

Finding of the Editorial Standards Committee

Panorama: North Korea Undercover, BBC1, 15 April 2013, 8.30pm

Background

1. On 15 April 2013, Panorama: North Korea Undercover (the "Programme"), a programme in the weekly current affairs series Panorama, was broadcast on BBC1. In order to film it, in the words of the BBC website's synopsis, "*Panorama reporter John Sweeney spent eight days undercover inside the most rigidly controlled nation on Earth*". In order to gain entry into North Korea, John Sweeney and a Panorama cameraman/producer joined a group of current or former LSE students and post graduates led by a third member of the Panorama team, Tomiko Newson, and pretended to be part of their trip. They accompanied the students as they travelled around the country on an organised tour given by North Korean guides, and they filmed with conventional tourist cameras.
2. Mr X and the London School of Economics and Political Science (the "LSE") (together, the "Complainants") complained to the BBC and their complaints were consolidated into one Appeal (the "Appeal"). The central questions in the Appeal were whether student X (Mr X's daughter, a post graduate student on the North Korean trip on whose behalf Mr X complained) and the LSE were treated fairly by the BBC in the organisation of the trip and whether their privacy was infringed. There were also issues concerning the accuracy and impartiality of statements made by BBC Executives about the programme after it aired, and concerning whether the trip organiser and tour leader had a conflict of interest because she was employed by the BBC.

Executive Summary of the Committee's Decision

3. The Editorial Standards Committee (the "Committee") considered the Appeal and the evidence gathered as part of the Editorial Adviser's investigation. The Committee considered whether the actions of the BBC met the values and standards set out in the BBC's Editorial Guidelines (the "Guidelines"). In summary, the Committee decided that:
 - (a) there was a strong public interest in the Programme, particularly in light of the circumstances surrounding North Korea's nuclear testing in late 2012 and early 2013;
 - (b) the main risk created by the Programme was in the gathering, rather than in the broadcast, of material by the BBC;
 - (c) the evidence showed that the BBC was not reckless and spent considerable time evaluating the risks created by its presence on the trip to North Korea. There were numerous meetings and iterations of the paperwork. The correct referral procedures and processes were followed;
 - (d) however, the BBC failed to consider a number of important issues and risks and/or failed to deal with them appropriately. In particular, the provision of information to the students who took part in the trip to North Korea was insufficient and inadequate and therefore student X did not possess the knowledge that was necessary for her to give informed consent;

- (e) the use of the LSE's address details on the North Korea visa applications was inappropriate and this, combined with a number of other factors (which are explained in detail below) risked linking the LSE with the trip and resulted in unfair treatment to the LSE.
 - (f) from the moment the BBC had become involved in the trip to North Korea, Tomiko Newson (who was the trip organiser and tour leader) had a conflict of interest which was further compounded when she became employed by the BBC, and that the BBC should have ensured that someone independent of it was there to lead the trip.
4. For the reasons set out above, the Committee found that a number of Guidelines had been breached in certain respects, particularly those relating to Fairness, Contributors and Consent and Conflicts of Interest.

The Complaint

Background to Mr X's complaint

Stage One of the BBC's complaints process: pre broadcast correspondence regarding Mr X's complaint to the BBC Executive

Mr X's Letter of 2 April 2013

5. Mr X wrote to the Director General on 2 April 2013, shortly after his daughter returned from the trip to North Korea and thirteen days before the Programme was broadcast. The complaint focused on the BBC's alleged failure to obtain informed consent from the students who travelled to North Korea and the risk that Mr X considered had been caused to them and the guides as a result of the BBC's deception. Mr X referred to eight fairness and privacy Guidelines in his letter¹. He also attached a letter from student X, asking for footage of her and photos and video taken by her not to be used in the Programme, and raising concerns about the possible harm caused to the North Korean guides who accompanied the group.

The BBC's Response of 4 April 2013

6. Fran Unsworth, Acting Director of News replied on 4 April 2013, attaching a detailed response by Clive Edwards, the Executive Editor of TV and Current Affairs. The Executive Editor of TV and Current Affairs promised that student X would not appear in the Programme in any recognisable way, but said that the deception used to film the Programme was justified by the public interest and proportionate.

Mr X's Letter of 5 April 2013

7. Mr X was dissatisfied by the BBC's response and wrote again to the Director General on 5 April 2013 asking him to satisfy himself before broadcast of the Programme "*that the BBC behaved properly in approving the deception of these LSE students*".
8. Mr X reiterated that student X had not provided informed consent, because she had not known about various facts including: the fact that three journalists were

¹ 6.4.1, 6.4.17, 6.4.23, 6.4.31, 6.4.33, 6.4.34, 7.3.1, 7.3.6 (all of which are considered in the findings section below).

travelling instead of one, the journalists were television journalists rather than print journalists and that the BBC was involved. Mr X also complained about the risk posed to student X and the other students as a result of the trip. He queried whether the deception of the students could be justified and repeated student X's request for footage of her and photos and videos taken by her not to be used in the Programme.

Stage Two of the BBC's complaints process: post broadcast correspondence regarding Mr X's complaint to the BBC Executive

Mr X's Letter of 25 April 2013

9. On 25 April 2013 (after the broadcast of the Programme), Mr X wrote once more to the Director General repeating his complaint on his daughter's behalf that the BBC had failed to obtain informed consent from the students in making the Programme and that the BBC's process was flawed.

10. Mr X raised a further issue, which was that senior BBC Executives had made numerous public statements after the Programme was broadcast that were either untrue or deceptive and designed to mislead the public as to the true nature of the BBC's involvement. These were that:

(a) The trip would have happened without BBC involvement

Mr X said this could not have been the case as the trip was only advertised to LSE students on 30 January and Tomiko Newson subsequently met with at least two interested participants on 1 February and told them that a journalist would be joining the group. If Tomiko Sweeney was already aware of this on 1 February, it would mean that the BBC "piggy-backed" on the trip in less than 48 hours.

(b) The BBC became involved in the trip after the students had signed up

Mr X said this could not be the case - the Executive Editor of TV and Current Affairs had said that BBC advice had been sought and given before student X first met with Tomiko Newson on 1 February. This being the case, according to Mr X it was impossible for student X to have signed up before the BBC was involved.

(c) The BBC briefed the students

Mr X said the repeated use of the word "we" to give the impression that the BBC was involved in the briefings could not be true as it was acknowledged by the BBC (in the Guardian on 17 April) that Tomiko Newson did not become a BBC employee until sometime in March, after both London briefings had occurred.

(d) The students paid for the trip after receiving two briefings

Mr X said student X paid for the trip on 9 February, before her second briefing on 12 February.

(e) The students supported John Sweeney's deception - John Sweeney was reported to have said that "All the LSE students, all of them needed to say one

word in North Korea – 'BBC' - and I would have been off to the gulag. None of them did. The LSE students who went on the trip protected me."

Mr X said this was a misstatement because student X was very unhappy about being complicit in the BBC's deception.

11. Mr X referred to the Guidelines on trust and asked the Director General to undertake an appropriate investigation to establish the facts and take appropriate action if senior BBC executives were found to have misled the public.

Mr X's Letter of 1st May 2013

12. Mr X wrote to the Chairman of the BBC Trust on 1 May. As Mr X's complaint had not yet been considered at stages 1 and 2, the Chairman passed the letter to the BBC Executive for consideration. The letter set out Mr X's complaint as follows:
 - (a) The BBC failed to obtain informed consent;
 - (b) The risk posed to the students was unacceptable;
 - (c) There was not sufficient justification for putting student lives at risk;
 - (d) Harm was probably caused to the guides, students and academic research as a result of the broadcast of the Programme;
 - (e) There had been misstatement and deception by senior BBC Executives in defence of the BBC's decisions; and
 - (f) The BBC did not act impartially.
13. Mr X also implied in this letter that the BBC's procedures had not been properly followed and that student X's privacy had been breached.

The BBC's Response of 28 May 2013

14. On 28 May 2013, the Director General responded to Mr X's letters of post-broadcast complaint. He explained that given the particular circumstances of the case and the pre-transmission correspondence, his letter was to be regarded as the BBC's stage 2 response to the complaint. The letter enclosed an additional response from Ceri Thomas, Head of Programmes, BBC News, in answer to the specific issues raised.
15. The Director General said that the public interest in broadcasting the Programme was very strong and that all the students were properly informed about the risks of the trip. He said that the trip had been planned long before the BBC had any formal involvement in it and there was no reason to suppose it would not have gone ahead if the BBC had pulled out. The Director General said he did not consider that there was a direct conflict of interest as a consequence of the relationship between John Sweeney and Tomiko Newson.
16. The Head of Programmes, BBC News, said in his letter that what the participants had been told about the trip was central to the BBC's planning and that the purpose of having a meeting with the students on 12 February 2013 was to brief them on risks of going to North Korea with a journalist, following advice from BBC Editorial Policy. He said that a judgment had had to be made about the level of information

which was sufficient for the students to be properly informed, set against a level of information which would result in the least possible risk to participants. He said that the students had been told about the potential consequences of the trip: risk of arrest, detention and of being unable to return to North Korea. These consequences were not judged to be substantively different whether the trip was accompanied by "a journalist" or the Panorama team. The Head of Programmes, BBC News, said that the BBC High Risk Team, working with Panorama, had conducted a thorough examination of the likely potential risks and he did not accept that the presence of the BBC team put the lives of the rest of the group in danger.

17. The Head of Programmes, BBC News, said that the students had been given more information about the Panorama cameraman/producer in Beijing because there was a certain amount of joking that he was a spy and it would have been unhelpful, and potentially dangerous, for such comments to continue in North Korea. That disclosure to the students was made in reaction to a developing situation on the ground.
18. The Head of Programmes, BBC News, said student X had not appeared concerned about what the team were doing in North Korea and had attempted to help them. He said that John Sweeney had made an off the cuff suggestion that she might be able to have a credit on the film or a small fee for her pictures. However, he said no further mention was made of it and no money ever changed hands.
19. The Head of Programmes, BBC News, did not accept that any BBC Executives deliberately set out to deceive or mislead licence fee payers or the general public and explained the BBC Executive's understanding of the facts.

Stage Three of the BBC's complaints process: Appeal to the Trust

Mr X's Letter of 21 June 2013

20. Mr X remained dissatisfied with these responses and on 21 June 2013 wrote to the Chairman of the BBC Trust. He requested that his letter of 21 June 2013 should be accepted with his letter of 1 May 2013 (see above) as his appeal to the Trust.
21. Mr X disputed what had been said to him in the BBC's responses of 4 April 2013 and 28 May 2013 and set out a complaint in similar terms to his previous letters. This can be summarised as follows:
 - (a) the BBC did not obtain informed consent from the students to take part in the Programme, in breach of its own Guidelines;
 - (b) the risk posed to the students by being associated with the Programme was unacceptable;
 - (c) the BBC's right to inform the public was not sufficient justification for the deception of the students and associated risk;
 - (d) the processes followed by the BBC were flawed (including the decision to give the students further information in Beijing, increasing the risk);
 - (e) the broadcast caused harm to others (particularly to the guides);
 - (f) the BBC has made misstatements and deceived people since the broadcast.

22. Although Mr X did not specifically state that student X's privacy had been breached, he referred to her as a "private individual" and to the students' rights to "enjoy a private trip". Mr X also complained that in his response, the Director General seemed prepared to deceive participants in "future private student trips by imbedding BBC journalists".

Mr X's Letter of 1 July 2013

23. Following sight of the responses sent by the BBC to the LSE (see below), Mr X wrote again to the Chairman of the BBC Trust on 1 July 2013, saying he had become aware that the BBC had contributed to the cost of the trip. He complained about the fact that he had not previously been given this information, saying it "highlights the continuing and deep-rooted deception by senior BBC executives" and asked for this additional matter to be considered in the Trust's investigation.

The BBC Trust's Response of 2 July 2013

24. On 2 July 2013 the Trust Unit informed Mr X that the Trust would consider his complaint.

Background to the LSE's complaint

Stage One of the BBC's complaints process: pre broadcast correspondence regarding the LSE's complaint to the BBC Executive

The LSE's Letter of 10 April 2013

25. The LSE wrote to the Chairman of the BBC Trust on 10 April 2013, five days before the Programme was due to be broadcast. In that letter the LSE raised "serious concerns about the conduct of the BBC in respect of a visit to North Korea which took place from 23-30 March 2013 in the name of the Grimshaw Club, a student society at LSE, without the knowledge of the School."
26. The main issues complained about in the letter were that:
- (a) the informed consent of the LSE students was not sought because they were deceived;
 - (b) the risk posed to the students was too high;
 - (c) the deception using the LSE was not acceptable;
 - (d) harm was caused to the LSE.

The BBC Trust's Response of 11 April 2013

27. The Chairman of the BBC Trust replied on 11 April 2013 explaining that as the Complaint raised editorial and/or operational issues it was being passed to the Director General to provide BBC management with an opportunity to respond.

The BBC's Response of 13 April 2013

28. The Director General responded to the complaint on 13 April 2013 stating that while it was recognised "...that a programme of this sort involves some difficult judgements, editorially, practically and ethically...the public interest in broadcasting the programme is very strong indeed".

29. The Director General stated that the students were all over 18 and able to give informed consent and the BBC's view was that "*...the information given to them was sufficient to enable them to reach an informed decision.*"
30. The Director General confirmed the BBC's intention to broadcast the Programme. However, as three of the students had indicated that they did not wish to be identified, the BBC would "*take appropriate steps*" to mask the identity of those students. He said that the BBC did not intend to make any reference to the LSE in the Programme.

Stage Two of the BBC's complaints process: post broadcast correspondence regarding Stage Two of the LSE's complaint to the BBC Executive

The LSE's letter of 19 April 2013

31. The LSE was dissatisfied with the BBC's response and wrote again to the Chairman of the BBC Trust on 19 April after the broadcast of the programme. The letter complained about "*...the public defence of the BBC's actions made by John Sweeney, the reporter concerned, and Ceri Thomas, Head of Programmes for BBC news.*"
32. The LSE's specific complaints now were that:
 - (a) Contrary to statements made by BBC employees, it had not been an LSE trip, but one organised by the BBC "*designed to look like an LSE trip with the express purpose of duping the North Korean authorities into allowing a team of BBC journalists to enter the country and film illegally. It was also clearly orchestrated to keep LSE itself in the dark.*"
 - (b) The organisers, apparently with the consent of senior managers at the BBC did not tell the participants that the outcome of the trip would be a Panorama broadcast. Students "*were not given enough information to enable informed consent, yet were given enough to put them in serious danger if the subterfuge had been uncovered prior to their departure from North Korea.*"
 - (c) The BBC either never conducted a proper risk assessment, or conducted one that was deeply flawed. "*There is no evidence of any consideration of what would have happened to the group had they been caught*" and "*the BBC was not in a position to do a risk assessment on behalf of LSE and its reputation.*"
 - (d) John Sweeney gained entry to North Korea by posing as a LSE PhD student, putting future activities by LSE staff and students at risk.
 - (e) The BBC had incorrectly stated that the LSE made the issue public.

The BBC Trust's Response of 19 April 2013

33. The Chairman of the BBC Trust replied on 19 April 2013 informing the LSE that as several issues had now been raised which the Director General had not yet had the opportunity to address, the letter would be passed to him to provide a formal response. If the LSE remained dissatisfied with the BBC management's response, the LSE could then appeal to the Trust as the final arbiter in the BBC complaints process.

The BBC's Response of 28 May 2013

34. The Director General responded to the LSE's letter of post-broadcast complaint by letter dated 28 May 2013. He explained that given the particular circumstances of the case and the pre-transmission correspondence, his letter was to be regarded as the BBC's stage 2 response to the complaint. The letter enclosed an additional response from the Head of Programmes, BBC News, in answer to the specific issues raised.
35. The Director General said that the public interest in broadcasting the Programme was very strong and that all the students were properly informed about the risks of the trip. He said that the trip had been planned long before the BBC had any formal involvement in it and there was no reason to suppose it would not have gone ahead if the BBC had pulled out. However, the Director General said that it was evident that in the way some aspects of the trip were organised, the links with the LSE became more pronounced than was intended. The Director General said he did not consider that there was a direct conflict of interest as a consequence of the relationship between John Sweeney and Tomiko Newson.
36. In response to the complaint that this was not an LSE trip but one organised by individuals paid by the BBC, the Head of Programmes, BBC News, reiterated that this was not an LSE trip which was why the LSE was neither consulted nor asked to give its consent in any way.
37. The Head of Programmes, BBC News, explained that Tomiko Newson had previously organised and led a trip to North Korea in March 2012 in her capacity as Chairman of the Grimshaw Club. Given her growing interest in North Korea, she considered that it would be valuable to return there to build on her first-hand knowledge of the country with a second trip and set about organising another trip for 2013.
38. The Head of Programmes, BBC News, said that there was no intention to give potential participants any impression that this was anything other than a separate and independent trip, organised by a former chair of the Grimshaw Club.
39. The Head of Programmes, BBC News, confirmed that Tomiko Newson did not approach Panorama about whether it would be possible for John Sweeney to join the tour group until mid-January. He said internal discussions at the BBC with Editorial Policy and the High Risk Team did not start until early February. He said that David Jordan, the Director of Editorial Policy and Standards, was consulted on 1 February and Simon Marr, Head of High Risk, on 4 February. He added that Tomiko Newson was not contracted to the BBC until 4 March. He stated that the trip was therefore already being organised before the BBC became involved and before Tomiko Newson was contracted to the BBC. If the BBC had not been involved, or had withdrawn, the trip would (all else being equal) have gone ahead.
40. The Head of Programmes, BBC News, said that the issue of what the participants should be told was central to the BBC's planning and was the specific purpose behind the 12 February 2013 meeting with the students following advice from BBC Editorial Policy. He said that a judgement had to be made about the level of information which was sufficient for the students to be properly informed, set against a level of information which would result in the least possible risk to participants. He said this was part of a proper and appropriate process of assessment, including setting out for the students the potential consequences: risk of arrest, detention and of being unable

to return to North Korea. These consequences were not judged to be substantively different whether the trip was accompanied by "a journalist" or the Panorama team. He also said that the students who applied to join this trip did so understanding that they would be travelling to a repressive state during a time of heightening tension with South Korea and the United States of America. He said that Tomiko Newson was asked by the BBC to arrange the 12 February meeting with the students specifically to ensure that all those planning to travel to North Korea were briefed about the risks of going there with a journalist and that they all had the same information about those risks. A senior member of the Panorama team was present throughout.

41. The Head of Programmes, BBC News, confirmed that the BBC High Risk Team working with Panorama did a thorough examination of the likely potential risks. He did not accept that the presence of the BBC team put the students' lives in danger. He said that previous cases of journalists working undercover in North Korea were considered by the High Risk Team and *"in the light of all available information and in the event that the operation had been discovered, it was our view that the BBC team may first have been detained but that the students would have been more likely to have been deported, as would the BBC team once their footage had been taken from them."* He said that it was the case that had the assessment identified a risk to the lives of either the BBC team or the other participants, the trip would not have gone ahead.
42. The Head of Programmes, BBC News, said that this had not been an LSE trip or an academic trip. The LSE was offered assurances that at no point would the university be named in the Programme and that the students themselves were only ever going to be referred to as *"trip participants"*. He said that if a risk assessment had been carried out by the LSE, or even on the LSE's behalf, that would itself have risked giving a strong implication that the School did have some considered involvement which may, of course, have presented an actual risk to the School and its reputation.
43. The Head of Programmes, BBC News, said that it was the BBC's view that the suggestion that the nature of this one tourist trip would have jeopardised formal academic visits or other connections between British Universities and repressive regimes around the world was without foundation and that the notion that British Universities need to restore confidence in their honesty as a result of the trip was untrue. He stated that without the extensive publicity which resulted from the LSE's own intervention, public perception of the connection between the School and this trip would have been negligible. In fact, he said, there was no such connection.

Stage Three of the BBC's complaints process: The LSE's Appeal to the Trust

The LSE's letter of 14 June 2013

44. The LSE was dissatisfied with the BBC's response and appealed to the Chairman of the BBC Trust on 14 June 2013. The LSE asked for its earlier correspondence of 10 and 19 April 2013 to be included in its appeal.
45. The LSE's appeal to the Trust raised the following issues:
 - (a) the risk caused to LSE students by the Programme;
 - (b) the harm caused to the LSE and other academics;

- (c) the lack of informed consent from the students;
- (d) the BBC processes followed for the Programme;
- (e) the unacceptable deception used to film the Programme;
- (f) the accuracy of the responses provided by the BBC in writing and in interviews.

The BBC Trust's Response of 2 July 2013

46. On 2 July 2013 the Trust Unit told the LSE that the Trust would consider the LSE's complaint.

Remit of the ESC

47. The Committee's functions are outlined in the Royal Charter for the continuance of the BBC² (the "Charter") and the Agreement between the Secretary of State for Media Culture and Sport and the BBC (the "Framework Agreement"). The BBC's complaints processes are set out in the "BBC Protocol E3 – Complaints Framework" and "Procedure No 1: Editorial complaints and appeals procedures" (the "Protocol" and "Procedure" respectively).
48. The Committee must fulfil the BBC Trust's duty under Article 7 of the Charter to exercise "a general oversight of the work of the [BBC] Executive Board". Article 52(3) states that one of the purposes of the BBC's complaints handling framework is to "provide...methods of securing that the BBC complies with its obligations". Paragraph 3.38 of the Procedure provides that the "Trustees are regulators..."
49. Article 24(2)(g) of the Charter states that the Trust has a specific function to set the "framework within which the BBC should handle complaints (and the framework must provide for the Trust to play a role as final arbiter in appropriate cases)".
50. Paragraph 3.35 of the Procedure states that the Committee:
- "...will come to one of the following findings in your appeal: upheld; upheld in part; not upheld; or already resolved (where an error has occurred and the ESC is satisfied that the Executive has acknowledged a problem and already dealt appropriately with the matter)."*

Applicable Editorial Guidelines

51. The applicable values and standards in the Guidelines in relation to this Appeal are the BBC's Editorial Values, Using the Guidelines, Accuracy, Impartiality, Fairness, Contributors and Consent, Privacy, War, Terror and Emergencies, Conflicts of Interest and the Law. Extracts from the relevant Guidelines are included in the Appendix to this finding.

Editorial Adviser's Investigation

52. An Editorial Adviser undertook an investigation for the Trust. For the purposes of deciding this Appeal, the Committee has considered the evidence uncovered by the Editorial Adviser's investigation into the issues raised by the Complainants.

² The Royal Charter is the constitutional basis for the BBC. It sets out the public purposes of the BBC, guarantees its independence, and outlines the duties of the Trust and the Executive Board. The current Charter runs until 31 December 2016.

53. In the course of her investigation, the Editorial Adviser considered the following evidence:
- (a) The Programme;
 - (b) Documentation provided by the BBC Executive;
 - (c) Correspondence and supporting documentation provided by the Complainants;
 - (d) The evidence of a number of individuals who were interviewed by the Editorial Adviser.
54. The Complainants appealed to the Trust in June 2013 and their appeals were accepted in July 2013. Interviews took place in August, September and October 2013, several months after the relevant events had taken place. Recollection of the same event often differed from interviewee to interviewee. The Editorial Adviser interviewed seven of the ten students who travelled to North Korea between 8 August and 30 September 2013. Of the other three, two declined to take part on the investigation and one did not respond to the request. The Editorial Adviser also interviewed John Sweeney, Tomiko Newson and several members of: the Panorama team; the BBC's News Team; the BBC's Editorial Policy team; and the BBC's High Risk team.
55. The Committee was supplied with the investigation report prepared by the Editorial Adviser. Mr X, the LSE and the BBC were invited to comment on the Editorial Adviser's report and Mr X and the LSE were able to comment on the BBC's comments and the BBC was able to comment on Mr X's and the LSE's comments. The comments were provided to the Committee. The Committee was also provided with Mr X's appeal letters, the LSE's appeal letters and the risk assessment form regarding the trip.

The Committee's Preliminary Considerations

56. Before considering the substance of the Appeal, the Committee addressed three preliminary points.

Third party complaints

57. First, the Committee discussed whether it should consider any fairness or privacy complaints brought by "third parties" in relation to the Programme. The Procedure does not define "third parties", but states that "first party complaints" are complaints "*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.*"
58. This issue was relevant because (i) the LSE had complained about unfair treatment of the students; (ii) the students themselves had not made any formal complaint about the Programme with the exception of Student X, represented by her father. Further, Students A and C, whilst making no formal complaint themselves, had indicated to the BBC Trust at stage 3 of the complaints process that they authorised Mr X to represent them, but Mr X had made it clear that he had not made a complaint on their behalf at stages 1 and 2; and (iii) Mr X had complained about the fairness of treatment of the North Korean guides.

59. The Committee noted the position on the admissibility of third party complaints in relation to fairness of treatment and infringements of privacy in the making or broadcast of the Programme, as set out in Paragraph 1.5 of the Procedure. This explains that "*such complaints can be brought only by the first party or by someone who has the authority to represent them*". However, the Committee also acknowledged that the Trust is the final arbiter if any question arises as to whether an appeal is for the Trust to determine or not and Trustees have a broad discretion in deciding the approach to take in determining appeals.
60. The Committee noted that it has a duty to consider topics of editorial concern to the Committee, whether or not such concern arises from a formal complaint³. The Committee agreed that it had a broad discretion to consider the complaints brought on behalf of others without their direct authority if it wished to do so.
61. The Committee considered the nature of the complaints brought in relation to the Programme. It noted that the complaint brought by Mr X on behalf of his daughter student X in relation to her treatment by the BBC was a first party complaint. However, the Committee acknowledged that the elements of Mr X's complaint relating to the North Korean guides shown on the Programme and the students aside from student X were third party complaints.
62. The Committee took the view that one element of the complaint by the LSE was a first party complaint, namely the alleged unfairness of treatment caused by associating the LSE with the trip. The Committee did not consider that the LSE had suffered unfair treatment *in BBC content* (as the LSE was not identified in the Programme), but considered that the LSE might have suffered unfair treatment *in the making of BBC content*, as certain LSE details had been used to facilitate entry into North Korea. On the other hand, some aspects of the LSE's complaint were third party complaints, namely the allegedly unfair treatment of the students by the BBC.
63. The Committee decided that it would not depart from its usual procedure of taking only first party complaints regarding fairness and privacy. With the exception of the concerns expressed about the treatment of the North Korean guides (which was discussed separately - see paragraph 66 below), it noted that the first party complaints made by the Complainants had also raised the relevant issues, and the Committee would therefore have the opportunity to consider all topics of editorial concern without having to accept a complaint from a third party in a departure from the Procedure.
64. The Committee further decided that it would be inappropriate for it to consider the issues raised by Mr X's complaint on behalf of students A and C, as the position of these students had not been considered by the BBC Executive at an earlier stage, as required by the Charter.
65. The Committee decided that it would not make any findings in relation to the students other than student X, as complaints about them were third party complaints. Nonetheless, the Committee noted that it would inevitably need to consider evidence regarding the other students as well as student X, as this would be relevant to determining how student X was treated. For the avoidance of doubt,

³ Editorial Standards Committee Terms of Reference, paragraph 10.1(i)

factual references to evidence about the other students should not be construed as the Committee taking any complaints on their behalf.

66. In relation to the North Korean guides:
- (a) The Committee acknowledged that the complaints concerning the treatment of the North Korean guides were third party complaints as the guides themselves had not complained.
 - (b) However, the Committee noted that the guides could not make a complaint on their own behalf, given the repressive regime in which they lived and the likelihood that they would be unaware of the BBC's complaints procedure.
 - (c) The Committee also noted that some potentially serious editorial issues had been raised in relation to the guides, namely the question of the degree to which the BBC should take into account the risk of recriminations when filming people in autocratic states, and that it was appropriate for the Committee to consider those. In light of the highly unusual position of the guides in this Appeal, the Committee decided that it would consider issues in relation to the guides. The Committee clarified that it was considering these issues pursuant to its powers under the Editorial Standards Committee Terms of Reference (the "Terms of Reference"), paragraph 10.1(l), rather than as a third party complaint brought by Mr X.

The meaning of the word "contributor" in the BBC Editorial Guidelines.

67. The Committee noted that some of the Guidelines on Fairness, Contributors and Consent and Privacy are expressed as applying to "contributors" and that the BBC Executive argues that, as the students were not "contributors", such Guidelines were not applicable to them. There is no definition of the term "contributor" in the Guidelines. The Committee acknowledged that there is an accepted broadcasting understanding of the term "contributor", which, in broad terms, usually describes someone who gives an interview or a performance to camera, as opposed to someone who is merely caught on camera or referred to in a programme but who does not give an interview or performance. However, the Committee noted that some of the Guidelines are stated as applying to either "contributors" or to "audiences". The Committee agreed that, if "contributor" were to be construed narrowly, according to the broadcasting understanding of the term, there would be a group of people between "audiences" and "contributors", who were not protected by the Guidelines.
68. The Committee considered that the purpose of the Guidelines was to be "*fair to all*" (Guideline 6.1) and to "*balance [the BBC's] presumption of freedom of expression with [its] responsibilities, for example to respect privacy, to be fair, to avoid unjustifiable offence and to provide appropriate protection for [its] audiences from harm*" (value 1.1). The Committee recognised that the level of protection provided by the Guidelines was different for different people, and would depend on the extent of their contribution or involvement in the output. However, the Committee agreed that, if the wording of the Guidelines on Fairness, Contributors and Consent and Privacy was construed such that people like the students, without whom the Programme could not have been made, were not caught at all, then this objective would not be met. In the Committee's view, the students fell somewhere in the middle of a spectrum that has

at one end individuals who are interviewed or recorded for a programme and who perform an "act", and at the other end passers-by who are caught on camera. The Committee considered that the students could not be placed in the same category as passers-by since they provided the cover of a student trip which enabled the Panorama team to enter North Korea to film. Without them, the Programme would not have been made. The Committee therefore concluded that the students were entitled to the protection of certain of the Guidelines and that the appropriate course would therefore be for it to consider each Guideline potentially applicable to the Appeal and determine whether, as a matter of common sense and in the spirit of that Guideline, it should apply to those involved in the Programme. The Committee wished to emphasise that not everyone who happens to appear in BBC output will have the protection of the Guidelines on Fairness, Contributors and Consent and Privacy for "contributors" in the same way as the students. The application of the Guidelines in this case was specific to the particular circumstances of the Programme.

Accuracy/Impartiality

69. The Committee noted that Mr X had made certain complaints concerning the accuracy and impartiality of statements made by BBC staff in public and in BBC output following the broadcast of the Programme. The BBC output in question consisted of the Media Show on BBC Radio 4, BBC Newswatch, the Today Show on BBC Radio 4 and interviews on BBC News UK. The Committee noted that Mr X's accuracy and impartiality complaints related to five statements made by BBC Executives about the North Korea trip, namely:
- (a) That the trip would have happened without BBC involvement;
 - (b) That the BBC became involved in the trip after the students signed up;
 - (c) That the BBC briefed students;
 - (d) That students paid for the trip after receiving two briefings; and
 - (e) That students support John Sweeney's deception (this was not reported in BBC output).
70. The Committee considered the BBC Executive's argument that these complaints were stand alone complaints about the output in question, and that since the Editorial Adviser had not investigated the relevant items of output in their entirety and addressed those in the report, the Committee could not decide those complaints at this stage, and instead would have to fully investigate the items of output and give the BBC Executive an opportunity to respond to the complaints. The Committee noted that the BBC Executive raised this argument regarding the Guidelines on Impartiality, and not regarding the Guidelines on Accuracy.
71. The Committee noted that Mr X had raised these accuracy and impartiality complaints in his letters to the BBC of 25 April 2013 and 1 May 2013, both of which had been passed to the BBC Executive at stages 1 and 2 for their consideration. The Committee also noted that the BBC Executive had replied to Mr X on these issues on 28 May 2013 and it therefore considered that the BBC Executive had already had an opportunity to respond to these complaints and that there was therefore no

requirement to remit this issue to the BBC Executive for comment before reaching its view.

72. The Committee went on to deal with the substance of the matter. First, the Committee considered that, when making their statements in the various BBC programmes, the BBC staff were essentially contributors (interviewees). The question was therefore whether the Editors of the relevant programmes could reasonably have been held responsible for the accuracy and impartiality of the comments made by the interviewees, in that they should have known whether the statements were duly accurate or impartial. The Committee considered that they could not reasonably have been expected to know this at the time when the statements were made.
73. The Committee concluded that there was some evidence that BBC staff had made statements about the trip to North Korea in the immediate aftermath of the trip that were subsequently shown not to have been entirely correct.
74. The Committee noted that the BBC staff concerned had subsequently explained that when they made the statements complained of, they were presenting the facts of the North Korean trip as they appeared to them at the time. The Committee was satisfied that the BBC staff had not set out to be deliberately misleading. However, the Committee's view was that it was best practice where the BBC became aware that it had publicly presented incorrect facts for it to correct those facts.
75. The Committee also noted that in relation to the statements made about the Programme, the BBC Executive had already clarified some of them by explaining, for example, that certain statements had been made because they were what its staff believed at the time, although they had subsequently transpired to be the result of a misunderstanding.

The Committee's Deliberations

76. The Committee decided to consider a number of factual issues, before turning to consider whether there had been a breach of the Guidelines.

Public Interest in the Programme

77. The Committee first considered whether there was a clear public interest in North Korea. The Committee noted that this issue was relevant to the issue of informed consent and the risks the students were exposed to, as well as to the question of whether the BBC balanced the public interest of the Programme against the legitimate expectation of privacy on the part of student X or the LSE.
78. The Committee concluded that there was always a high level of public interest in programmes about North Korea, but that there was a particularly high level of interest in the country after it stepped up its nuclear testing in late 2012 and early 2013 and made threatening statements to the USA. The Committee noted that the Panorama team could not have known exactly what it might uncover on the 2013 trip, but it had reasonable grounds to expect that it would at the least obtain a candid glimpse of some aspects of life inside North Korea under the new regime of Kim Jong-Un.

79. The Committee considered it was not possible for investigative Western television journalists to enter North Korea openly without being subject to very tight State supervision and that it therefore accepted the BBC Executive's argument that there was in principle a strong and legitimate public interest such that some form of deception and secret recording to obtain candid material might be justified. The Committee decided to consider whether the level of deception actually used could be justified by reference to each of the relevant Editorial Guidelines (see below).

Was the trip to North Korea organised by the BBC?

80. The Committee then turned to consider the question of the origins of the trip. The Committee noted that this was relevant to the issue of informed consent and the risks the students were exposed to, as well as to the question of whether there was a conflict of interest regarding Tomiko Newson's role.
81. The Committee noted Mr X's argument that the BBC had organised the trip to North Korea from the outset and therefore it was organised for the sole purpose of providing a means for the Panorama team to enter North Korea. It also noted the BBC's assertion that the preparations for the trip had taken place well before the BBC had any formal involvement and that there was no reason to suppose that the trip would not have gone ahead if the BBC had pulled out.
82. Given the disagreement about whether or not the BBC initiated the trip, the Committee set out its conclusions as to the chronology of events leading up to the BBC's involvement, based on the body of the evidence before it:

Date	Event
Easter break 2012	Tomiko Newson organised a trip to North Korea in her capacity as Chairman of the Grimshaw Club (the Student International Relations Society at the LSE).
June 2012	Tom Giles, the Panorama Editor, employed Tomiko Newson to conduct research to establish whether there was enough evidence to show that infanticide was practised by North Korea in order to make a Panorama for the BBC.
August 2012	Tomiko Newson's infanticide project with Panorama was either put on hold or shelved. Whichever it was, the Committee's view was that there was no ongoing North Korea project at the BBC between this date and 2013.
3 December 2012	Organiser B (Tomiko Newson's friend) contacted the North Korean Friendship Association about whether it would be " <i>possible for LSE to send another group of students to North Korea</i> ". This contact was not instigated by the BBC.
4 December 2012	The North Korean Friendship Association responded to confirm that another trip was possible.
14 January 2013	John Sweeney approached the Panorama Editor to talk about North Korea.

21 January 2013	Tomiko Newson approached the Panorama Editor direct and asked to meet with him in order to discuss the trip to North Korea.
22 January 2013	A document advertising the trip was sent to Oxford University International Relations Society ready to send onto students.
22 January 2013	John Sweeney and the Panorama Editor discussed John Sweeney joining the trip. Although these conversations were exploratory and informal in nature, the Committee concluded that the Panorama Editor started to think seriously about the BBC joining the trip at this stage.
30 January 2013	Invitations for the North Korea trip were sent out to the Grimshaw Club.
First week of February 2013	<p>The BBC conducted internal discussions about the Programme with the high risk and editorial policy teams.</p> <p>On 1 February John Sweeney rang Tomiko Newson to tell her that the Director of Editorial Policy and Standards was in principle in agreement with the trip.</p> <p>On 2 February, John Sweeney emailed the Acting Director of News setting out details of the proposed trip and she said the proposal seemed like a workable idea in principle</p> <p>Between 31 January 2013 and 4 February 2013, Tomiko Newson met informally with all but two of the students travelling to North Korea and told them that a journalist would be joining the trip. The other two students were briefed by phone.</p>
12 February 2013	<p>A meeting was held at the George pub to brief the students. This was attended by Tomiko Newson, a Deputy Editor from the Panorama team and all the students (apart from student D).</p> <p>By this point (12 February 2013), Tomiko Newson had received payment from five of the students.</p>
13 February 2013	The Editorial Policy Adviser approved BBC payment for two "phantom" places on the trip to keep costs down.
15 February 2013	Payment for the trip was made to the North Korean fixer.
18 March 2013	Final sign-off for the BBC's proposal to undertake secret filming and recording was given. At the same time, the high risk assessment was also signed off.

83. On the basis of the evidence before it, the Committee concluded that, ever since her first trip to North Korea, Tomiko Newson had wanted to return there. She pursued the possibility of a second trip to North Korea at a time when the BBC was

not showing any interest, and the contact with the North Korean Friendship Association was not instigated by the BBC. However, the Committee considered that, to all intents and purposes, the BBC became intrinsically involved in the trip from around the first week in February 2013. The Committee accepted that, at that point, the BBC did not have the budget secured, nor formal approval. However, in the Committee's view, from that point, the BBC assumed certain responsibilities towards the students.

What did the BBC tell student X?

84. The Committee then turned to the question of what information the students were given about the trip. The Committee agreed that this issue was relevant to its consideration of the Guidelines on Fairness, the issue of informed consent and the risks the students were exposed to.
85. The Committee noted that there was almost no agreement on this point between all of the students. It also noted that the starting point was that the students were all over 18 and were therefore adults (student X was 28 and had been in the workplace before returning to study as a post-graduate student at the LSE), and that the BBC was entitled to treat them as such.
86. The Committee considered that the body of evidence supported the conclusion that the students were told at least once that a journalist would be joining them on the trip. Most of the students gave evidence that they were told this twice. Further, it appeared that the students had been told that there were risks associated with travelling to North Korea with a journalist, although the evidence was not consistent as to what precisely the students were told. The BBC's position is that it informed the students about the risks of arrest/detention, deportation and of not being able to return to North Korea. However, only one of the students interviewed as part of this investigation agrees with this. Some stated that they were told about the risks of arrest/detention and deportation, others said that they were told about there being associated risks, but that these were not specified and one student said that she was told only about the risk of not being able to return to North Korea. Only one student, stated that she was told nothing about the risks at either meeting with Tomiko Newson. The Committee also noted that in a letter dated 17 April 2013 to the LSE, sent by two of the students and stated as being supported by 4 unnamed others, the students in question (one of whom did not take part in this investigation) said that "*before we left for the trip we were all informed that a journalist would be coming along, with all that entailed for our possible deportation, detention, or indeed be subjected to any course of action that a regime like North Korea's could be capable of undertaking*". As far as student X was concerned, there is a direct conflict of evidence. Student X said that she was told only about the risks of deportation/arrest and detention, whereas Tomiko Newson and the Panorama team member who attended the 12 February meeting said they outlined to her the risks of arrest, detention and the possibility of not being able to return to North Korea.
87. The Committee noted that, when the Panorama team recognised that it was not confident about what information had been provided up to that point to the students, the Panorama team had organised a second briefing for the students in the George pub by Tomiko Newson with a Deputy Editor from the Panorama team present.

88. The Committee recognised that the briefing attended by the Panorama team member had been designed to ensure that all of the students were briefed about the risks of the trip in a consistent way. However, the Committee considered that the location of this briefing, which took place in a pub, was not an appropriate venue to relay the information which the BBC had rightly decided were risks the students needed to understand before agreeing to go on the trip. Although the Committee was not able to draw any firm conclusions about how noisy the venue was given the conflicting evidence received from the students on this issue, the Committee did agree that it was clear that the group had been required to stand up throughout the briefing, and that some were closer to Tomiko Sweeney than others. Further, the Committee noted that English was not the first language of all of the students (although they were all studying in England and student X was a native English speaker). In its view, the briefing should have taken place at a venue where the Panorama team could be sure the information they were imparting could be heard and where the students could absorb the information properly. The Committee was of the view that the informality of the venue could have affected how seriously the students perceived any risks. The Committee considered that the Panorama team should have provided the students with the opportunity to have an informed discussion about the risks of the trip and whether they were worth taking, and they should have given the students a specified period to pull out of the trip. It therefore concluded that the manner of the briefing given to student X was inappropriate.
89. The Committee also concluded that there were some facts that were not communicated to the students and which they had been entitled to be aware of, such as the fact that Tomiko Newson and the rest of the BBC team would, according to the risk assessment form, separate themselves from the group in the event that the journalists were detected (in order to draw official attention away from the students), and that there could not be a pre-arranged exit strategy to get the students or the Panorama team out of the country in the event that they were detained.

Did it make a difference that John Sweeney was a TV journalist?

90. The Committee then turned to consider whether it made any material difference that John Sweeney was a television journalist, as opposed to a print journalist. The Committee noted that this question was relevant to its consideration of the Guidelines on Fairness, the issue of informed consent and the risks the students were exposed to.
91. The Committee noted that the evidence showed the students had been told at least once and probably twice that a "journalist" would be accompanying them on the trip, but that many of them appeared to have assumed this would be a print journalist.
92. The Committee also noted that, in its view, the differences between a print journalist and a television journalist in the modern age are minimal, given that most news organisations now deploy video as well as print. Nevertheless, the Committee considered that there were some material differences between the risks that the students perceived to be associated with travelling with a single print journalist and the risks that they in fact ran on this trip.
93. The Committee considered that the material differences between what the students were told and the reality of the trip were: that there was a three-person BBC team

on the trip as opposed to one journalist; that the lead journalist was well-known for presenting high profile undercover investigations; that there was a cameraman among the group who would have been carrying video recordings which were clearly journalistic in nature and which might have made the BBC team more vulnerable to detection.

94. The Committee considered that these factors together increased the likelihood of the BBC team being detected. Further, the Committee did not consider that, even if the BBC team were to have declared themselves once they were detected, it would have been immediately accepted by the North Korean authorities which members of the tour group were genuine tourists and which were working undercover for the BBC. As a result, the Committee concluded that the additional risks associated with being accompanied by the Panorama team as opposed to one print journalist were not insignificant.

Did student X have sufficient information about the risks of the trip?

95. Having considered what the students were told by the BBC about the journalist and the risks, and whether it made any difference that the journalist was a television journalist as opposed to a print journalist, the Committee then turned to consider whether, overall, the students had sufficient information about the risks of the trip. Again, the Committee noted that this question was relevant to its consideration of whether student X was treated fairly by the BBC, the issue of informed consent, and the risks the students were exposed to.
96. On the basis of its deliberations above, the Committee considered that the students had not been given sufficient information about the trip they were going on to be able to give their informed consent. In the Committee's view, the students had been entitled to know that they were travelling with a team of three BBC journalists, and what might happen if they were detected, including the BBC team's plan to separate from the group at that point and leave each individual student without any assistance from a tour leader to make whatever efforts were necessary to persuade the North Koreans that they were students on a tour rather than journalists and to try to contact their families and national governments for assistance.
97. The Committee was satisfied that, when taking its decisions about what to tell the students, the BBC had genuinely sought to strike a balance between two conflicting requirements, namely: the requirement to secure informed consent from the students because of the additional risks the BBC's presence might entail, and the desire to minimise the risks to the students by not telling them too much, affording them "plausible deniability" in the event that the BBC team was detected by the North Korean authorities.
98. However, the Committee expressed the view that, in the rare cases when an irreconcilable conflict arises between the need to minimise risk and the need to secure informed consent from people who put themselves in danger for the BBC, enabling fully informed consent should normally be the priority. The Committee accepted that each case must be determined according to the particular circumstances and that difficult judgements will sometimes need to be made. In this case, the Committee was satisfied that the BBC should have given all the students concerned all of the information they needed to give their informed consent, including all the risks identified by the BBC, the unavailability of an exit strategy, and

the proposed tactics the undercover team were to adopt in the event of discovery. The Committee agreed that, if revealing all of this information had been judged by the BBC to pose too high a risk of disclosure, jeopardising the entire project, then the BBC should have abandoned the idea of joining the tour group.

99. The Committee also discussed in detail the BBC's process of assessing the risks on this occasion, and observed that the advice of the Editorial Policy team and the advice of the High Risk team were in some respects inconsistent with one another. On 1 February 2013, Editorial Policy had advised that the students should be told that a journalist would be travelling with them. Students were so informed and when the Panorama team initially met High Risk, High Risk expressed no concerns. However another member of the High Risk team subsequently indicated that their advice would have been not to give this information to the students as it could increase the risks. However, by this point the students had been informed that a journalist would be on the trip. The Committee recognised that Editorial Policy advice is driven principally by a judgement of what is appropriate for the BBC to do in line with its editorial standards, whereas High Risk advice is concerned with assessing and mitigating risk, but the Committee regarded it as unsatisfactory in this case that the Panorama team had implemented Editorial Policy advice that the students should be told that a journalist would be travelling with them, before it had received any advice from High Risk which, given the conflicting nature of the advice that emerged, would have required a decision to have been taken at a more senior editorial level." Finally, the Committee discussed the fact that the Panorama team had decided that it was necessary to tell the students at a late stage in Beijing that they were accompanied by a cameraman working with John Sweeney. This was in response to jokes from some of the students that the Panorama cameraman/producer "was a spy", and the Panorama team thought that any continued conversations of that nature in North Korea might endanger the students more than their knowing that there was a BBC team among the group. The decision to give the students this information was made by a Deputy Editor of Panorama in London.
100. The Committee acknowledged that it was appropriate for the Deputy Editor to have made this decision once the journalists were deployed on the ground, without necessarily making further referrals within the BBC. Making important decisions under pressure is part of the role and there was only a limited time for consideration.

Was student X encouraged to film or take photographs by the BBC team while in North Korea?

101. The Committee then turned to consider whether student X was encouraged by the BBC team to film and/or to take photographs on her mobile phone while in North Korea. The Committee agreed that this question was relevant to its determination of the Guidelines on Fairness, Contributors and Consent, and also to the issue of the risks the students were exposed to.
102. The Committee noted that:
- (a) There was conflicting evidence from the investigation in relation to this issue. On the one hand, student X claimed that both John Sweeney and Tomiko Newson encouraged her and the rest of the students to take photographs - for example, of military checkpoints and in the Museum of Gifts. On the

other hand, John Sweeney and Tomiko Newson both denied that any of the students had been encouraged by them to take photographs or videos. John Sweeney did say, however, that the students would all point out things to him that they felt were worth filming. In the BBC's view, the students were on a 'once in a lifetime' trip and it was unsurprising, therefore, that they took photographs and videos to record it. In addition, the Committee noted that evidence from other students on the trip in relation to this issue was also inconsistent.

- (b) Student X had taken photographs of a North Korean village and that she had subsequently taken John Sweeney and the Panorama cameraman/producer to a vantage point from where they could see the village, and a piece to camera had been filmed. The Committee also noted that John Sweeney had accepted that he had offered student X a payment and/or a credit for the photographs she had already taken of the village, but that it had seen no evidence to suggest that any such offer had been repeated during the trip.
103. Beyond the conflicting accounts, the Committee agreed that it had seen no direct evidence (other than John Sweeney's offer to student X of a payment and/or a credit) that might suggest that the BBC had encouraged student X to film or take photographs on its behalf while in North Korea. The Committee therefore considered whether John Sweeney's offer to student X amounted to encouragement. The Committee was mindful of the fact that this offer had been made to student X *after* she had already taken the photographs in question, and that there was no evidence to suggest it had been repeated. The Committee was satisfied that John Sweeney's offer to student X did not amount to encouragement in these circumstances. In particular, the Committee agreed that student X's decision to take the photographs of the North Korean village, and therefore to run any risk that was associated with taking unsanctioned photographs, was not taken as a result of encouragement by the BBC team.
104. For the reasons set out above, and recognising the conflicting accounts, the Committee concluded that, on the balance of probabilities, the BBC had not encouraged student X to film or take photographs on its behalf while in North Korea.

Risks to the LSE

105. The Committee then proceeded to consider the LSE's complaint that unacceptable risks had been posed to the LSE by the BBC's actions, namely that LSE students and academics working in North Korea and other repressive regimes could be suspected of being a cover for journalistic activities and put in danger or refused entry, to the detriment of academic research. The Committee noted that this issue was relevant to its consideration of whether the LSE was treated fairly by the BBC in the organisation of the trip.
106. The Committee observed that there were six factors that linked, or risked linking, the trip to the LSE. They were:
- (a) the fact that organiser B's email to the North Korean Friendship Association of 3 December 2012 referred to Organiser B being an LSE student and the LSE sending "*another group of students*";

- (b) the use of the LSE's postal address details on the North Korea visa applications of John Sweeney and the Panorama cameraman/producer;
 - (c) the use of an LSE alumni email address on John Sweeney's North Korea visa application (an email address which the Committee accepted he had been entitled to apply for and use);
 - (d) the fact that John Sweeney was referred to on the North Korea visa application as "Dr. J. Paul Sweeney", with a PhD in History, alongside the use of his LSE email address, which the Committee considered may have given the impression that he was a fellow of the LSE;
 - (e) the fact that all of the students who took part in the trip were either current or former LSE students (both undergraduates and post graduates); and
 - (f) the fact that the invitation to the students had been sent to them via the Grimshaw Club which, although independent of the LSE, is closely associated with it.
107. The Committee noted that the decision to describe this as "another group of LSE students" by Organiser B was taken before the BBC was involved in the trip. However the Committee considered that the way the trip had been set up and presented became an issue for the BBC at the point that the BBC assumed some responsibility for the students (see the timeline above). The Committee agreed that the BBC in effect adopted Organiser B's approach once it became involved.
108. The Committee agreed that the use of the LSE's postal address details on two of the North Korea visa applications was inappropriate and that this, combined with the other factors, unfairly linked, or risked linking, the LSE with the trip and that that, in turn, created risk of harm to the LSE's reputation. The Committee noted that the Director of Editorial Policy and Standards had stated that, at a meeting he had with John Sweeney and the Panorama Editor on 1 February 2013, he was satisfied that the trip was not an official LSE trip and that the BBC was sufficiently distanced from the LSE to be viable. Nonetheless, the Committee agreed that the BBC did not appear to have specifically considered the risk of linking the LSE with the trip in the context of the six factors set out above, as part of its discussions about arrangements for the trip.
109. The Committee noted that a History department LSE address had been used on John Sweeney's visa application and an LSE student halls address had been used on the Panorama cameraman/producer's visa application. The use of the LSE's address on the visa applications was not discussed with the Editorial Policy team, the High Risk team, the senior Programme team or with wider BBC management. The Committee was of the view that any links between the trip and the LSE should have been discussed with the High Risk and Editorial Policy team as part of the sign-off process in order to assess their appropriateness and consider any possible consequences.
110. The Committee noted that the BBC Executive had already accepted in correspondence with the Complainants that some of the links between the LSE and the trip were inappropriate - it said that "*it would have been better had John Sweeney not described himself and [the Panorama cameraman/producer] in the way that he did*" ,

that "the links with the LSE became more pronounced than was intended" and that "the use of LSE addresses - email and room numbers - was inappropriate".

Tomiko Newson's Conflict of Interest

- I 11. Finally, the Committee turned to the question of whether Tomiko Newson had a conflict of interest. The Committee noted that this question was relevant to its determination of whether there was a conflict of interest under the Guidelines, and was also relevant to the issue of the risks that the students were exposed to.
- I 12. The Committee determined that, from the moment the BBC had become involved in the trip to North Korea, Tomiko Newson had a conflict of interest which was further compounded when she became employed by the BBC.
- I 13. The Committee considered that this conflict of interest arose from Tomiko Newson's dual role as both the trip leader for the students and as a Panorama team member. The Committee noted that if anything had gone wrong in North Korea, Tomiko Newson would have had to choose between fulfilling her duty as team leader to the students, which would have required her to stay with them if possible and use her training to protect them if they were detained, and her role as part of the Panorama team, which would have required her to act in the best interests of the BBC (which, the Committee accepted, might also have included trying to act in the best interests of the students). The Committee noted that, in its risk assessment, the BBC had determined that if the team were detected by the North Korean authorities they would try to "separate" themselves from the students. The Committee considered that, while this might well have been a tactic aimed at isolating the students from further risk, it would inevitably have had the effect of preventing Tomiko Newson acting primarily as group leader, and that the students would have been left, in effect, as a group of young adults from a variety of different countries, all personally responsible for trying to extricate themselves from possible detention.
- I 14. The Committee concluded that, from the moment the BBC became involved in the North Korea trip, it was not viable for Tomiko Newson to lead the trip and to be certain of being able to act in the best interests of the students in North Korea.
- I 15. The Committee did not consider that the fact that Tomiko Newson was married to John Sweeney was in itself a conflict of interest but it concluded that the sign-off process for the Programme should have expressly identified the conflict of interest between Tomiko Newson's role as team leader and her involvement with the BBC. The Committee was of the opinion that the BBC should have considered how the conflict of interest was to be mitigated if the trip was to proceed, and whether the trip should proceed at all if the conflict could not be appropriately mitigated.

The Committee's Findings on the Guidelines

Fairness, Contributors and Consent

Guidelines 6.1 and 6.2.1

- I 16. The Committee considered the requirements of Guideline 6.1, and in particular the requirement that "The BBC strives to be fair to all - fair to those our output is about, fair to contributors and fair to our audiences". The Committee also considered Guideline

6.2.1, which requires that the BBC will be "*open, honest, straightforward and fair*" in its dealings with contributors and audiences unless there is a clear public interest in doing so otherwise. The Committee noted that Guidelines 6.1 and 6.2.1 apply to both contributors and audiences.

117. Student X: The Committee noted its earlier conclusions at paragraph 67 - 68 above about who is a "contributor" under the Guidelines. It considered that, while not contributors in the traditional broadcasting sense, the students' contribution was more than incidental because, while they appeared only briefly at times throughout the Programme, their presence in North Korea was the context of the Programme and without them the BBC would not have been able to make it. For all of the reasons set out in paragraphs 95 - 102 above, the Committee agreed that the provision of information to the students was insufficiently clear and inadequate in the circumstances to enable them to give informed consent. The Committee fully accepted, however, that the BBC did not intend to treat the students unfairly, and that its decisions about what to tell them were motivated by a desire to protect them as well as the Programme. The Committee noted in this respect that it had seen no evidence to suggest that the BBC did not have the students' best interests in mind when deciding what information to provide to them, and what information to withhold. Nevertheless, on balance the Committee concluded that the BBC did not treat student X fairly in the making of the Programme. While the Committee accepted that there was a clear public interest in the making of the Programme, it was satisfied that this did not outweigh the requirement to treat student X fairly by making sure she was given all the information necessary to take an informed decision as to whether to take part in the trip.
118. The LSE: The Committee considered its conclusions in paragraphs 107 - 112 above regarding the LSE. In particular, the Committee concluded that the combined effect of the six factors set out in paragraph 108 above risked unfairly linking the LSE with the BBC's undercover activities regarding the trip to North Korea and that that, in turn, created risk of harm to the LSE's reputation. In particular, the Committee agreed that the use of the LSE's postal address details on the North Korean visa applications for John Sweeney and the Panorama cameraman/producer, without the LSE's knowledge or consent, was unfair to the LSE. In reaching its conclusion, the Committee was mindful that it had seen no evidence to suggest that the BBC had specifically considered this risk as part of its discussions about arrangements for the trip. Accordingly, the Committee concluded that the BBC did not treat the LSE fairly in the making of the Programme. While the Committee accepted that there was a clear public interest in the making of the Programme, it was satisfied that this did not outweigh the requirement to treat the LSE fairly in these circumstances. The Committee noted, however, that the BBC Executive had already accepted in correspondence with the Complainants that it would have been better if John Sweeney had not described himself and the Panorama cameraman/producer the way that he did. The Committee also noted that the Director-General had accepted that "*the links with the LSE became more pronounced than intended*" and "*the use of LSE address - email and room numbers - was inappropriate*".

Finding: Upheld against Guidelines 6.1 and 6.2.1 in respect of student X and the LSE in the making of the Programme

Guidelines 6.2.2 and 6.4.1

119. The Committee considered Guideline 6.2.2, which requires that individuals should normally be "appropriately informed about the planned nature and context of their contributions when they are asked to take part in BBC content and give their consent, unless there is an editorial justification for proceeding without their consent". The Committee also considered Guideline 6.4.1 which states that the BBC's commitment to fairness is "normally achieved by ensuring that people provide 'informed consent' before they participate. 'Informed consent' means that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content".
120. The Committee noted that these Guidelines do not apply to the LSE, since it is not a contributor in the spirit intended by these Guidelines and did not feature in any way in the Programme. On the other hand, the Committee agreed that student X should be treated as a contributor for the purposes of these Guidelines, for the reasons explained at paragraph 119 above, and should benefit from their protection.
121. For the reasons set out in paragraph 119 above, the Committee concluded that the provision of information to the students was insufficient and inadequate in the circumstances. Accordingly, the Committee concluded that student X had not been appropriately informed about the planned nature and context of her contribution and, in this way, did not possess the knowledge that was necessary for her to make a reasoned decision to take part in the trip to North Korea and give informed consent. The Committee also concluded that it did not consider there to be an editorial justification for proceeding without student X's informed consent.

Finding: Upheld against Guidelines 6.2.2 and 6.4.1 in respect of student X in the making of the Programme

Guidelines 6.3.3 and 6.4.17

122. The Committee considered the requirements of Guideline 6.3.3 which states that any proposal to deceive a contributor to news or factual output must be referred to a senior editorial figure or, in the most serious cases, the Director of Editorial Policy and Standards. Similarly, the Committee considered the requirements of Guideline 6.4.17, which states that "*any proposal to deceive a contributor to news or factual output must be referred to a senior editorial figure or...in the most serious cases Director Editorial Policy and Standards*".
123. The Committee noted that the investigation showed that the proposal for the BBC to join the trip to North Korea and the question of what to tell the students was referred to the Director of Editorial Policy and Standards. Accordingly, the Committee concluded that the requirements of Guidelines 6.3.3 and 6.4.17 had not been breached.

Finding: Not upheld

Guidelines 6.3.6 and 6.4.23

124. The Committee considered the requirements of Guidelines 6.3.6 and 6.4.23 which state that any proposal to use a tourist visa to avoid visa restrictions when working for the BBC in that country must be referred to a senior editorial figure. The

Committee also noted that Guideline 6.4.23 further requires that "*when use of a tourist visa in this way...in approved, Newsgathering and the Head of the relevant World Service region should also be informed*".

125. The Committee noted that the BBC's proposal for the Programme team to use a tourist visa to enter North Korea was referred to the Director of Editorial Policy and Standards. The Committee also noted that Newsgathering had been informed and were involved in the sign off of the arrangements for the trip to North Korea. The Committee noted that it had seen no evidence to suggest that the Head of the World Service region had been informed about the use of the tourist visa in this way. However, in the circumstances, the Committee did not consider that this was necessary for the purposes of meeting the requirements of this Guideline (the Committee noted that the Guideline states that the Head of the World Service region *should*, rather than *must* be informed). What was important, in the Committee's view, was that the Director of Editorial Policy and Standards and Newsgathering were aware of and approved the use of the tourist visa in this way. Accordingly, the Committee concluded that the requirements of Guidelines 6.3.6 and 6.4.23 had not been breached.

Finding: Not upheld

Guideline 6.4.3

126. The Committee considered the requirements of Guideline 6.4.3, which states that the BBC should be fair and accurate in its portrayal of people who are discussed, referred to or appear in material without their knowledge or consent and, where appropriate, respect their legitimate expectations of privacy.
127. The Committee agreed that this Guideline does not apply to the students and therefore was not applicable to student X: while the students did appear in the Programme in an unidentifiable way, their appearance was not without the students' knowledge or consent because, when the students were in North Korea with the BBC team, all of them knew that the Programme was being filmed.
128. The Committee considered whether the BBC's portrayal of the North Korean guides, who appeared in the Programme without their knowledge or consent, was fair and accurate. The Committee noted that the question relating to the treatment of the guides was a third party issue but that it had decided at paragraph 66 above that, due to the unusual factual circumstances of this Appeal as far as the guides were concerned, it would consider any issues relating to the guides using its powers under paragraph 10.1(l) of the Terms of Reference.
129. The Committee noted that the BBC took care to ensure the guides appeared in the Programme only when performing their roles as official state guides. Nothing broadcast in the Programme suggested they held anything other than the official view on all subjects. The Committee further noted that, in any event, the guides appeared to be aware that they were being filmed (albeit not for the purposes of a BBC documentary) and that there could be no restrictions placed upon further publication of video recorded by tourists visiting North Korea. In such circumstances, the Committee concluded that the portrayal of the guides in the Programme was fair and accurate, since the guides knew they were being filmed, only ever appeared in their official capacity and did nothing to bring their personal

conduct into disrepute. Accordingly, the Committee considered that the standards in the Guidelines had been met in this regard.

Finding: Not upheld

Guidelines 6.4.5 and 6.4.7

130. The Committee considered the requirements of Guideline 6.4.5, which states that the BBC obtains "informed consent from its contributors in a wide variety of ways depending on the circumstances of their contribution. Wherever practicable we should obtain consent in a form capable of proof". The Committee also considered Guideline 6.4.7, which notes that "for more significant contributions, we may sometimes ask participants to sign a contract which formalises the terms of their dealings with us".
131. The Committee noted its conclusions in paragraph 123 above that student X did not possess the knowledge that was necessary for her to make a reasoned decision to take part in the trip to North Korea and give informed consent. The Committee recognised that, had student X been in possession of sufficient information to give her informed consent, that could have been secured in a variety of ways, as Guideline 6.4.5 suggests. Nevertheless, the Committee wished to emphasise its view that in circumstances where there is a perceived risk to the safety of members of the public engaged in facilitating the making of a programme, it is highly desirable to have every aspect of the process by which they are given the necessary information and by which they give their consent properly documented.
132. In relation to Guideline 6.4.7, the Committee agreed that this Guideline was not applicable to the present case because: (i) in the Committee's view, the students did not make a "significant" contribution to the Programme; and (ii) there was no argument between the parties that the BBC should have entered into formal contracts with the students.

Finding: Not upheld

Guidelines 6.4.9, 6.4.11 and 6.4.12

133. The Committee considered the requirements of these Guidelines, which relate to the withdrawal of consent by a contributor prior to broadcast, and to anonymity. In particular, Guideline 6.4.9 requires that the BBC listens carefully to reasonable objections by a contributor to using his or her contribution prior to broadcast, Guideline 6.4.11 states that the BBC "*must ensure when [it] promise[s] anonymity that [it] is in a position to honour it...*" and Guideline 6.4.12 sets out the ways in which effective anonymity for a contributor can be achieved - for example "*effective obscuring of identity may require more than just anonymity of a face. Other distinctive features, including hair, clothing and voice may need to be taken into account. Blurring rather than pixilation, which can be reversed, is the best way of ensuring anonymity in pictures*".
134. The Committee noted that student X had sent a request to the BBC prior to the broadcast of the Programme, stating that she did not consent to appear in it. The Committee was satisfied that, in response to this request, the BBC ensured that student X appeared in the Programme only in a blurred form and, as such, in a way which rendered her generally unrecognisable. Other steps were also taken, including

re-sizing shots to exclude individuals from a recorded picture. In the circumstances, the Committee was satisfied that the BBC took appropriate and proportionate action in response to student X's request. The Committee therefore concluded that the BBC was not in breach of the requirements of these Guidelines.

Finding: Not upheld

Guideline 6.4.31

135. The Committee considered the requirements of Guideline 6.4.31, which states that *"we should not ask contributors to expose themselves to significant health and safety risks while taking part in our output unless we have completed a BBC risk assessment form and conducted rigorous fitness and psychological checks as appropriate... We must ensure that our contributors recognise and accept all the identified risks in writing"*.
136. The Committee construed this Guideline as applicable particularly to those contributors who engage in high risk physical activities for BBC output. In the circumstances, the Committee concluded that it was not applicable to the current case of student X.

Finding: Not upheld

Guideline 6.4.32

137. The Committee considered the requirements of Guideline 6.4.32, which states that the BBC must ensure that it does not *"encourage contributors to put themselves at risk when using recording equipment, including small cameras and mobile phones, to gather material"*.
138. The Committee referred to its deliberations in respect of whether student X was encouraged to film and/or take photographs by the BBC team while in North Korea in paragraphs 103 - 106 above. The Committee concluded that, on the balance of probabilities, the BBC had not breached the requirements of this Guideline by encouraging student X to put herself at risk when using recording equipment.

Finding: Not upheld

Guideline 6.3.33

139. The Committee considered the requirements of Guideline 6.4.33, which states that the BBC *"may need to take practical steps to protect international contributors or sources from repercussions within their own countries, arising from their participation in our output"*.
140. Again, the Committee noted that the question relating to the treatment of the guides was a third party issue but that it had decided at paragraph 66 above that, due to the unusual factual circumstances of this Appeal as far as the guides were concerned, it would consider any issues relating to the guides pursuant to its powers under paragraph 10.1(l) of the Terms of Reference.
141. The Committee noted its conclusion in respect of Guideline 6.4.3 above that the portrayal of the guides in the Programme met the standards of the Guidelines, since the guides knew they were being filmed and appeared only in their official capacity. Noting, however, the arbitrary nature of the North Korean regime, the Committee recognised that a degree of risk must have faced the guides, but that the BBC, in

gathering the material and in editing it, had taken appropriate practical steps to minimise it. Accordingly there was no breach of this Guideline.

Finding: Not upheld

Guideline 6.4.34

- I42. The Committee considered the requirements of Guideline 6.4.34, which states that *"If any material is gathered, by us or by contributors, by recklessly or wilfully endangering anyone, the BBC may decide not to broadcast it and may take disciplinary action"*.
- I43. The Committee noted its conclusions above that, in deciding what information to tell the students about the trip, the BBC was motivated at least in part by a desire to protect them in the event of discovery. The Committee also noted its conclusion in respect of Guideline 6.4.32 above that, on the balance of probabilities, the BBC had not encouraged student X to put herself at risk when using cameras or mobile phones to gather material. In such circumstances, the Committee concluded that the BBC had not breached the requirements of this Guideline.

Finding: Not upheld

Privacy

Guidelines 7.1, 7.2.1 and 7.2.3

- I44. The Committee considered the requirements of Guideline 7.1, which states that *"The BBC respects privacy and does not infringe it without good reason, wherever in the world it is operating."* The Committee also considered Guideline 7.2.1, which states that the BBC must *"balance the public interest in freedom of expression with the legitimate expectation of privacy by individuals. Any infringement of a legitimate expectation of privacy in the gathering of material...must be justifiable as proportionate"*. Finally, the Committee considered Guideline 7.2.3, which states that the BBC must *"justify intrusions into an individual's private life without consent by demonstrating that the intrusion is outweighed by the public interest"*.
- I45. Student X: The Committee considered whether the BBC had infringed student X's privacy in the gathering and broadcast of material for the Programme. The Committee agreed that, while student X appeared in the Programme, her appearance was not without her knowledge or consent because, when the students were in North Korea with the BBC team, all of them knew that the Programme was being filmed. The Committee also agreed that the BBC took appropriate and proportionate action in response to student X's subsequent request not to appear in the Programme. Accordingly, the Committee concluded that the BBC had not infringed student X's privacy in the gathering or in the broadcast of the Programme.
- I46. The LSE: In relation to whether or not the LSE's privacy had been infringed in the gathering of material for the Programme, the Committee noted that, while the LSE had not specifically complained that its privacy had been breached, it had complained that its address details had been used without its consent. The Committee concluded that privacy Guidelines 7.1, 7.2.1 and 7.2.3 were not engaged by this aspect of the LSE's complaint, which it considered was essentially a complaint about whether or not it was fair to use the LSE's address details in this way. The Committee therefore decided to consider this aspect of the LSE's complaint under

the Guidelines on Fairness, Contributors and Consent (see Guidelines 6.1 and 6.2.1 above).

Finding: Not upheld

Guideline 7.2.2

147. The Committee considered the requirements of Guideline 7.2.2, which states that the BBC must "*balance the public interest in the full and accurate reporting of stories involving human suffering and distress with an individual's privacy and respect for their human dignity*".
148. The Committee interpreted this Guideline as applicable specifically to stories involving human suffering and distress, which it decided was not the case in respect of the Programme. In the circumstances, the Committee concluded that this Guideline was therefore not applicable to the Appeal.

Finding: Not upheld

Guidelines 7.3.1, 7.3.6 and 7.3.10

149. The Committee considered the requirements of Guideline 7.3.1, which states that "Any proposal to gather material illegally outside the UK by disregarding privacy or other similar laws in the relevant country must be referred to Director Editorial Policy and Standards". The Committee also considered Guideline 7.3.6, which states that any proposal to carry out secret recording "must be referred to Editorial Policy prior to approval by the relevant senior editorial figure in the division" and Guideline 7.3.10, which requires that any deception to obtain secretly recorded material must be referred to the relevant senior editorial figure.
150. The Committee noted that the proposal for the BBC team to film undercover in North Korea was referred to the Director of Editorial Policy and Standards at a very early stage (on 1 February 2013) and at other points prior to formal approval being given by the BBC to proceed with the proposal on 18 March 2013. The Committee also noted that an Editorial Policy Adviser had been involved in discussions about arrangements for the trip. The Committee also noted that the proposal to gather material by secret filming and recording had been signed off by a Senior Programme Executive, and that the Programme had been approved for broadcast by the Executive Editor of TV and Current Affairs. Accordingly, the Committee was satisfied that the relevant referrals had been made within the BBC and concluded that the requirements of these Guidelines had not been breached.

Finding: Not upheld

Guideline 7.4.1

151. The Committee considered the requirements of Guideline 7.4.1, which states that when contributors give informed consent to take part in BBC output, "*they can be assumed to have waived their expectations of privacy in relation to their contribution*".
152. The Committee noted its conclusion in respect of Guidelines 6.2.2. and 6.4.1 above that student X had not been appropriately informed about the planned nature and context of her contribution and, therefore, did not possess the knowledge that was necessary for her to make a reasoned decision to take part in the trip to North

Korea and give informed consent. In any event, the Committee noted its conclusions in respect of Guidelines 7.1, 7.2.1 and 7.2.3 above that student X's privacy had not been infringed in the gathering or in the broadcast of the material. The Committee therefore concluded that this Guideline was not applicable to the circumstances of this Appeal.

Finding: Not upheld

Guidelines 7.4.10, 7.4.11 and 7.4.13

153. The Committee considered the requirements of Guidelines 7.4.10, 7.4.11 and 7.4.13. The Committee noted that Guideline 7.4.10 sets out the purposes for which secret recording is normally used and that Guideline 7.4.11 requires that any proposal to carry out secret recording be referred to Editorial Policy prior to approval by the relevant senior editorial figure. The Committee noted that Guideline 7.4.11 also states that *"the gathering and broadcast of secretly recorded material is always a two-stage process, requiring a justification for any intrusion at each stage"*. Finally, the Committee noted that Guideline 7.4.13 requires that *"secret recording must be justified by a clear public interest"* and that *"the intrusion in the gathering and transmission of secret recording must be proportionate to the public interest it serves"*.
154. In relation to Guideline 7.4.10, the Committee agreed that secret filming was appropriate in these circumstances, in light of the fact that North Korea's laws made the normal and responsible gathering of candid material extraordinarily difficult or impossible. In relation to Guideline 7.4.11, the Committee noted that both the Director of Editorial Policy and Standards and the Editorial Policy Adviser had been consulted about the proposal to carry out secret recording. The Committee also noted that the proposal to gather material by secret filming and recording had been signed off by a Senior Programme Executive, and that the Programme had been approved for broadcast by the Executive Editor of TV and Current Affairs. Finally, in relation to Guideline 7.4.13, the Committee agreed that the proposal to gather and broadcast material by secret filming and recording was justified by a clear public interest and was proportionate to that interest. Accordingly, the Committee concluded that the requirements of these Guidelines had not been breached.

Finding: Not upheld

War, Terror and Emergencies

Guideline 11.4.22

155. The Committee considered the requirements of Guideline 11.4.22, which states, in relevant part, that *"any proposal to work in hostile environments, on high risk activities or high risk events must be referred to Head of Newsgathering and BBC Safety's High Risk Team"*.
156. The Committee noted that the proposal to film undercover in North Korea, which became classified as a hostile environment on 13 March 2013, was referred to both the Deputy Director of News and Current Affairs (who was at the time the Acting Director of News and had been the Head of Newsgathering between January 2005 and November 2012) and to the BBC's High Risk Team. In this respect, the Committee was satisfied that there was no breach of process by the BBC given that the proposal had in fact been referred to a more senior level than required by the

Guideline and in any event to someone who had previously been the Head of Newsgathering. Accordingly, the Committee concluded that the requirements of this Guideline had not been breached.

157. Nevertheless, the Committee wished to note that the process adopted in respect of the proposal to film undercover in North Korea appeared to have been muddled in at least one respect. The Committee considered the problem was that the team felt they had to act quickly and acted on Editorial Policy advice before they received High Risk advice. The Committee understood the time constraints, but considered that in future, editorial control needed to be asserted so that advice given by the High Risk and Editorial Policy teams was considered in the round before it was acted on and any inconsistencies worked through and signed off at a senior editorial level.

Finding: Not upheld

Conflicts of Interest

Guideline 15.2.3

158. The Committee considered the requirements of Guideline 15.2.3, which states that "The BBC must be satisfied that individuals involved in the production of its content are free from inappropriate outside commitments and connections".
159. The Committee referred to its deliberations about Tomiko Newson's role in the trip in paragraphs 113 - 117 above. On the basis of the BBC's involvement in the trip from the first week of February 2013 and in particular due to the fact that, as of 4 March 2013, Tomiko Newson was both the trip leader to the students and was also employed by the BBC, the Committee concluded that she was not free from inappropriate outside commitments and connections since her ability to make decisions solely in the best interests of the students had been compromised. The Committee wished to note, however, that this conflict of interest was the responsibility of the BBC to identify and to manage, rather than Tomiko Newson herself.

Finding: Upheld

The Law

Guideline 18.2.2

160. The Committee considered the requirements of Guideline 18.2.2, which requires that any proposal to break the law must be referred to a senior editorial figure and, if necessary, the Director of Editorial Policy and Standards.
161. The Committee noted that it would not have been permissible to openly film a documentary such as the one that was broadcast in North Korea. The Committee also noted that the proposal to film undercover in North Korea was referred to both the Director of Editorial Policy and Standards and the Editorial Policy Adviser. In this respect, the Committee concluded that the requirements of this Guideline had not been breached.

Finding: Not upheld

Using the Guidelines

Guideline 2.4.1

162. The Committee considered the requirements of Guideline 2.4.1, which states that "the concept of editorial justification...is a judgment on the particular circumstances of each case, balancing the editorial purposes of our output or actions with their impact on our audiences and people in our output".
163. The Committee agreed that the BBC did not intend to treat the students unfairly, and that its decisions about what to tell them were motivated at least in part by a desire to protect them. In this respect, the Committee referred to its conclusions regarding Guidelines 6.1 and 6.2.1 above. However, the Committee also agreed that, in the circumstances, the provision of information to student X was insufficient and inadequate to enable her to give her informed consent to running the risks involved in the trip. The Committee emphasised that securing informed consent should normally be the priority where a conflict arises between the need to minimise risk and the need to secure informed consent from people who put themselves at risk for the BBC.

Finding: Upheld

Accuracy and Impartiality

Guidelines 3 and 4

164. The Committee noted the requirements of the Guidelines on Accuracy and Impartiality in respect of the alleged misstatements made by the BBC Executive following the broadcast of the Programme. In particular, the Committee considered the requirements of Guidelines 3.1, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 4.1 and 4.4.15.
165. For the reasons set out at paragraphs 69 - 75 above, the Committee concluded that the requirements of the Guidelines on Accuracy and Impartiality had not been breached in these circumstances. The Committee expressed regret that statements appeared to have been made following the broadcast of the Programme that had proved not to be entirely accurate. However, it was also mindful of the fact that the BBC Executive had already clarified some of its early statements, by explaining, for example, that certain statements had been made because they were what its staff believed at the time, although they had subsequently proved to be the result of a misunderstanding.
166. The Committee recognised that interviewees on programmes, including interviewees representing the BBC on occasion, will sometimes say things which turn out not to have been accurate, and while presenters and editors should do their best to spot and challenge inaccuracies where they may be apparent during an interview the Guidelines do not require BBC programme makers to accept responsibility for every mistake. The Committee was satisfied in this case that the BBC staff had not set out to be deliberately misleading.
167. However, the Committee wished to emphasise the importance of the BBC ensuring, to the best of its abilities, that statements it made post-broadcast were accurate. The Committee's view was that it was best practice where the BBC became aware that it had publicly presented incorrect facts for it to correct those facts.

Finding: Not upheld

Values 1.1, 1.2.1, 1.2.7, 1.2.8 and 1.2.11

168. The Committee agreed that, in view of the findings made above, it was not necessary for the purposes of this Appeal to consider whether the BBC had breached values 1.1, 1.2.1, 1.2.7, 1.2.8 and 1.2.11 of the Guidelines.
169. However, the Committee wished to note that, in its view, it is open to it in principle to uphold a breach of editorial standards against these values, and that there is nothing in the Charter, Agreement or in the Complaints Framework to preclude it from doing so. Indeed, the Committee considered that if it was not able to uphold a complaint in respect of values that encapsulate the spirit of the Guidelines, this would be inconsistent with its remit of securing editorial standards.

Outcome

170. The Committee noted that the BBC Executive had, in light of the breaches of the Guidelines identified above, informed the Committee that it intended send letters of apology to both student X (via Mr X) and to the LSE. These letters were sent to Mr X and the LSE on the morning of the publication of this finding and this was recorded on the 'Corrections and Clarifications' page of the BBC's website⁴. The Committee agreed that, in view of the nature of the breaches of the Guidelines identified above, this was an appropriate outcome.

⁴ http://www.bbc.co.uk/helpandfeedback/corrections_clarifications/index.html

APPENDIX - Extracts from the Guidelines

Guideline	Extract
The BBC's Editorial Values	
1.1	<ul style="list-style-type: none"> • "We must give our audiences content made to the highest editorial and ethical standards..." • "We must therefore balance our presumption of freedom of expression with our responsibilities, for example to respect privacy [and] to be fair..." • "We seek to uphold the BBC's Editorial Values in all that we do."
1.2.1	<ul style="list-style-type: none"> • "Trust is the foundation of the BBC: we are independent, impartial and honest. We are committed to achieving the highest standards of accuracy and impartiality and strive to avoid knowingly and materially misleading our audiences."
1.2.7	<ul style="list-style-type: none"> • "Our output will be based on fairness, openness, honesty and straight dealing. Contributors and audiences will be treated with respect."
1.2.8	<ul style="list-style-type: none"> • "We will respect privacy and will not infringe it without good reason, wherever in the world we are operating. Private behaviour, information, correspondence and conversation will not be brought into the public domain unless there is a public interest that outweighs the expectation of privacy."
1.2.11	<ul style="list-style-type: none"> • "We are accountable to our audiences and will deal fairly and openly with them." • "We will be open in acknowledging mistakes when they are made and encourage a culture of willingness to learn from them."
Guideline 2 - Using the Guidelines	
2.4.1	<ul style="list-style-type: none"> • "The concept of editorial justification...is central to the application of our values and standards. It is a judgment on the particular circumstances of each case, balancing the editorial purposes of our output or actions with their impact on our audiences and people in our output (or, where relevant, those closest to them)."
Guideline 3 - Accuracy	
3.2.3	<ul style="list-style-type: none"> • "The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences' trust in our

Guideline	Extract
	content."
3.2.4	<ul style="list-style-type: none"> "We should normally acknowledge serious factual errors and correct them quickly, clearly and appropriately."
Guideline 4 - Impartiality	
4.4.15	<ul style="list-style-type: none"> "When dealing with controversial subjects concerning the BBC, our reporting must remain duly impartial, as well as accurate and fair. We need to ensure the BBC's impartiality is not brought into question and presenters or reporters are not exposed to potential conflicts of interest. It will be inappropriate to refer to either the BBC as "we" or the content as "our". There should also be clear editorial separation between those reporting the story and those responsible for presenting the BBC's case."
Guideline 6 – Fairness, Contributors and Consent	
6.1	<ul style="list-style-type: none"> "The BBC strives to be fair to all - fair to those our output is about, fair to contributors, and fair to our audiences. BBC content should be based on respect, openness and straight dealing. We also have an obligation under the Ofcom Broadcasting Code to "avoid unjust or unfair treatment of individuals or organisations in programmes"."
6.2.1	<ul style="list-style-type: none"> "We will be open, honest, straightforward and fair in our dealings with contributors and audiences unless there is a clear public interest in doing otherwise or a need to consider important issues such as legal matters, safety or confidentiality."
6.2.2	<ul style="list-style-type: none"> "Individuals should normally be appropriately informed about the planned nature and context of their contributions when they are asked to take part in BBC content and give their consent, unless there is an editorial justification for proceeding without consent."
6.3.3	<ul style="list-style-type: none"> "Any proposal to deceive a contributor to news or factual output must be referred to a senior editorial figure... Editorial Policy or, in the most serious cases, Director Editorial Policy and Standards, must also be consulted."
6.3.6	<ul style="list-style-type: none"> "Any proposal to use a tourist visa to avoid visa restrictions when working for the BBC in that country, or any other proposal to enter a country illegally, must be referred to a senior editorial

Guideline	Extract
	<p>figure, or for independents to the commissioning editor, who may consult Director Editorial Policy and Standards."</p>
<p>6.4.1</p>	<ul style="list-style-type: none"> "We should treat our contributors honestly and with respect. Our commitment to fairness is normally achieved by ensuring that people provide 'informed consent' before they participate. 'Informed consent' means that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content...the more significant their contribution, the more detail we should provide."
<p>6.4.3</p>	<ul style="list-style-type: none"> "There may be occasions when people are discussed, referred to or appear in material without their knowledge or consent...We should be fair and accurate in our portrayal of these people and where appropriate respect their legitimate expectation of privacy."
<p>6.4.5</p>	<ul style="list-style-type: none"> "We obtain informed consent from our contributors in a variety of ways depending on the circumstances of their contribution. Wherever practicable we should obtain consent in a form capable of proof."
<p>6.4.7</p>	<ul style="list-style-type: none"> "For more significant contributions, we may sometimes ask participants to sign a contract which formalises the terms of their dealings with us, and includes a declaration of personal information which may bring the BBC into disrepute, for example, criminal convictions, or which may involve possible conflicts of interest."
<p>6.4.9</p>	<ul style="list-style-type: none"> "Occasionally people who have willingly contributed to our output try to withdraw their consent prior to broadcast. Generally no one has the right in such circumstances to prevent their contribution being used, but we should listen carefully to any reasonable objections. There may be exceptions...where there have been significant changes to the context in which their contribution is to be used."
<p>6.4.11</p>	<ul style="list-style-type: none"> "We must ensure when we promise anonymity that we are in a position to honour it, taking account of the implications of any possible court order demanding the disclosure of our unbroadcast material. When anonymity is essential, no document, computer file, or other record should identify a contributor or source. This includes notebooks and administrative paperwork as well as video and audio material."

Guideline	Extract
6.4.12	<ul style="list-style-type: none"> • "Effective obscuring of identity may require more than just anonymity of a face." • [Steps should be taken to avoid any risk of jigsaw identification] • "We may need to disguise the identity of international contributors... if their safety may be compromised"
6.4.17	<ul style="list-style-type: none"> • "In news and factual output where there is a clear public interest, it may occasionally be acceptable for us not to reveal the full purpose of the output to a contributor. Such deception is only likely to be acceptable when the material could not have been obtained by any other means. It should be the minimum necessary and in proportion to the subject matter. Any proposal to deceive a contributor to news or factual output must be referred to a senior editorial figure... Editorial Policy, or in the most serious cases Director Editorial Policy and Standards, must also be consulted."
6.4.23	<ul style="list-style-type: none"> • "We should normally be open about our intentions when entering countries to work." • "Any proposal to use a tourist visa to avoid restrictions when working for the BBC in that country, or any other proposal to enter a country illegally, must be referred to a senior editorial figure...." • "When use of a tourist visa in this way, or any other illegal entry of a country, is approved, Newsgathering and the Head of the relevant World Service region should also be informed. It may also be advisable to contact Programme Legal Advice before travelling."
6.4.31	<ul style="list-style-type: none"> • "We should not ask contributors to expose themselves to significant health and safety risks while taking part in our output unless we have completed a BBC risk assessment form and conducted rigorous fitness and psychological checks as appropriate." • "We must ensure that our contributors recognise and accept all the identified risks in writing".
6.4.32	<ul style="list-style-type: none"> • "We must ensure that we do not encourage contributors to put themselves at risk when using recording equipment, including small cameras and mobile phones, to gather material."
6.4.33	<ul style="list-style-type: none"> • "We may need to take practical steps to protect international contributors or sources from repercussions within their own countries, arising from their participation in our output."

Guideline	Extract
6.4.34	<ul style="list-style-type: none"> • "If any material is gathered by us or by contributors by recklessly or wilfully endangering anyone, the BBC may decide not to broadcast it and may take disciplinary action. Those responsible may also be liable to prosecution."
Guideline 7 – Privacy	
7.1	<ul style="list-style-type: none"> • "The BBC respects privacy and does not infringe it without good reason..." • "Meeting these ethical, regulatory and legal obligations in our output requires consideration of the balance between privacy and our right to broadcast information in the public interest. We must be able to demonstrate why an infringement of privacy is justified." • "An infringement is considered in two stages requiring justifications for both the gathering and the broadcasting of material where there is a legitimate expectation of privacy."
7.2.1	<ul style="list-style-type: none"> • "The BBC must balance the public interest in freedom of expression with the legitimate expectation of privacy by individuals. Any infringement of a legitimate expectation of privacy in the gathering of material... must be justifiable as proportionate in the particular circumstances of the case."
7.2.2	<ul style="list-style-type: none"> • "We must balance the public interest in the full and accurate reporting of stories involving human suffering and distress with an individual's privacy and respect for their human dignity."
7.2.3	<ul style="list-style-type: none"> • "We must justify intrusions into an individual's private life without consent by demonstrating that the intrusion is outweighed by the public interest."
7.3.1	<ul style="list-style-type: none"> • "Any proposal to gather material illegally outside the UK by disregarding privacy or other similar laws in the relevant country must be referred to Director Editorial Policy and Standards. Programme Legal Advice may also be consulted."
7.3.6	<ul style="list-style-type: none"> • "Any proposal to carry out secret recording must be referred to Editorial Policy prior to approval by the relevant senior editorial figure in the division..."

Guideline	Extract
7.3.10	<ul style="list-style-type: none"> "Any deception required to obtain secretly recorded material... must be referred to the relevant senior editorial figure..."
7.4.1	<ul style="list-style-type: none"> "When contributors give informed consent to take part in our output, they can be assumed to have waived their expectations of privacy in relation to their contribution, subject to any agreed conditions placed on their participation."
7.4.10	<ul style="list-style-type: none"> [Summary of a small part of the Guideline]: <p>Normally the BBC will use secret filming only for limited purposes which include obtaining material outside of the UK where a country's laws make the normal and responsible gathering of material extraordinarily difficult or impossible.</p>
7.4.11	<ul style="list-style-type: none"> "Any proposal to carry out secret recording must be referred to Editorial Policy prior to approval by the relevant senior editorial figure in the division..." "The gathering and broadcast of secretly recorded material is always a two stage process... the decision to gather is always taken separately from the decision to transmit." "A record must be kept of the approval process" "Any deception required to obtain secretly recorded material... should be the minimum necessary and proportionate to the subject matter and must be referred to the relevant senior editorial figure..." "When proposing to carry out secret recording outside the UK, we should be aware that the laws relating to privacy vary around the world. Any proposal to gather material illegally outside the UK by disregarding privacy or other similar laws in the relevant country must be referred to Director Editorial Policy and Standards. Programme Legal Advice may also be consulted."
7.4.13	<ul style="list-style-type: none"> "Secret recording must be justified by a clear public interest [and]... should normally be a method of last resort." "The intrusion in the gathering and transmission of secret recording

Guideline	Extract
	<p><i>must be proportionate to the public interest it serves. Where there is a higher legitimate expectation of privacy, the BBC requires a higher public interest test to be achieved before recording secretly."</i></p>
<p>Guideline 11 – War, Terror and Emergencies</p>	
<p>11.4.22</p>	<ul style="list-style-type: none"> • <i>"Any proposals to work in hostile environments, on high risk activities or high risk events must be referred to Head of Newsgathering and BBC Safety's High Risk Team."</i> • <i>["Hostile environment", "high risk activities" and "high risk events" are defined, and it is stated that the BBC keeps a list of hostile and dangerous environments on Gateway.]</i>
<p>Guideline 15 – Conflicts of Interest</p>	
<p>15.2.3</p>	<ul style="list-style-type: none"> • <i>"The BBC must be satisfied that individuals involved in the production of its content are free from inappropriate outside commitments and connections."</i>
<p>Guideline 18 – The Law</p>	
<p>18.2.2</p>	<ul style="list-style-type: none"> • <i>"Any proposal to break the law must be referred to a senior editorial figure... who may consult Programme Legal Advice and, if necessary, Director Editorial Policy and Standards."</i>