sharon's visit to the Temple Mount, the Adviser noted the two sentences which the complainant said were misleading (highlighted in bold type below):

After the failure of the 2000 Camp David talks, Mr Sharon sought to stir a public groundswell against the then Prime Minister Ehud Barak, depicting him as a usurper ready to trade Jerusalem for a peace agreement.

"Barak does not have the right to give up Jerusalem, which the people received as a legacy," Mr Sharon said at a parliamentary session.

**In 2000 Mr Sharon paid a controversial visit to the holy compound in Jerusalem known as the Temple Mount to Jews and Haram al-Sharif to Muslims.**

**Palestinians rioted and the second intifada (uprising) ensued.**

The Adviser also noted the article's inclusion of relevant context for Mr Sharon's visit to the Temple Mount in reflecting Mr Sharon's opposition to the Prime Minister's willingness to negotiate the status of Jerusalem. In the Adviser's opinion, this wider context accurately informed audiences that Mr Sharon's visit was most likely to have been aimed at boosting his own popularity within the Israeli electorate. The Adviser concluded therefore that the audience was unlikely to form the impression that Mr Sharon's purpose in visiting the Temple Mount was to provoke the Palestinians.

The Adviser then considered the precise wording of the brief summary of the sequence of events as outlined in the article. She noted that regardless of whether the Palestinians had been planning the second intifada, and notwithstanding the range of sources quoted by the complainant, Mr Sharon's visit to the Temple Mount was clearly capable of being viewed as controversial and provocative, hence the presence of 1000 riot police. Secondly, regardless of whether the precise timing of the riots and subsequent uprising were stage-managed, that the event could be used as a credible pretext to start an uprising in the Adviser's view meant the formulation of the wording in the article would likely be regarded as duly accurate.

The Adviser noted and agreed with the following from the ECU finding:

Regardless of whether they were organised or not, it is a matter of record that rioting followed the visit. The article does not go into any detail on the broader background to the riots, or the extent to which they were spontaneous, which is I think understandable given that this was a brief reference to a single event from a full life. I don't believe that due accuracy would require reference to the interpretation you support.

I think the only conclusion readers would take from this is that the visit was controversial and was considered by the Palestinians to be inflammatory – and it is a matter of record that this was the case, so I struggle to conclude that it would have given readers to misunderstand the visit or what followed. In any case, whether the riots were orchestrated or not, they manifestly happened following the visit and this is what the article said.

The Adviser therefore concluded that the first element of the appeal would not have a reasonable prospect of success and should not proceed to appeal.

The Adviser considered the complainant's second allegation, noting the content which was the subject of the allegation:

The move stopped the PLO using Lebanon to launch attacks against Israel, but also resulted in the killing of hundreds of Palestinians by Lebanese Christian militiamen in two Beirut refugee camps under Israeli control.

The incidents, known as the Sabra and Shatila massacres, made Mr Sharon notorious among Palestinians, and hated.

Mr Sharon was removed from office in 1983 by an Israeli tribunal investigating the 1982 Lebanon invasion, finding him indirectly responsible for the killings.

The Adviser noted the complainant's assertion that the article

...left the reader with the impression that it had been Mr Sharon's intention that the massacre should take place and that the entry into the camps by the Phalange had been arranged by Sharon with that in mind, or at very least that he probably had anticipated it and gone ahead with the plan anyway because he wanted such a massacre to happen.

The Adviser noted the complainant's acknowledgement in his appeal that the sentences in the profile were not untrue, but that the article should also have included information from the Israeli tribunal<sup>16</sup> investigating the massacre, specifically its finding that:

No intention existed on the part of any Israeli element to harm the non-combatant population in the camps.

The Adviser did not agree with the complainant that the audience would take the view from the article that Mr Sharon had either arranged the massacre, anticipated the massacre, or wanted it to happen.

The Adviser noted that the article explicitly stated that the attacks were perpetrated by Lebanese Christians.

The Adviser noted the following extract from the findings of the Israeli Tribunal (as quoted also in the ECU finding):

...It is impossible to justify the Minister of Defense's disregard of the danger of a massacre. We will not repeat here what we have already said above about the widespread knowledge regarding the Phalangists' combat ethics, their feelings of

---

<sup>16</sup><http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook6/pages/104%20report%20of%20the%20commission%20of%20inquiry%20into%20the%20e.aspx>

hatred toward the Palestinians, and their leaders' plans for the future of the Palestinians when said leaders would assume power. Besides this general knowledge, the Defense Minister also had special reports from his not inconsiderable [number of] meetings with the Phalangist heads before Bashir's assassination.

Giving the Phalangists the possibility of entering the refugee camps without taking measures for continuous and concrete supervision of their actions there could have created a grave danger for the civilian population in the camps even if they had been given such a possibility before Bashir's assassination; thus this danger was certainly to have been anticipated - and it was imperative to have foreseen it - after Bashir's assassination...In the circumstances that prevailed after Bashir's assassination, no prophetic powers were required to know that concrete danger of acts of slaughter existed when the Phalangists were moved into the camps without the I.D.F.'s being with them in that operation and without the I.D.F. being able to maintain effective and ongoing supervision of their actions there...

As a politician responsible for Israel's security affairs, and as a Minister who took an active part in directing the political and military moves in the war in Lebanon, it was the duty of the Defense Minister to take into account all the reasonable considerations for and against having the Phalangists enter the camps, and not to disregard entirely the serious consideration mitigating against such an action, namely that the Phalangists were liable to commit atrocities and that it was necessary to forestall this possibility as a humanitarian obligation and also to prevent the political damage it would entail. From the Defense Minister himself we know that this consideration did not concern him in the least, and that this matter, with all its ramifications, was neither discussed nor examined in the meetings and discussion held by the Defense Minister. In our view, the Minister of Defense made a grave mistake when he ignored the danger of acts of revenge and bloodshed by the Phalangists against the population in the refugee camps.

The Adviser noted the Tribunal's conclusions regarding Mr Sharon (again as also quoted in the ECU finding):

Mr Sharon was found responsible for ignoring the danger of bloodshed and revenge when he approved the entry of the Phalangists into the camps as well as not taking appropriate measures to prevent bloodshed....

The Adviser noted also, as the ECU had done, that the conclusion appeared in the Israeli report under the heading, *The Indirect Responsibility*.

The Adviser therefore agreed with the ECU's reasoning and its conclusion that "the terminology in the article adequately summed up the facts of the matter".

The Adviser concluded that the omission of the additional information that the Tribunal found that there had been no intention on the part of Israel to harm the refugees in Sabra and Shatila did not result in the audience being left with a materially misleading impression of the key facts.

The Adviser therefore considered that the complaint did not have a reasonable prospect of success and 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.

In respect of the first point of complaint, the complainant repeated his allegation that the disputed sentences had given the misleading impression that the Palestinian riots and the second intifada were a consequence of Mr Sharon's visit to the Temple Mount. If the BBC had not wanted that interpretation they would not have used the word 'ensue'. The complainant clarified that he was not suggesting that the BBC was implying that the reason for Mr Sharon's visit was to cause a riot, "but clearly the article did imply that that was the result". The complainant stated that Mr Sharon did not have a bodyguard of 1000 policemen because the visit was considered to be provocative as the Adviser suggested, but because Israeli intelligence knew that the Palestinians were planning to riot and Mr Sharon wanted to ensure that they did not use his visit as an opportunity to do so.

In respect of the second point of complaint, the complainant repeated that the way the incident was covered in the profile made it appear to most readers that Mr Sharon was complicit in the massacre. He agreed with the Adviser that the long section of the inquiry report that was quoted did come under the section headed "indirect responsibility", but also quoted another extract from that section which read:

We assert that in having the Phalangists enter the camps, no intention existed on the part of anyone who acted on behalf of Israel to harm the non-combatant population, and that the events that followed did not have the concurrence or assent of anyone from the political or civilian echelon who was active regarding the Phalangists' entry into the camps.

The complainant said that without that context the words used in the article definitely and falsely suggest complicity in the massacre by Mr Sharon.

## **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.

In respect of the first aspect of the appeal, the Committee noted that Mr Sharon's visit to the Temple Mount was clearly capable of being viewed as controversial and provocative. The Committee also agreed with the ECU's view that it was a matter of record that rioting followed the visit. The Committee considered the formulation was likely to be regarded as duly accurate if it took the matter on appeal.

The Committee therefore concluded that the first element of the appeal would not have a reasonable prospect of success and should not proceed to appeal.

In respect of the second element of the complaint, the Committee agreed with the Adviser that the audience would be unlikely to take the view from the article that Mr Sharon had either arranged the massacre, anticipated the massacre or wanted it to happen. The Committee noted that the article explicitly stated that the attacks were perpetrated by Lebanese Christians.

The Committee agreed with the Adviser that the omission of the additional information that the Tribunal found that there had been no intention on the part of Israel to harm the refugees in Sabra and Shatila did not result in the audience being left with a materially misleading impression of the key facts. The Committee therefore concluded there was no reasonable prospect of success for the second element of the complainant's appeal.

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

## Searching for Exile: Truth or Myth?/Searching for Exile: The Debate, BBC Four, 3 November 2013

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

### Background

This complaint was about the BBC Four broadcasts, *Searching for Exile: Truth or Myth?/Searching for Exile: The Debate*.

The programme *Searching for Exile: Truth or Myth?* had originally been scheduled to run in April 2013 as part of the BBC Four Archaeology season under the title *Jerusalem: An Archaeological Mystery Story*. The BBC said at the time that during the re-versioning of the film from its initial one hour 14 minutes to 60 minutes it was found that it covered broader issues and a decision was made to withdraw it from that particular season.

Following a re-cut in consultation with its director, Ilan Ziv, the programme was broadcast in November 2013, under the title *Searching for Exile: Truth or Myth?* The transmission was followed by a 45-minute discussion (*Searching for Exile: the Debate*) chaired by Ed Stourton examining the historical and archaeological evidence portrayed in the film and what it could mean for Judaism. The panel included Mr Ziv.

### The complaint

The complainant had first complained to the BBC on 19 November 2013 as she considered there had been a failure of impartiality on the part of the BBC. She noted that, in a separate series, Simon Schama "was allowed to present, in five long episodes, his own Zionist version of the 'Story of the Jews', culminating in the justification of the creation of a Jewish State in Palestine, without any challenge, without any discussion..." She contrasted this with the treatment of Mr Ziv's film. She noted that the subsequent debate – which Mr Ziv took part in – did not include a Muslim among the other panellists and felt this was an omission. The complainant received a stage 2 response on 28 January 2014 which included comments from the Channel Executive for BBC Two and BBC Four; the complaint was not upheld. The complainant was informed she could appeal against this decision to the BBC Trust.

### Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 16 February 2014 asking it to review her complaint. She made a series of allegations concerning the circumstances surrounding the broadcasting of the documentary and argued that the absence of a Muslim voice on the studio panel for the discussion which followed demonstrated bias. She alleged the programme was neither accurate nor impartial and was "tailored by the BBC to suit the Zionist sympathisers".

The first allegation was that the BBC had not been even-handed in the treatment of the programme in comparison with the five hours it allotted in September 2013 for the series, *The Story of the Jews*, which it had not followed with a debate on key issues.

The complainant asserted that Mr Ziv's film was deliberately postponed so that it ran after Simon Schama's film, and that it was edited to "accommodate a debate in which no

Muslim was invited to take part". The complainant said that it was obvious that Mr Ziv did not approve of that decision.

The complainant asserted that "the Christian", Professor Joan Taylor of Kings College, London had been "planted" on the panel to emphasise the "brutal killing of the Jews... as if they had been the only ones killed by the Romans in their vast empire". The complainant said that Professor Taylor had "mused" on "the beautiful sequence of the creation of Israel told by [Yigal] Yedin [the Israeli politician] in 1948".

The complainant said:

In this instance among many more the BBC keeps to the official "history" of "Israel" as a "legitimate" state, ignoring the endless suffering of the Palestinians in the "OPTs" and "Israel Proper".

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

The Trust's Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. The relevant correspondence was also reviewed by the Trust Unit and an independent editorial adviser watched the programmes in question.

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

The Adviser considered first the assertion that there had been a deliberate decision to withdraw the programme from the archaeology series so that it could run after *The Story of the Jews* and that it could be followed by a debate.

The Adviser noted, and agreed with, the BBC's response at Stage 1 that the respective programmes had different remits and did not bear comparison in the way the complainant had suggested.

The Adviser also noted, as had the BBC at Stage 1, that the complainant's specific allegations regarding the editorial content of *The Story of the Jews* had been the subject of a separate appeal to the BBC Trust and it would not be appropriate to discuss that programme in her decision on this appeal.

Regarding the scheduling of the two programmes, the Adviser noted the BBC Trust has no jurisdiction in areas of programme scheduling. 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 direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards. Decisions relating to what programmes to include within a themed series fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted too that the format of content broadcast by the BBC is also entirely in the discretion of the programme makers; matters such as duration and co-programming with, for example, a live debate were rightly issues of editorial judgement and

commissioning decisions were not therefore capable of being tested against the editorial guidelines.

The Adviser noted that it was common practice when transmitting content which had not originally been commissioned by the BBC (as was the case here) that changes were made to content and length, with the approval – and often the input – of the original author.

The Adviser noted the complainant's assertion that it was "obvious" that Mr Ziv disagreed with the BBC's editorial decision making relating to the content and timing of the programme, and the debate which followed. The Adviser acknowledged that Mr Ziv had criticised the BBC at the time when the withdrawal of his film from its original slot had been announced. However, she noted that the remarks he had made at that time had since been superseded. Writing on his website ([www.ilanziv.com](http://www.ilanziv.com)), Mr Ziv said he had supervised and authored the cut down from the longer version of the film and that any delays were entirely down to his schedule of other work and "nothing to do with politics or the BBC". Mr Ziv wrote on his website that following a discussion with BBC Four executives:

We both agreed that we would like to see the film broadcast in the UK. We agreed to explore, by examining scripts and cuts, the possibility of showing a mutually agreeable 60 min. version of the film followed by a discussion program where others and myself will participate...

The BBC affirmed their wish that the version that will emerge will be authored by me...

I am almost ashamed to admit that I am the reason for the delay... my excuse ... has nothing to do with politics or the BBC. As a matter of fact the BBC commissioners and editors have prodded me to send them my version of the cut down and until now I simply did not have time... I fear it is not much of a conspiracy theory.

The Adviser concluded there was no evidence that the scheduling of *The Story of the Jews* was a factor in the decision to postpone broadcast of Mr Ziv's documentary or in determining the timing of its eventual transmission, nor any evidence that the programme had been "tailored by the BBC". There was not therefore anything to test against the guidelines in relation to the BBC's editorial standards.

The Adviser then turned to the allegations concerning the panel for the debate. The Adviser noted that the authored nature of Mr Ziv's documentary was clearly signposted in the broadcast introduction:

Now on BBC Four Ilan Ziv's documentary offers a personal view on the historical and archaeological evidence for the exile of the Jews

The Adviser noted the section of the Impartiality guideline covering personal view content includes the requirement that where the subject matter is controversial programme makers should:

- provide an opportunity to respond when appropriate, for example in a pre-arranged discussion programme
- ensure that a sufficiently broad range of views and perspectives is included in output of a similar type and weight and in an appropriate timeframe

The Adviser considered the content on this occasion would likely fall within the definition of controversial content as defined in 4.4.6 of the Impartiality guideline, in particular the clause which states the BBC should take account of

- sensitivity in terms of relevant audiences' beliefs and culture

The Adviser noted that Mr Ziv's film offered an alternative narrative to the view that the establishment of Israel was a "return" to the land from which the Jews had been exiled 1800 years earlier. This was clearly a counter-intuitive approach in the context of the narrative which has been generally taught in Judeo-Christian societies for thousands of years.

It was that aspect of the programme which BBC Four executives would rightly have considered controversial, particularly as the Adviser noted that there was no challenge in the film to Mr Ziv's analysis of the historical and archaeological evidence. In this case the programme makers had clearly considered that a discussion of the film's thesis, which included scholars of Jewish and Christian thought, was an appropriate "opportunity to respond" as suggested by the guideline and would have ensured that "a sufficiently broad range of views and perspectives was included". She noted the following from the response at Stage 1:

The debate was simply an opportunity to discuss the film and for others not represented by the film to offer their own view, which they're entitled to.

The Adviser noted the complainant's assertion that the programme was one of many instances of the BBC supporting "the official history of Israel as a legitimate state". The Adviser did not agree that either the programme or the documentary which followed implied any BBC position on the issue, rather the BBC had given a platform for an authored view which challenged what by some is considered a key aspect of Israel's claim to be a legitimate homeland for the Jewish people.

The Adviser noted the complainant's assertion about the absence of a Muslim voice from the panel. She noted the Palestinian viewpoint was reflected in the programme, particularly in the final 20 minutes. The Adviser did not agree there was any requirement for the contemporary issues in the wider Israel-Palestinian conflict to explicitly feature in a debate about ancient history and archaeology. She nevertheless noted that the script reflected on two occasions that the inhabitants of the Muslim village of Safuri had fled in 1948 and had not been allowed to return and that it took a court case in Israel to prevent the destruction of their ancient cemetery.

The Adviser noted the complainant's assertion that it was "obvious" that Mr Ziv disapproved of there being no Muslim on the panel and that it was "disingenuous" for the BBC at an earlier stage in her complaint to deny the fact. The Adviser noted the comment that the complainant was referring to came towards the end of the discussion:

Ilan Ziv:

The Israeli conflict has been constantly debated on political grounds...I think we've sort of shied away from the religious aspect. The historical aspect, particularly the seculars amongst us... Avoiding it hasn't proved conducive to a solution. So we need to delve into those myths, argue as much as we can, because avoiding it leaves us in the same limbo for many many dozens of years and that is why I personally did it... I do believe the conflict at its root has a huge religious

component which we don't admit and we always cover it up. So we have to delve into the religious aspect more with rabbis and priests and Islamic scholars which we don't have around this table and start dabbling into this history and start arguing from the perspective of that religion and of history. Because avoiding it, pretending it's some kind of secular conflict only about land...

Whilst the Adviser accepted that Mr Ziv acknowledged the absence of an Islamic scholar, she considered it was no more than that. In the Adviser's view the comment could equally have been taken as the filmmaker arguing where the broader debate went next, rather than protesting the absence of a Muslim voice to discuss the historical and archaeological evidence in his film in that debate.

The Adviser concluded that, in any event, while the programme makers might have chosen to include a "Muslim" voice there would be no requirement to do so for the segment to achieve due impartiality.

Accordingly, the Adviser considered none of the allegations had a reasonable prospect of success and should not therefore proceed to appeal.

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

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

The complainant reiterated her concerns regarding the scheduling of the film and the fact that it had been postponed from earlier in the year. The complainant also emphasised again that the debate which followed the eventual broadcast had not included any Muslim or indigenous Palestinian.

The complainant disputed that *Searching for Exile: Truth or Myth?* and *The Story of the Jews* had had different remits, stating they were both about the exile of the Jews some 2,000 years ago. In the complainant's view, the former explained that the Jews did not leave Palestine but the latter suggested that the Jews had been exiled and had to return to their "homeland, Zion".

Regarding the signposting of the documentary as personal view content and the Adviser's view that the content likely fell within the definition of controversial content as defined in 4.4.6 of the Impartiality guideline, the complainant asked why this had not also been the case for *The Story of the Jews*.

### **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 email asking the Committee to review her decision.

Regarding the complainant's first assertion (scheduling), the Committee agreed with the Adviser that the programmes *Searching for Exile: Truth or Myth?* and *The Story of the Jews* had had different remits and it was not appropriate to compare them as the complainant had suggested. The Committee agreed with the Adviser that there was no evidence that the scheduling of *The Story of the Jews* had been a factor in the decision to postpone broadcast of Mr Ziv's documentary from earlier in the year or in determining the timing of its eventual transmission, nor any evidence that the programme had been

“tailored by the BBC”. The Committee did not see any reason why the delay in the programme’s broadcast should engage the BBC’s Editorial Guidelines.

The Committee agreed that the BBC Trust has no jurisdiction in areas of programme scheduling, for the reasons explained by the Adviser. The Committee agreed with the Adviser that the format of content broadcast by the BBC is entirely a matter for the discretion of the programme makers.

Regarding the complainant’s allegation concerning the panel for the subsequent programme *Searching for Exile: the Debate*, the Committee felt that it would be likely to decide that the content of the previous programme on this occasion fell within the definition of controversial content as defined in 4.4.6 of the Impartiality guideline. In the Committee’s view, the subject of the programme was controversial, and the Committee noted the Adviser’s explanation that the programme makers had clearly considered that a discussion of the film’s thesis, which included scholars of Jewish and Christian thought, was an appropriate “opportunity to respond” as suggested by the guideline and would have ensured that “a sufficiently broad range of views and perspectives was included”. The Committee agreed with the Adviser that there was no requirement for the contemporary issues in the wider Israel-Palestinian conflict to explicitly feature in a debate about ancient history and archaeology. The Committee also agreed with the Adviser’s conclusion that there was no requirement for the debate to have included a “Muslim” voice for the segment to achieve due impartiality.

The Committee agreed with the Adviser that neither the programme nor the documentary which followed implied any BBC position on the issue of whether Israel should be considered a “legitimate state”. Rather, the BBC had given a platform for an authored view which challenged what by some is considered a key aspect of Israel’s claim to be a legitimate homeland for the Jewish people.

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

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

## Springwatch, BBC One, 10–12 June 2013

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

### The complaint

The complaint was about *Springwatch*, broadcast between 10 and 12 June 2013.

The complainant first contacted the BBC on 26 June 2013. While he greatly appreciated the *Springwatch* output in general, he took issue with the references to "urban gulls" and the contribution made by Peter Rock. He stated that the research Mr Rock had carried out into urban gulls had not been peer-reviewed and he disputed the figures given by Mr Rock and considered that they could not be relied on. He considered Mr Rock's work was generally funded by local councils who themselves regarded urban gulls as pests and were involved in a campaign of "persecution" against gulls. He considered there was no evidence to suggest that "urban gulls" were a separate species as he considered Mr Rock had suggested. He stated that his mother had found Mr Rock's references to the gulls "dive bombing" to be offensive as she had lived through the bombing of Britain during the war. After a series of exchanges with BBC Audience Services, the complainant escalated his complaint to the Editorial Complaints Unit (ECU). He received a response from the ECU's Complaints Director on 22 November 2013 which did not uphold the complaint.

### Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the response received at Stage 2. The complainant had been in correspondence with the BBC regarding film segments related to gulls living in urban areas, during episodes of *Springwatch* broadcast during the period 10 to 12 June 2013.

In particular, the complainant escalated his complaint regarding the film segment that featured the contribution of Mr Peter Rock, who was introduced as "the leading expert in urban gulls" in discussion with a BBC presenter on 12 June 2013.

The complainant raised the following points in his letter of appeal:

1. Mr Rock identified a 24-year-old herring gull and stated that it had fathered 3 chicks per year. The complainant said Mr Rock and *Springwatch* failed to point out not only that it is extremely uncommon for a herring gull to live that long, but also that it was virtually impossible to breed at that success rate.
2. The presenter stated that "urban and non-urban gull populations are entirely separate and do not intermingle". The complainant said that this theory was central to Mr Rock's opinions on urban gulls "taking over the world"; however, in his view there was no evidence to support this. The complainant said the evidence to the contrary was that gulls are great wanderers and any increase in urban populations should be considered in the context of the overall catastrophic decline in their numbers.
3. The BBC should not have referred to Mr Rock as an "expert". The complainant said that this term implies some recognised standard of academic and/or professional qualification and also a degree of impartiality and independence.
4. The complainant said that Mr Rock has used the BBC on previous occasions to spread the myth that "gulls are taking over the world", frequently following it up

with the words “and I’m not joking”. The complainant referred to Mr Rock’s contribution on Radio 4 on 15 August 2013 and said that this, alongside his contribution to *Springwatch*, showed a pattern.

### **The Trust Unit’s decision**

The Senior Editorial Complaints Adviser carefully read the correspondence that had passed between the complainant and the BBC. She was pleased that the complainant generally enjoyed the *Springwatch* output and had also enjoyed watching *Autumnwatch* over the years. She acknowledged the strength of the complainant’s feelings on this matter.

The relevant correspondence was reviewed by the Trust Unit and an independent editorial adviser viewed the programme in question. The Senior Editorial Complaints Adviser (the Adviser) decided that the complainant’s appeal did not have a reasonable prospect of success.

In considering the complainant’s appeal, the Adviser reviewed the Editorial Guidelines concerning Accuracy, including those sections relating to Finding Contributors and Avoiding Misleading Audiences.

The Adviser then considered each of the complainant’s points in turn:

**Point 1** – *Springwatch* should have made it clear to viewers that the age and breeding success rate of herring gulls attributed by Mr Rock were “virtually impossible”.

The Senior Editorial Complaints Adviser noted the conversation between the contributor and the presenter in the film on 12 June 2013. Filming a particular bird that had been ringed by the contributor they said:

Peter Rock: 24 years old

Presenter: 24 years old? So you ringed that then?

PR: Mmm. I ringed that in 1989

Presenter: As a chick?

PR: As a chick.

Presenter: If you look down and to the right there are chicks. 2 or 3 chicks.

PR: These gulls here are raising 2 or 3 chicks between them every year and he’s 24 years old. He’s been breeding for 20 years.

Presenter: So this bird may have reared as many as 60 chicks

Presenter: It’s not unusual for gulls to live for more than 20 years and some can reach 30. Within cities the survival rate of offspring may be as high as 90%. It’s no wonder urban living is so popular.

The Senior Editorial Complaints Adviser also considered the information regarding herring gulls available on the RSPB website<sup>17</sup>. She noted that in relation to the breeding habits of gulls it states:

“The clutch of two to four eggs is incubated by both sexes for up to 30 days in May and June. ... Gulls are long-lived birds - the larger species only start to breed when four years old, and some can live to their upper twenties”.

She concluded that the information given on the programme about the age and breeding success rate of herring gulls was consistent with information available from the RSPB and did not agree with the complainant's point that the figures given in *Springwatch* were “virtually impossible”. She felt that this point did not raise a matter of substance and should not therefore be put before the Trustees.

**Point 2** – There was no evidence to support the statement made by the presenter that “urban and non-urban gull populations are entirely separate and do not intermingle”. The evidence to the contrary was that Gulls were great wanderers and any increase in urban populations should be considered in the context of the overall catastrophic decline in their numbers.

The Senior Editorial Complaints Adviser noted the detailed response given to the complainant by the ECU Complaints Director on this point in his letter dated 22 November 2013. This response summarised a number of instances during the programmes broadcast during the period 10 to 12 June 2013, in which the increase in urban gull populations was put into context with their overall decline in numbers.

The situation was summarised in the first programme on 10 June 2013 as follows:

“While gull populations have declined along the coast, urban populations have been increasing. Over a thousand pairs now live in the UK's towns and cities, and Bristol is home to a large colony.”

On 11 June 2013, presenter Chris Packham made clear that although the population of gulls in urban areas was rising, total numbers were falling. He said:

“It's really good to see those gulls doing so well as some species such as the Lesser Black-backed are now amber listed, they're decreasing on the coast.”

On 12 June 2013, the reporter said:

“Despite their seeming abundance, the number of gulls living on our coast has plummeted in recent decades. The reasons why are not yet clear. But where they are still thriving is in our towns and cities.”

The Adviser considered that the programme had provided context between the rise in the population of gulls in urban areas against the overall decline of the population. She was in agreement with the findings of the Complaints Director who said in his letter dated 22 November 2013:

“The reports on the three programmes were about gulls living in urban areas and so I cannot conclude that there was a requirement to provide detailed information about the total gull population.”

---

<sup>17</sup> <http://www.rspb.org.uk/advice/gardening/unwantedvisitors/gulls/breeding.aspx>

The Adviser concluded that this point did not have a reasonable prospect of success and should not therefore be put before the Trustees.

**Point 3** - The BBC should not have referred to the contributor as an "expert".

The Adviser noted that, in his introduction, the presenter described Mr Rock as follows:

"If you want to know about urban gulls there's only one man you can go and see. Peter Rock is the leading expert on urban gulls and he's based here in Bristol. In the last 30 years Peter's caught and ringed 7,000 different birds allowing him to monitor their breeding habits."

The Adviser also noted the response that the complainant had received on this point from the Complaints Director, ECU on 22 November 2013. He said:

"I admit I am not qualified to judge the status of Mr Rock, but the expert I spoke to at the RSPB told me that, in his opinion, Mr Rock is the 'de facto authority' on urban populations of gulls in the UK and said 'He is the only one who occupies that ground as far as we are concerned'. The RSPB has no professional relationship with Mr Rock. I am therefore satisfied that it was reasonable to invite Mr Rock to contribute to the programme and to present him as an expert on urban populations of gulls."

The Adviser also noted that the Oxford English Dictionary defines an expert as "A person who is very knowledgeable about, or skilful in a particular area". She therefore concluded that there was nothing in the use of the term "expert" that implied some recognised standard of academic and/or professional qualification. She noted that Mr Rock had been studying gulls in urban areas for more than 30 years and therefore meets the criteria of the definition of expert outlined above. The Adviser concluded that this point did not have a reasonable prospect of success and should not therefore be put before the Trustees.

**Point 4** - The complainant said that Mr Rock has used the BBC on previous occasions to spread the myth that "gulls are taking over the world", frequently following it up with the words "and I'm not joking". The complainant referred to Mr Rock's contribution on Radio 4 on 15 August 2013.

The Adviser noted that during *Springwatch* broadcast on 12 June 2013 Mr Rock and the presenter were discussing the increase in gulls nesting in urban areas. Mr Rock said:

"The same story is happening all over the country, and not just here in Britain. All over the western seaboard of continental Europe, all round the Mediterranean, all round the great lakes in the US and Canada, Australia, oh you name it. Urban Gulls will take over the World."

The Senior Editorial Complaints Adviser also noted the response that the complainant had received from the Complaints Director, ECU on 22 November 2013. He said:

"I appreciate that you have also raised concerns about Mr Rock's comment that 'Urban gulls will take over the world'. I have to say I did not share your interpretation of his comment. I think it was clear he was making a light-hearted comment that was not intended to be taken seriously and so I do not agree that it was in poor taste."

She also took into consideration information available on the RSPB website which refers to the overall decline in total gull populations set against an increase in gulls in urban areas.

“The birds nesting on roofs of houses are most likely to be herring gulls, whilst lesser black-backed gulls tend to concentrate on the larger expanses of industrial or commercial buildings with flat roofs. Although numbers of roof-nesting gulls, especially lesser black-backed gulls, are still increasing, the overall population of herring gulls is plummeting, making them a red list species”<sup>18</sup>.

The Adviser considered this information was in line with the input given by Mr Rock who, as outlined in point three, is independent of the RSPB. She noted that the complainant’s reference to output on Radio 4 had not been considered by the BBC. She noted that the Complaints Framework made clear that all aspects of a complaint had to be introduced at stage 1 and that Trustees would only consider complaints once the BBC had ceased responding to them. She therefore did not consider it appropriate for Trustees to consider this aspect of the appeal.

Overall, therefore, the Adviser did not consider any aspect of 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. The complainant reiterated his dissatisfaction with the choice of Mr Rock as an expert and his view that there were inaccuracies in the programme. The complainant also set out his “own credentials as regards Gulls”, explaining he is a co-founder of a gull sanctuary charity. The complainant revisited the points of his original appeal, noting that his concerns regarding the assertion that urban and non-urban gull populations are entirely separate were not addressed.

### **The Committee’s decision**

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

The Committee noted the strength of the complainant’s views relating to certain segments within *Springwatch* broadcast between 10-12 June 2013. The Committee also noted the complainant’s interest in and knowledge about gulls.

The Committee noted the complainant’s dissatisfaction with Mr Rock being presented as “the leading expert in urban gulls” and his concerns about Mr Rock’s research.

The Committee noted that the complainant understood the programme to suggest that 24 year-old herring gulls are commonplace.

The Committee felt that to say “it’s not unusual for gulls to live for more than 20 years and some can reach 30” was not to suggest it was commonplace. The Committee felt that it would be likely to agree with the Senior Editorial Complaints Adviser that the information given about the age of gulls was consistent with information available from the RSPB.

---

<sup>18</sup> <http://www.rspb.org.uk/advice/gardening/unwantedvisitors/gulls/urbangulls.aspx>

The Committee noted the complainant's objection to the statement made by the presenter that "urban and rural gulls are two separate populations, they do not mix at all". The Committee agreed with the response from the Complaints Director, Editorial Complaints Unit, on 22 November 2013, regarding the geographic separation:

"I am unaware that any of the programmes suggested that 'Urban Gulls' were a separate subspecies. I think it was clear that all three programmes were simply drawing attention to two particular breeds of gull where some birds have moved to urban areas. In the final programme, [the presenter] attempted to explain why this was happening and interviewed Mr Rock but at no point did either man suggest that the birds were a separate species. [The Presenter] did say that 'what's fascinating is that urban and rural gulls are two separate populations, they do not mix at all' but I think the audience would understand the clear distinction between separate populations and separate species."

The Committee was content to accept the contributor's credentials, affirmed by the RSPB, as a "de facto authority" on urban populations of gulls in the UK. The Committee agreed with the Complaints Director, Editorial Complaints Unit, that it was not inappropriate to invite Mr Rock to contribute to the programmes.

The Committee felt that it would be likely to agree with the Complaints Director, Editorial Complaints Unit, that the reference to gulls "taking over the world" was a light-hearted reference to the increasing urban gull population.

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

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

## Decision of BBC Audience Services not to respond further to complaint about *Kidulthood*, BBC Two, 23 August 2013

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

### The complaint

The complainant was about the broadcast of the feature film, *Kidulthood* on BBC Two on 23 August 2013 at 11.05 pm.

The complainant had first raised his complaint with *Radio Times* in a letter dated 27 August 2013. He received no response from *Radio Times* and subsequently submitted a complaint to the Secretary of State for Education, then to the Department for Culture, Media and Sport who referred him to the BBC Trust.

The complainant first wrote to the Trust Unit on 20 November 2013 enclosing his original email to *Radio Times*, in which he made the following points:

- The language in the film was extremely vulgar
- The film appeared to treat cases of rape and sexual assault as normal and glorify the perpetrators
- The *Radio Times* film reviewer described it as "impressive", and "powerful and entertaining" – a description with which the complainant strongly disagreed.

The Trust Unit responded to the complainant on 9 December 2013 explaining that although the Trust does have a role in the BBC complaints process, this was only at the final stage when complaints were heard on appeal. The complainant was notified that his email had been passed to BBC Audience Services so that they could provide him with a response on behalf of the BBC's management.

BBC Audience Services responded to the complainant at Stage 1 on 13 December 2013 explaining that, as the programme had been broadcast on 23 August 2013, and his complaint had not been sent to the Trust until 20 November 2013, his complaint had been submitted well beyond the 30 day deadline specified in the Complaints Framework. They said they would therefore not be able to comment further on the substance of his complaint.

The complainant was informed that his views had been noted and BBC Audience Services stated:

"Your comments have still been added to our daily report so that any reference to the film in future will be informed by the feedback you have given us about it."

The complainant was not satisfied with this response and sent a follow-up complaint to BBC Audience Services on 17 December 2013. He explained that he had contacted the Secretary of State for Education on 28 August 2013 and was advised by the Ministerial and Public Communications Division on 24 September to send it to the Department for Culture, Media and Sport. He did this on 28 September, but was then told by the Broadcasting Policy Officer at the Department for Culture, Media and Sport, on 23 October 2013, to send it to the BBC Trust Unit, which he did on 20 November 2013. The Trust

Unit informed him in their communication dated 9 December 2013 that his complaint had been forwarded to Audience Services for response, in line with the BBC's complaints process.

Under the circumstances he had outlined, the complainant did not consider that his complaint should be rejected for being 'out of time'.

Audience Services responded on 18 December 2013, saying that as the complaint had been sent to the BBC beyond the 30 day deadline, they could not investigate it in detail, but they did make the following general points about the content:

- The 2006 feature film, *Kidulthood*, was not a BBC production. However, the content would have been assessed and deemed to comply with the BBC's Editorial Guidelines before being broadcast.
- The film was shown at 11.05 pm, which was well beyond the 9.00 pm watershed which signals the transition to more adult programming.
- The content of the film was signposted to viewers with a continuity announcement which preceded the broadcast, which warned viewers of "very strong language, some violence and scenes of a sexual nature".

BBC Audience Services also explained that *Radio Times* is a publication which is entirely independent of the BBC and any concerns about its contents such as film reviews should be raised directly with *Radio Times*.

The complainant wrote to BBC Audience Services again on 19 December 2013 expressing his dissatisfaction. He considered that it was justifiable in the circumstances he had described to expect his complaint to be investigated outside the stipulated time limit and escalated in the usual way under the BBC's complaints framework.

He made the following points with regard to the substance of his complaint:

- It was irrelevant to his complaint that *Kidulthood* was not a BBC produced programme.
- It only added weight to his complaint that the film's content had been deemed to comply with the BBC's Editorial Guidelines.
- It was naïve for the BBC to think that its well-established policy regarding the 9.00 p.m. watershed did anything to prevent the viewing of adult material by children and young teenagers, who had the means of viewing in their bedrooms.
- The continuity announcement designed as a 'warning' to people who did not wish to see such material would also act as an invitation to inquisitive young people, as well as some adults interested in pornography and paedophilia.

BBC Audience Services sent a final response on 13 January 2014, acknowledging the complainant's points but stating that they stood by their original decision not to investigate the complaint further. They said they could not offer the complainant the escalation usually available under the BBC's complaints framework because the complaint had been submitted out of time.

## Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 19 January 2014 as he was not satisfied with the response received from BBC Audience Services. The complainant appealed on the substance of his complaint as described in his earlier correspondence, in which he stated that the broadcast was harmful...

“..to young children viewing the film *Kidulthood* which portrayed the unacceptable sexual behaviour of teenagers in London suburban schools, and was described by the reviewer in the *Radio Times* as ‘impressive’ and ‘powerful and entertaining’.”

He also referred to his previous correspondence which detailed his reasoning as to why his complaint should be considered even though it had been rejected for being submitted ‘out of time’.

## The Trust Unit’s decision

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

Although the complainant had appealed on the basis of the substance of his complaint, the Adviser decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant had raised concerns which could engage the BBC’s Editorial Guidelines on Harm and Offence.

The Adviser noted that, despite the complaint being submitted to the BBC so long after the film’s broadcast, BBC Audience Services had given general consideration to the complaint against the guidelines on Harm and Offence in their response of 18 December 2013. They had informed the complainant that the film would have been assessed as complying with the BBC’s Editorial Guidelines; that it was shown well after the watershed; and that it was preceded with a warning announcement.

The Adviser acknowledged the fact that the complainant did not feel that this response satisfactorily addressed his concerns. However, she considered that Trustees would be likely to conclude that no evidence had been presented to suggest that the film’s content breached Guidelines on Harm and Offence.

She also noted that the Complaints Framework clearly established that complaints should be made within thirty working days of broadcast and considered that that requirement existed with good reason – it allowed complaints to be answered efficiently and it became increasingly difficult to answer complaints properly as time passed. She noted that the Complaints Framework allowed for complaints to be taken “exceptionally” outside the thirty working day time limit, but did not consider that such exceptional circumstances existed in this case that it warranted the complaint being considered.

She considered Trustees would be likely to conclude that the complainant had received a reasoned and reasonable response to his concerns from Audience Services and they had acted appropriately in deciding to close down the correspondence as the complaint had been received out of time. It followed from that that she considered the complaint did

not have a reasonable prospect of success and she did not propose to put it before Trustees.

Additionally, the Adviser acknowledged the complainant's view that the *Radio Times* film review had been misleading in terms of signposting the film's content, but agreed with Audience Services that this was not a matter that the BBC could address as the *Radio Times* was not part of the BBC. She acknowledged that the complainant had sought to raise his concerns initially with the *Radio Times* but had not received a response from them and she accepted that this must have been frustrating, but it was not appropriate for Trustees to consider this point of appeal.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He outlined again the actions he had taken to seek an answer to his complaint before writing to the BBC and reiterated his view that the BBC should use the discretion provided in its Complaints Framework for investigating complaints not received within the normal period of 30 days. He was concerned about harm to young children by portraying the sexual behaviour of teenagers in a London school.

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

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

The Committee noted that the complainant had contacted the BBC almost three months after the broadcast which was the subject of his complaint. The Committee acknowledged the complainant had provided an explanation for this.

The Committee noted that, despite the complaint being submitted to the BBC so long after the film's broadcast, BBC Audience Services had given general consideration to the complaint.

Although acknowledging the complainant's frustration, the Committee agreed that the 30 day requirement was included in the BBC's Complaints Framework with good reason – it allowed complaints to be answered efficiently and it became increasingly difficult to answer complaints properly as time passed. Although the Complaints Framework allowed for complaints to be taken "exceptionally" outside the thirty working day time limit, the Committee did not consider that such exceptional circumstances existed in this case that it warranted the complaint being considered.

The Committee considered that it would be likely to conclude that the complainant had received a reasoned and reasonable response to his concerns from BBC Audience Services and they had acted appropriately in deciding to close down the correspondence as the complaint had been received out of time. It followed from this that the complaint did not have a reasonable prospect of success.

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

## Decision of BBC Audience Services not to respond further to complaint about 10 interpretations of who started World War I, BBC News Online

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

### The complaint

The subject of the complaint was a report on BBC News Online: *World War One - 10 Interpretations of who started WW1* ([www.bbc.co.uk/news/magazine-26048324](http://www.bbc.co.uk/news/magazine-26048324)). The complainant first contacted BBC News Online about this article on 13 February 2014. He offered his own interpretation, stating that the guilt lay with Serbia, France, Russia and England. He said their motives were:

- Serbia wanted a greater Serbia
- France wanted to gain Alsace and Lorraine
- Russia wanted Constantinople
- Britain wanted to remain the unchecked workshop of the world and financial and colonial centre

He alleged the BBC was biased in its selection of opinions and sources and believed it should apologise for this and rewrite the article with truly wide ranging and scholarly sources.

He said that nine out of ten of the BBC's sources for the article blamed Germany and all the sources had ignored the overwhelming evidence of the involvement of Serbia, France, Russia and England. He said there were other respected historians who did lay the blame squarely on the English and their allies, but the BBC had ignored their views.

BBC News Online replied to the complainant on 14 February 2014, stating:

"The piece in question presented a wide range of opinions on the subject of the start of the war from a variety of respected historians. The second opinion was from Sir Richard J Evans who laid the blame at Serbia's door."

The complainant made a follow-up complaint on 14 February, reiterating his concerns.

BBC News Online responded again on 17 February stating that they had nothing further to add to their previous response and did not consider that the points raised by the complainant suggested a possible breach of Editorial Guidelines.

### Appeal to the BBC Trust

On 18 February 2014 the complainant appealed to the Trust against the decision by BBC News Online not to engage in further correspondence on his complaint.

He reiterated his previously stated concerns that the BBC "was fraudulent in portraying its survey of 10 opinions as being either scholarly or wide ranging".

In support of his complaint he cited *The German Wars* and *The Pity of It All*, as two works by historians which he believed contained an “honest” analysis of the causes of World War One.

### **The Trust Unit’s decision**

The Trust Unit’s Senior Editorial Complaints Adviser (the Adviser) replied to the complainant, explaining she had carefully read the correspondence that had passed between the complainant and the BBC and the online article in question. She acknowledged the strength of the complainant’s feelings about this matter.

The complainant had appealed on the substance of his complaint which was that the BBC had defended the pervasive myths of the past in its article suggesting 10 possible interpretations on who started World War One. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at stage 1 and that the complaint had not gone to stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant had raised concerns that the output was not impartial and that the sections of the BBC’s Editorial Guidelines which were relevant to this case were those relating to Impartiality.

The Adviser noted that the article offered several different perspectives on the countries considered responsible for playing a major part in the start of World War One and that the historians featured in the article held one or more of the following countries to blame according to their individual views: Austria-Hungary, Britain, France, Germany, Russia and Serbia. She noted that two of the ten historians, Sean McMeekin and Gerhard Hirschfeld believed that blame lay with Austria-Hungary, Germany, Russia, France, Britain and Serbia.

She also noted that Sean McMeekin stated in his contribution to the article:

“The resulting war, with France and Britain backing Serbia and Russia against two Central Powers, was Russia’s desired outcome, not Germany’s. Still, none of the powers can escape blame. All five Great Power belligerents, along with Serbia, unleashed Armageddon.”

The Adviser noted that BBC Audience Services had stated the article “presented a wide range of opinions on the subject of the start of the war” and she agreed with that analysis. She also noted the article’s headline, “10 interpretations of who started WW1”, would have led readers to understand these were individual opinions rather than statements by the BBC on the start of the war.

She considered that the report was intended to give a flavour of the subject in the war’s centenary year and was not intended to give detailed scholarly analysis of the causes of World War One, which have been the subject of a vast amount of historical debate over the last one hundred years.

The Adviser acknowledged that BBC News Online had not replied to the complaint in any detail but she felt that it was reasonable for BBC News Online not to explore the causes of World War One in any depth in the context of a complaint which disputed the choice of contributors to a comparatively short article with a general readership. She noted that the article made the point that the causes of World War One were still contested a hundred

years on from the start of the war, and it provided a condensed general introduction to a subject which many people might not be familiar with in the 21<sup>st</sup> century.

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 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 did not apply in this case. She considered that decisions relating to the choice of contributors to BBC output fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser considered that Trustees would be likely to conclude that BBC Audience Services had provided a reasoned and reasonable response to the complainant's concerns and had acted appropriately in declining to enter into further correspondence on this matter. It followed from this that she did not consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He outlined again his concerns regarding the article and the fact that he did not believe that the opinions expressed in the article had been wide-ranging enough or had taken into account the appropriate evidence.

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

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

The Committee noted that BBC Audience Services had explained to the complainant that the article "presented a wide range of opinions on the subject of the start of the war". The Committee agreed with the Adviser that the report was intended to give a flavour of the subject and was not intended to give detailed scholarly analysis of the causes of World War One. The Committee noted that the article made the point that the causes of World War One were still contested a hundred years on from the start of the war.

The Committee noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

The Committee agreed with the Adviser that BBC Audience Services had provided a reasoned and reasonable response to the complainant's concerns and had acted appropriately in declining to enter into further correspondence on this matter. The Committee therefore did not consider the appeal had a reasonable prospect of success.

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

# Handling of complaints at Stage 1

## Summary of finding

### **Decisions by BBC Audience Services not to correspond further regarding complaints about Panorama: North Korea Undercover, BBC One, 15 April 2013**

Four complainants appealed to the BBC Trust after BBC Audience Services declined to correspond further regarding their original complaints. Audience Services had told the complainants that, having posted on their website a general response to the issues raised by the Panorama programme, the BBC had nothing further to add.

The Committee decided as follows:

- the Committee disagreed with the BBC's decision to stop its correspondence with the four complainants because the Committee found that:
  - the four complaints raised editorial concerns that were similar or identical to issues raised by two existing appeals that had reached Stage 3 of the Editorial Complaints and Appeals Procedure and would be considered by the Committee in due course<sup>19</sup>, and
  - Audience Services had given no reasons for its decision
- however, all of the substantive issues raised by the four complaints were already under investigation by the Trust Unit in the context of the two existing appeals
- it would be neither proportionate nor cost-effective for the Committee to direct the BBC Executive to investigate the four complaints in full, since the Executive had already provided comprehensive responses in relation to the programme in question in connection with the two existing appeals
- therefore, these four complaints would not be considered substantively by the Committee, although the Committee will be aware of them when considering the existing appeals, and the complainants would be provided with a copy of the Committee's finding in respect of the existing appeals in due course
- the Trust remains open to considering any aspects of the present substantive complaints not dealt with by the finding on the existing appeals
- the Committee expressed no view on the substantive issues raised by these or the two existing appeals.

The appeals were therefore upheld, as the Committee disagreed with the BBC's decision to stop its correspondence with these complainants.

---

<sup>19</sup> The existing appeals have now been considered by the Committee and its finding in relation to them is available at: [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2014/panorama\\_north\\_korea.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2014/panorama_north_korea.pdf)

## Finding in full

### Background

Four complainants appealed to the BBC Trust after Audience Services declined to correspond further regarding their original complaints. Audience Services had told the complainants that, having posted on their website a general response to the issues raised by the Panorama programme, the BBC had nothing further to add.

The complaints related to the programme *Panorama: North Korea Undercover*, broadcast on 15 April 2013, which involved reporter John Sweeney, his wife Tomiko Newson, who was also the trip organiser and who also freelanced for the BBC, and a cameraman accompanying a group of students from the London School of Economics (LSE) on a trip to North Korea.

### Appeals to the Trust

In summary, two of the complainants questioned whether the LSE students gave informed consent to participate in the programme and raised concerns that the BBC put the students' lives at risk. One of the complainants also argued that the BBC had attempted to cover up what had happened. The other complainant also raised issues regarding the BBC's risk assessment procedures and professional standards.

Another complainant complained about John Sweeney posing as a member of LSE's staff and claiming to hold a PhD, in order to gain access to North Korea to make the report. That complainant also raised issues relating to the public interest in broadcasting the programme, and the extent to which the BBC misled its audiences in this context.

A fourth complainant questioned whether the BBC Director-General should have intervened to prevent the *Panorama* programme being broadcast, arguing that it put students at risk and prejudiced LSE's position. (The complainant also argued that the Director-General should have intervened to prevent the broadcast of another item of BBC output, not related to the *Panorama: North Korea Undercover* broadcast. This Committee noted that the Trust Unit were handling this element of the complaint separately and therefore did not consider it.)

### The Committee's decision

The Committee was provided with:

- the complainants' appeals to the Trust and their attachments (and the full correspondence was available to the Committee upon request)
- paperwork regarding two other complaints that had already been responded to by the Executive in relation to *Panorama: North Korea Undercover* and which were subsequently appealed to the Trust in accordance with Stage 3 of the Editorial Complaints and Appeals Procedure (the "**Existing Appeals**").<sup>20</sup>

### Appeals against the decision of BBC Audience Services not to correspond further

---

<sup>20</sup> The Existing Appeals have now been considered by the Committee and its finding in relation to them is available at: [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2014/panorama\\_north\\_korea.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2014/panorama_north_korea.pdf).

The Committee noted that, in respect of each of the four complaints on appeal to the Trust, Audience Services had stated in support of their decision not to respond further: "We feel that we responded as fully as we can in this reply. Given the nature of your complaint, we do not have more to add."

The Committee considered that it was not clear from the correspondence on what basis Audience Services decided to stop the correspondence.

The Committee understood that Audience Services took the view that the four complaints raised issues that were appropriate for a "first party complaint" (i.e. relating to fairness towards, or a breach of the privacy of, a particular person – the "first party"), but that the complainants were not "first parties". Audience Services therefore concluded that these complaints fell outside the complaints procedure. The Committee recognises that this is one of a range of grounds on which Audience Services can appropriately decline to correspond further with complainants.<sup>21</sup>

The Committee nevertheless noted that that the four complaints raised issues of editorial concern similar or identical to those raised in the Existing Appeals, and by the time Audience Services replied, the Trust had already decided to accept the Existing Appeals for full consideration at Stage 3. The Committee considered that this could raise a question of consistency of approach, but accepted that although the Executive had been informed of this decision, Audience Services had not been aware of it. The Committee also noted that, in considering these issues in the Existing Appeals at Stage 2, the Executive had not regarded them as first party complaints issues.

The Committee noted that this was a very unusual set of circumstances. They considered it relevant that the issues in the four complaints appeals might well have been accepted by the Trust from third parties under the general complaints and appeals procedure, in that they raised a significant matter of general importance. This made the decision for BBC Audience Services complex.

Having considered the evidence before it, including Audience Services' response to the four complainants and the grounds on which the Executive can refuse to investigate complaints and/or decline to correspond further with complainants, the Committee concluded, in relation to each of the appeals, that:

- Audience Services' response to the four complainants failed to give any reasons for its decision to stop correspondence with them (and so failed to demonstrate which, if any, of the grounds for doing so had been made out); and
- the matters raised by the four complaints raised similar or identical issues of editorial concern that had been raised in the Existing Appeals (which had proceeded to Stage 3 of the Editorial Complaints and Appeals Procedure).

Accordingly, in relation to each of the appeals, the Committee found that it did not agree with Audience Services' decision not to correspond further with the complainants in respect of their complaints about the programme. Therefore, the Committee upheld all four appeals on this basis.

---

<sup>21</sup> e.g. if the complaint fails to raise an issue of breach of the Editorial Guidelines; is trivial, misconceived, hypothetical, repetitious or otherwise vexatious; concerned content pre-broadcast; is out of time; or makes new points not raised at Stage 1a.

In light of this finding, the Committee noted that it is open to it under the Editorial Complaints and Appeals Procedure to direct the Executive to investigate the complainants' complaints in full.<sup>22</sup> However, the Committee also noted the Executive has already provided comprehensive responses in relation to the programme in question in respect of the Existing Appeals. The Committee considered each of the appeals and was satisfied that the substance of the issues raised by them had already been addressed by the Executive in the context of the Existing Appeals.

The Committee therefore considered that it would not be proportionate or cost-effective to ask the Executive to provide a further response in respect of the present complaints and that it would be appropriate in the circumstances for the Committee to proceed to consider them as substantive appeals to the Trust under the Editorial Complaints and Appeals Procedure.

The Committee was satisfied that it would be appropriate, proportionate and cost-effective to adopt this approach and that it was consistent with the BBC Trust's role under the BBC Charter in upholding the interests of licence-fee payers.<sup>23</sup>

### **Finding: Appeals against the closedown of these complaints at Stage 1b upheld.**

#### Next Steps

The Committee noted that, under the Editorial Complaints and Appeals Procedure, the next question was whether the substantive complaints underlying the appeals (the "**Substantive Complaints**") should proceed for consideration by the Committee.

The Committee noted the relevant sections of the Editorial Complaints and Appeals Procedure, which provide:

5.8 The Trust is not obliged to consider every appeal brought to it, and is the final arbiter if any question arises as to whether an appeal is for the Trust to determine or not.

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

The Committee noted that the Existing Complaints were already being investigated at Stage 3. It agreed that each of the Substantive Complaints raised matters of substance. However, it also took account of its finding that they did not raise any issues that were not also raised by the Existing Appeals, and had regard to the duty of the BBC Trust

---

<sup>22</sup> Editorial Complaints and Appeals Procedure, para. 1.10.

<sup>23</sup> BBC Charter, Art. 22.

under the BBC Charter to uphold the interests of licence-fee payers<sup>24</sup> and the following section of the Editorial Complaints and Appeals Procedure:

5.20 The Charter and Agreement give the Trust a range of options in deciding the approach to take in investigating and deciding appeals. The nature of the appeals that come before the Trust varies widely and different appeals call for different approaches. [...] It is up to the Trust to decide which approach is appropriate, proportionate and cost-effective in relation to your appeal, and in making that decision it will take account of all relevant circumstances, including its role as the final arbiter in appropriate cases, its duty to exercise rigorous stewardship of public money, and its duty to hold the BBC Executive to account for the BBC's compliance with applicable regulatory requirements and the general law.

The Committee therefore noted that it had discretion under the Editorial Complaints and Appeals Procedure to determine which approach to take when investigating and deciding appeals. In the present case, the Committee considered that it would not be appropriate, proportionate or cost-effective for the Committee to separately investigate and decide upon each of the Substantive Complaints in addition to the Existing Appeals.

The Committee therefore determined that the Substantive Complaints would not proceed for consideration. The Committee would, however, be aware of them when considering the Existing Appeals, if (and the Committee expressed no view on this question) it decides that the issues are admissible under the Editorial Complaints and Appeals Procedure. The Committee also agreed to provide the present complainants with a copy of the Committee's finding in respect of the Existing Appeals in due course. The Trust would remain open to considering any aspects of the Substantive Complaints not dealt with by the finding on the Existing Appeals.

In the circumstances, the Committee was satisfied that it would be appropriate, proportionate and cost-effective to adopt this approach and that it was consistent with the BBC Trust's role under the BBC Charter in upholding the interests of licence-fee payers.

---

<sup>24</sup> BBC Charter, Art. 22.

# Best Practice and Editorial Control in Investigative Journalism

## Introduction

On 14 December 2012 the Editorial Standards Committee of the Trust (“the Committee”) considered a report from the BBC Executive which identified the editorial failures which had occurred in an edition of *Newsnight* broadcast on 2 November 2012. The programme had included a report into child sexual abuse in North Wales care homes in the 1970s and 1980s (the “Newsnight Report”). In the Newsnight Report, it was claimed that two victims had been abused by “a leading Conservative politician from the Thatcher years”. The alleged perpetrator was not identified. By the time the Newsnight Report was broadcast, there had been 12 hours of speculation online regarding the identity of the alleged perpetrator. We now know that the man anonymously alleged to be the perpetrator in the Newsnight Report was Lord McAlpine. The following week, on 9 November 2012, *Newsnight* broadcast an apology and also included a clip of an interview that had been recorded with the abuse victim earlier that day, in which he offered his “humble apologies to Lord McAlpine” for wrongly identifying him as the abuser.

The Committee was aware that Ofcom was considering a complaint about the programme at the same time as its consideration. As part of its decision, the Committee included the following statement:

“The Trustees will request a report from the Executive in 2013 on the steps that will be taken to ensure the BBC learns from these events after Ofcom has published its finding. The Executive will [also] be asked to identify where best practice and experience in investigation and editorial control exists in the BBC and share those lessons across the BBC. This report will be published.”

Ofcom’s finding on the matter was published on 23 October 2013. The Committee has subsequently received from the Executive the following report on best practice and editorial control in investigative journalism.

## Response from BBC News Executive to the Findings of the Editorial Standards Committee of the BBC Trust into *Newsnight*, 2 November 2012

BBC News has read the findings of the Editorial Standards Committee into *Newsnight* of 2 November 2012 with interest. It agrees entirely with the Trust that this was a serious breach of BBC Guidelines which brought BBC journalism into disrepute.

The consequences were correspondingly profound, and their impact has already made it obvious to editors that the evidence on which they are making their judgments must be as robust as their decision making. Accordingly, we do not think that a list of future actions need be a long one. There is no legislating for common sense.

But it is important to learn lessons for the future.

The best practice and experience in investigation and editorial control lies among senior editors, supported by their understanding of BBC editorial guidelines. That will continue to be the case but we have taken steps to strengthen our editorial team with the creation of, and appointment to, a new role, Head of Television Current Affairs.

We have also appointed a new Editor of *Newsnight*, Ian Katz; a new Head of Programmes, Ceri Thomas [currently editing *Panorama*]; and a News Editor, who drives stories and checks on investigative journalism on a daily basis across TV, radio and online. We have also appointed a Development Executive on *Panorama* whose job will be to improve the thoroughness of its research and the editorial quality of its commissions.

We have also introduced a greater level of senior editorial supervision. The Director of News, or Deputy Director, is now informed directly of all new commissions by *Panorama*. We have instructed *Panorama* to institute a "commissioning moment" – the time at which a clear decision is taken to proceed or not with an investigation, so that the status of any project is clear to the Director of News.

Editors have also been asked to operate a 'no surprises' rule. They must inform the Director of News directly if there are any issues of concern around a programme, over and above logging them on the managed risk programmes list.

On a daily basis, the Director of News or the Deputy Director now chairs the 9am news conference and attends the 3.15pm and 6.40pm meetings. The latter is a new meeting which has been introduced to ensure that information on stories is shared more widely. It is attended by the TV Ten team, as well as World News, Today and *Newsnight*.

To ensure that information is properly disseminated across the division, we have introduced a weekly meeting of current affairs editors – editors of *Newsnight*, *Panorama*, *Today*, Radio current affairs, and Television current affairs - attended by the Director of News and the News Editor. As a result, we are sharing information more widely and, where appropriate, commissioning across both programmes and platforms.

We have also established a weekly meeting of senior editors and correspondents to discuss stories and story ideas chaired by the News Editor and attended by the Director of News. And we are introducing a 'News Review' meeting so that we can regularly check on the quality and fairness of our reporting and the calibre of our investigative journalism.

We will not shy away from investigative journalism in the public interest. Editors have been reminded by their heads of department that sources must be properly interrogated and tested before any item is aired, the more so when reports contain serious allegations.

Similarly, they have been reminded that any future projects involving outside journalistic organisations or reporters will be on the basis that their work is subjected to rigorous editorial scrutiny to ensure that it meets BBC standards.

We will ensure that the expertise of the relevant BBC Nations or regions is consulted before controversial items from their areas are aired.

And we have reminded our journalists that the nature of any report or investigation, and the risks surrounding them, may alter as a result of commentary in the social media and that editorial decisions may need to be reviewed in the light of changing circumstances up until the point of broadcast.