

Editorial Standards Findings

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

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

Remit of the Editorial Standards Committee

The Editorial Standards Committee (ESC) is responsible for assisting the Trust in securing editorial standards. It has a number of responsibilities, set out in its Terms of Reference at http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2014/esc_tor.pdf

The Committee comprises five Trustees: Richard Ayre (Chairman), Sonita Alleyne, Mark Damazer, Bill Matthews and Nicholas Prettejohn. The Committee is advised and supported by the Trust Unit.

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

The Committee may consider appeals concerning complaints which allege that:

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

However, not all requests for appeal qualify for consideration by the ESC. The Editorial Complaints and Appeals procedure¹ explains that:

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

1 http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

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

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

In deciding whether an appeal qualifies for consideration, the Committee may also decide to take only part of the appeal, and consider only some of the issues raised. Where an appeal or part of an appeal qualifies for consideration, the Committee will aim to provide the complainant with its final decision within 80 working days of accepting the request for an appeal.

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

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

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

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

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

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

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

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

Summary of findings

Appeal: Sportscene, BBC Two Scotland, 19 October 2014

Summary of finding

The Chairman of Kilmarnock Football Club contacted the BBC because he felt that an accusation by a football pundit that the Chairman had “acted in bad faith” was inaccurate, misleading and unfair.

The Committee concluded that:

- the pundit’s views on what had happened in the past and what had happened during the previous season were duly accurate.
- the interview had been duly accurate in a way that was adequate and appropriate to the output, taking into account the subject and nature of the content and audience expectations.
- the audience would not have been misled as to the nature of the comment, which had been labelled as an opinion. Trustees considered the output to be duly accurate.
- as the two interviewees confirmed that the situation at the club was discussed in the pre-broadcast discussion and the phrase “in bad faith” was not used, this disposed of the suggestion that the BBC knew this point was going to be made and had asked a “leading”, scripted and rehearsed question.
- the presenter was simply seeking the opinion of a pundit on an issue of interest and concern to Scottish football fans. Consequently, the Committee concluded that there had been no resulting unfairness to the complainant in posing this question about the club.
- it might have been preferable for the presenter to have acknowledged that the complainant did not share the pundit’s version of events or interpretation of his actions. Trustees considered that the charge was expressed in strong language but noted it was expressed as a personal opinion in a live interview. It was entirely in line with the tendency to hyperbole which the audience would expect of a sports pundit. Consequently, Trustees concluded that this accusation of acting “in bad faith” did not amount to an allegation which called for a right of reply and was therefore not in breach of the guidelines on Fairness.

The complaint was not upheld.

Closure of correspondence regarding description of Syriza as “far-left”

Summary of finding

The complainant contacted the BBC about the use of the term “far-left” to describe the Greek political coalition/party, Syriza. He appealed to the Trust following BBC Audience Services’ decision to stop corresponding with him. Trustees considered whether this decision was reasonable.

The Committee concluded:

- the decision about the way to describe Syriza in any particular content was generally an editorial and creative decision for the BBC but that, depending on context, the Editorial Guidelines might well be engaged.
- that it agreed with the complainant that “radical left” and “far-left” were not the same. Trustees decided, however, that in principle it could have been duly accurate and duly impartial to describe Syriza as “far-left”, depending upon the context.
- it would have been preferable if the complainant had been asked at an early stage to identify examples of specific output in order to better investigate his complaint. However, Trustees accepted that due to the volume of unspecified complaints the BBC received, it was not proportionate to reply to each of these requesting further evidence.
- the BBC had been reasonable to close down the appeal at the stage it did, as the complainant had not specified what precise content he was complaining about and without that, it was not possible to assess content in context.
- Syriza received a great deal of coverage on the BBC and this was significant as audiences would be able to form their own view on the party and its position on the political spectrum.
- the complainant had raised an issue which the BBC Executive might wish to take note of, so the Committee would draw the case specifically to the attention of the Director of News.

This complaint was not upheld.

Today, Radio 4, 9 October 2014

Summary of finding

The complainant contacted the BBC about a report on rural road deaths which he felt was inaccurate.

The Committee concluded that:

- given that the Government was launching a campaign to highlight the dangers of rural roads and that a disproportionate number of deaths occurred on rural roads, there was some editorial justification for making this the focus of the report, even though it was not one of the main findings of the Department for Transport report.
- it was regrettable that listeners had not been made aware of the campaign but that did not invalidate the story that was being explored in the item.
- the decision to focus the report on the issue highlighted by the campaign, albeit without mentioning that campaign, had not breached the Editorial Guidelines.
- while the phrase “rural accidents have increased” could have been better chosen, the introduction to the item and the item itself signposted that the focus was on statistics regarding deaths on rural roads. Trustees decided that this was duly accurate and not misleading in context.
- that the long-term trend and the recent upswing in rural road deaths were both of interest and that it would have been more informative if the item had included more analysis of trends. However, the Committee noted that this was a short bulletin piece so the amount of material that could be covered was limited. As a result, after taking account of the subject and nature of the content, Trustees considered on balance that due accuracy had been achieved.
- the Editorial Complaints Unit had acted within its remit in investigating this complaint and had explained those limits to the complainant. The investigation undertaken by the Trust had made the fuller context and the reason for focusing on rural deaths clearer.

The complaint was not upheld.

News at One, BBC One, 22 August 2014

Summary of finding

The complainant contacted the BBC regarding a report about the introduction of new powers intended to protect patients from mistakes by doctors. In particular, he felt the line: “hundreds of people died unnecessarily” was inaccurate and warranted an on-air apology.

The Committee concluded that:

- it would never be possible to identify more than a few people by name (as the complainant had requested) as having died at Stafford Hospital directly because of failings of care.
- it did not agree with the complainant’s assertion that, in order to say a number of people died unnecessarily, they had to be identifiable as individuals who had been subject to a coroner’s inquest.
- given the explanation of the mortality figures and the evidence in the Healthcare Commission and Francis reports, there was a 95% probability of excess deaths occurring at Stafford Hospital at the time in question.
- it might have been preferable for the report to have qualified the line “hundreds of people died unnecessarily” by saying, for example, “hundreds of people may have died unnecessarily”, given the debate and controversy around the statistics. However, the Committee concluded that there was a high probability that a large number of patients amounting to hundreds had died unnecessarily at Stafford Hospital over time.
- the phrase that was the subject of this complaint had been tangential to the story covered in the news item and the Committee took that context into consideration when considering whether it had been duly accurate.
- there had been no breach of the Editorial Guidelines. The accuracy had been adequate and appropriate to the output.
- the guidelines on Accuracy had not been breached in the amended line: “hundreds of people suffered unnecessarily”. This line was duly accurate.
- as it had not found the news item to be in breach of the guidelines on Accuracy, there was no need for an on-air correction or apology.

This complaint was not upheld.

This World: Ireland's Lost Babies, BBC Two, 17 September 2014, 21.00

Summary of finding

At the complainants' request, this finding has been partially anonymised in order to minimise distress to surviving relatives.

The BBC received a complaint that:

- it had not directly contacted, consulted or informed a widower (Mr A) that his late wife (Mrs A) was to feature in the programme; (The programme amongst other stories told the story of his late wife's illegitimate child (Ms Monaghan) who was given up for adoption and was then abused.)
- the BBC did not have permission to use video footage filmed in his home which featured him and his late wife;
- it had not asked for his permission to film at her grave and that it did not have the cemetery's permission to film there;
- the programme was unfair to her; and
- it was inaccurate to describe Ms Monaghan's visit to her mother's grave in the programme as being her first visit.

The complaint therefore alleges that the programme treated the late Mrs A unfairly and contained unwarranted infringements of her privacy. Such a complaint may be made by the next of kin of a deceased person.⁴

The Committee considered this complaint on appeal. Trustees noted that this was a distressing situation and wished to reassure all affected parties that this decision had been approached with the utmost care.

The Committee concluded that:

- *Ireland's Lost Babies* had exposed the injustice of the past adoption process in Ireland as it related to unmarried mothers and their babies and it had disclosed significant historical and contemporary negligence on the part of the Church and the State, particularly in relation to the accessing of adoption records;
- the programme had highlighted important information that allowed its audience to better understand the way mothers and their illegitimate children were treated in Ireland in the 1950s and 1960s;

⁴ See Part 5 of the Broadcasting Act 1996, and in particular section 111(2). References to the BSC should be read as references to Ofcom (which took over the BSC's functions by virtue of the Communications Act 2003). The BBC is required by clause 45 (1) of its Agreement with the Secretary of State for Culture Media and Sport to comply with Ofcom's Fairness Code, which is comprised of the sections on fairness and privacy in the Ofcom Broadcasting Code.

- in broadcasting *Ireland's Lost Babies* the BBC had identified Mrs A and revealed sensitive personal information about her which, according to the evidence before the Committee, had not previously been in the public domain and that this had resulted in an infringement of Mrs A's legitimate expectation of privacy. However:
 - there was a public interest to this specific story because it demonstrated the inadequate vetting processes the Catholic Church had in place at that time which resulted in a child being adopted by an abusive father;
 - there was a significant public interest in the way the programme revealed the scandal of the adoption system in Ireland;
 - Ms Monaghan's had a right to freedom of expression in telling her own story as did the BBC;

and this outweighed the privacy of Mrs A. Therefore the infringement into Mrs A's private life was warranted and that the privacy guidelines had not been breached in this regard;

- the BBC was not obliged to seek consent from Mr A to film the gravestone which showed his wife's name or show the video which featured his late wife and a fleeting shot of part of his face and which was filmed in his home. This was because (although he was Mrs A's next of kin) the privacy of Mrs A was outweighed by both the public interest in the programme and in the freedom of expression of Ms Monaghan and the BBC;
- given the subject matter of the programme and the detail included, the programme had examined past events that caused suffering and trauma and Mrs A's immediate family should have been informed in order to comply with the Editorial Guidelines;
- given the vulnerability of both Ms Monaghan and Mr A and the sensitive nature of Ms Monaghan's adoption story, it had been entirely appropriate for the BBC to make its first approach to Mr A through Ms Monaghan;
- it was not appropriate for the BBC to rely totally on the assurances of a third party that Mr A had been made aware of the nature of the programme and the inclusion of footage of the grave with his personal inscription to his wife, footage of her and information about his late wife's story which was not in the public domain;
- the BBC's apologies stopped short of resolving this aspect of the complaint. This was because the BBC had not apologised for not contacting Mr A directly to tell him about the nature of the whole programme and the context in which the material, which identified his wife, was to be used within it;
- given the particular facts of the case the BBC had not demonstrated that it had taken sufficient steps to minimise any possible distress to Mr A when it examined past events, which involved suffering and trauma, by notifying him of the programme. The BBC was in breach of the privacy guideline 7.4.44;
- Mr A would not have had any right of veto in this case as the public interest would have outweighed any (reasonable) objections he may have had;

- on the evidence before it that the BBC did not require permission to film at Slough Cemetery;
- there was no criticism of Mrs A (or in fact any mother) in the programme and the criticism was focussed on the Catholic Church and the Irish State;
- the brief description by Ms Monaghan of the first meeting with her mother did not amount to a criticism of Mrs A but was an insight into how difficult the trauma of having an illegitimate child had been for her. The Committee decided that based on all the evidence before it the BBC had been fair and accurate in its portrayal of Mrs A; and
- the account in the programme that the filmed visit was Ms Monaghan's first visit to her mother's grave in Slough Cemetery, was accurate.

This complaint was partially upheld on one aspect of privacy.

Top Gear, 8pm, BBC Two, 1 February 2015

Summary of finding

The complainant contacted the BBC because he felt an item demonstrating the braking distance of cars was inaccurate and irresponsible.

The Committee concluded that:

- the programme should have provided accurate information about what was said in the Highway Code. This was important because this was factual information about road safety. On this point, therefore, the Committee concluded that the suggestion that the “Braking Distance” at 60mph was 240 feet was inaccurate.
- the testing of the braking distances of these high performance cars would have been seen by the audience as part of a familiar well-established format where many trials are undertaken with an emphasis on entertainment rather than for their information. Consequently, these exaggerated comments would not have exceeded audience expectations for this programme
- this feature would not have any effect on children’s behaviour as they were too young to drive.
- even impressionable young adult viewers would not see comments such as these in this comic context as a licence to break the law.
- given this context, there was sufficient editorial justification for including this item in the programme. The Committee decided that the programme did not condone or glamorise behaviour that was likely to encourage others to copy it.

This complaint was partially upheld.

Appeal Findings

Sportscene, BBC Two Scotland, 19 October 2014

The complaint

The complainant, who is the Chairman of Kilmarnock Football Club and a solicitor, complained because a football pundit on BBC Two's *Sportscene* said that the complainant had "acted in bad faith". The complainant said that this comment was inaccurate, misleading and unfair.

Background

The Kilmarnock Football Club players were told that they would no longer receive bonuses per game as well as an end-of-season bonus. They would instead be given a "pooled" bonus dependent on where they finished in the league table. For example, if they finished fourth, they would receive a six-figure sum between them; if they finished tenth they would share £20,000 between them.

As well as the final position in the league, this end-of-season squad bonus would be split among the players according to a range of additional factors, such as how many starts each player made in the first team or how many substitute appearances they made. It is not clear from information available in the public domain when exactly the players were told about this new arrangement or how they felt about it. However, at the beginning of September 2014, the Professional Footballers' Association Scotland (the PFA) was called in to mediate talks with the club.

On 10 October 2014, the complainant held a meeting with the players. Six days later, he told the Press Association:

"So far as I am aware, the players now understand the reasoning behind and accept the club's original proposal. Only 15 of 35 professional players attended the meeting on Friday afternoon, so I'm assuming that those who were not there - some for personal reasons, others because of international duty - are content."

On the same day, the Chief Executive of the Professional Footballers' Association Scotland said:

"Contrary to the statement issued by the club, no understanding was reached at last Friday's meeting with the chairman and manager. The players in attendance made their position clear in the strongest possible terms. It is also wrong to assume that those not in attendance are content. For the avoidance of doubt the players have not accepted the club's original proposal and are currently considering their position."

On Saturday 18 October, the complainant gave an interview to BBC Radio Scotland. He explained:

- the graduated bonus scheme
- that Kilmarnock "are probably paying better basic wages than a lot of comparable clubs of our size and financial resources".

- that after his meeting with the players, "... none of the players came forward seeking a further discussion either with me or the manager, either individually or as a group, so as far as Allan [the manager] and I are concerned the meeting a week past on Friday provided the clarity that was needed".
- "[The Chief Executive of the PFA Scotland] hadn't been in touch with me since the 16th September. I had emailed him twice in the interim seeking clarification on some points and in both of the emails I sent him I reiterated that I was happy to meet with any of the players who wanted to have a discussion about this. So I don't know why [The Chief Executive of the PFA Scotland] came out with such a strongly worded statement at the end of the week."

Immediately following this interview the presenter sought the view of the studio pundit, Allan Preston, who said:

"I just think it's a real awkward one for the players. I don't think they can win ... as far as I'm led to believe they might have been promised money from someone else who was there last year and had said to them we'll get this sorted out for next year because it wasn't sorted out last year either. So this has been rumbling on. This isn't something that just started this season. This has been last season as well."

On Sunday 19 October, *Sportscene* featured as pundits John Rankin, a footballer and Chairman of the PFA Scotland, and Michael Stewart, a former Scottish professional footballer who also has a column in the *Scottish Sun*.

Earlier that day, before appearing on *Sportscene*, Mr Stewart tweeted:

"Just finished my column this week I've been looking at Killie bonus dispute. Chairman acting in bad faith & no wonder the players are unhappy."

In the evening, *Sportscene* showed coverage of Kilmarnock's game. At the end of the match highlights, a discussion ensued about developments at the club. The presenter asked Mr Stewart:

"It is a bit of a murky business for those of us on the outside looking in, Michael, in terms of players' bonuses. But what's your feeling? Have the club moved the goalposts here?"

Mr Stewart said:

"...What needs to be happening is getting it down in writing and what's happened here is that historically what would happen is that the captain or an experienced player would talk to the chairman and maybe the manager as well. They would discuss the bonuses in pre-season. It would get batted about for a couple of weeks and then ultimately come to an agreement that would be similar to what it was the year before. But what's happened at Kilmarnock is that they moved from it getting paid monthly to then an end of season bonus. The players were under the impression that it would have been the same amount of money that they were on previously. Come the end of the season they found out that it was drastically less. So yeah, in my opinion, what's happened is the chairman has acted in bad faith and I'm not surprised the players are unhappy."

The following day, 20 October, Mr Stewart expanded on his view of the situation in his column in the *Scottish Sun*, asking:

“How do the two sides come to agreement? Well it’s very difficult when one side is acting in bad faith.”

Stages 1 and 2

The complainant complained to the BBC. He received replies from the Editor, TV Sport defending the programme and from the Head of Public Policy & Corporate Affairs for BBC Scotland who explained the process for escalating the complaint.

The complaint was not upheld by the Editorial Complaints Unit (the ECU) at Stage 2.

Appeal to the Trust

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

Point (A) Mr Stewart’s assertion that the complainant had acted in bad faith was inaccurate and misleading.

Point (B) The presenter asked a leading question designed to elicit a rehearsed response.

Point (C) It was unfair to the complainant to allow Mr Stewart to make his assertions when the programme makers knew – or should have known – what his answers would be.

Applicable Editorial Guidelines

The sections of the BBC Editorial Guidelines particularly applicable to this case relate to Accuracy and Fairness. The full guidelines are at:

<http://www.bbc.co.uk/editorialguidelines/>

The Committee’s decision

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

Point (A):

The Committee noted the interview at the centre of this complaint and the complainant’s view that Mr Stewart’s allegation that he “acted in bad faith” was inaccurate and misleading. The complainant had said: “There is no basis in fact for such an assertion.” Trustees also noted that the complainant said that Mr Stewart’s account of the background to the bonus dispute was “flawed”. The complainant said:

"He [Mr Stewart] has ignored the fact that the bonus structure at Kilmarnock FC this season is basically the same (actually slightly better) than last season..."

"... this season's bonus scheme was intimated in writing to the manager and shared with the players BEFORE the season started."

Trustees considered the context of this output. The issues ranged over two seasons: in the previous season the bonus system had changed, leading to dissatisfaction at the end of the season when the effects of the changes became clear, and in the season current at the time of broadcast, the issues appeared not to have been resolved. They noted that the bonus dispute had received considerable coverage in Scottish media, including by way of the complainant's interview on BBC Radio Scotland, but that the full details were not in the public domain. Trustees noted the complainant's understanding of his players' views during the current season, in that interview:

"...we had a meeting ... with the players ... and we gave a lot of information to the players which hopefully gave them a better understanding of the club's financial position, where the club stands and why things are structured the way they are. Not all the players were there, but the players who were there appeared to understand the club's position. The meeting broke on the basis that [NAME] and I were under the impression that the players were satisfied with the explanation that was given and that they would now focus on playing football and finish as high up the league as possible."

However, Trustees were aware that at the time of the *Sportscene* broadcast the PFA had said that the position was not clear.

Trustees noted that the Editorial Guidelines on Accuracy required the BBC to "establish the credentials of our contributors".

The Committee noted that Mr Stewart was a former professional footballer and club captain. The BBC said that:

"From his experience as a player and former club captain, Michael Stewart noted the normal processes in football by which bonus payments were discussed and agreed (between captain and Chairman). In the case of Kilmarnock FC, he said, these payments had [during the previous season] moved from a monthly basis to an end-of-season basis and the expectation of the players that the amount would be the same had been met, instead, by a decision drastically to reduce the amounts awarded. It was on this basis that Michael Stewart made the comments he did."

Trustees were aware of the complainant's observation that Mr Stewart had never belonged to Kilmarnock FC and therefore did not have access to the relevant information and that neither he (nor the BBC) had contacted the complainant or the football club for clarification. Trustees also noted the BBC's comment that:

"Michael Stewart has connections in many dressing rooms and, consequently, we were confident that we understood the details of the proposed bonus structure causing the disagreement, which had also been widely reported across Scottish media, including BBC ..."

Trustees noted that Mr Stewart's comments described what, in his view, had normally happened in the past, and what, in his view, had happened during the previous season. This was not at odds with the bonus system at the time of broadcast being "slightly better" than the previous season or at odds with the bonus scheme having been intimated to the manager in writing and shared with players before the season began, and it appeared to the Trustees to have been duly accurate.

Trustees then turned to the nub of the complaint which was the allegation that the Chairman of the club had acted "in bad faith".

Trustees noted that the Editor, TV Sport had felt that Mr Stewart was expressing his personal opinion. The ECU had then expanded on what, in its view, this meant:

"...Mr Stewart made it clear he was expressing a personal view ('So yeah, in my opinion, what's happened is the chairman's acted in bad faith here and I'm not surprised the players are unhappy') and viewers would have considered it on that basis. I appreciate that you believe differently ... but as I have attempted to explain, I think it was clearly expressed as a personal opinion and I see no reason why viewers would have assumed what he said was true or that his view was widely held by others within the sport."

Trustees also noted that the ECU pointed out that statements made by the complainant and the PFA would appear to indicate that neither party necessarily considered the issue as closed and that the ECU said:

"...it was reasonable to ask the programme's guests for their view of events at Kilmarnock and for those guests to offer a personal opinion. I accept Mr Stewart could have chosen a form of words which was less critical of you personally but I believe that viewers would have understood he was expressing a personal opinion rather than anything which might be taken as fact, and his views were the kind of robust and outspoken comments which regular viewers of *Sportscene* have come to expect."

Trustees noted it was clear from his interview with the BBC that the Chairman of the football club was of the view that the bonus system could not be changed for solid financial reasons:

"The bottom line is that the club has spent all of the player wage bill. As I touched on earlier we've actually brought in more players than we intended to so the player wage bill is fully spent. We don't have any latitude to add to any bonus schemes. When you look at player contracts you have to bear in mind that we are probably paying better basic wages than a lot of comparable clubs of our size and financial resources."

Trustees considered it was clear from his earlier BBC interview that the Chairman was prepared to meet players but that his aim was to operate the club on a sound financial footing and his view was that there was no money in the budget to add money to a bonus scheme:

"...we are open to discussion but it would be very difficult for us to make any promises at this stage about adding money to the bonus scheme because our budget is fully committed and we have to be careful, having eliminated all of the club's debt in March after working on it nine years prior to that, we don't want to

start replacing old debt with new debt. We've got to live within our means. We got rid of all our bank debt but the other side of that coin is that we don't have any borrowing facilities. We don't have an overdraft facility so we need to balance the books on the income we receive. It's well established in football, if you look at any of the football analysis that's carried out with the major firms of accountants and if you look at the UEFA financial fair play regulations you'll find them speaking repeatedly about having a maximum player wages to turnover ratio of 70% and we are at that figure. So we're trying to operate the club on a sensible financial footing going forward."

Trustees noted the Editorial Guidelines on Accuracy:

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

and:

"If an issue is controversial, relevant opinions as well as facts may need to be considered."

and:

"We must not knowingly and materially mislead our audiences with our content. We may need to clarify the nature of some content by labelling (for example, verbally, in text or with visual or audio cues) to avoid being misleading."

Trustees felt that *Sportscene* was a well-established programme and was well known by its audience. They considered it was likely that the audience would expect strong views and robust opinions from a football pundit; that hyperbole was part of the grammar of such programmes. The Committee noted that Mr Stewart was asked what was his "feeling" and that Mr Stewart's comments were prefaced with the qualifier that he was giving his opinion:

"So yeah, in my opinion, what's happened is the Chairman has acted in bad faith and I'm not surprised the players are unhappy."

The use of the word "feeling" and of the phrase "in my opinion" signposted to the audience that this was an opinion, not a statement of fact. Consequently, the Committee felt that the interview had been duly accurate in a way that was adequate and appropriate to the output, taking into account the subject and nature of the content and audience expectations. Trustees thought the audience would have recognised and understood the style of the football pundit, and would have been aware that he was presenting his own view. Trustees concluded that the audience would not have been misled as to the nature of the comment, which had been labelled as an opinion. They agreed that the output was duly accurate.

Finding on Point (A): not upheld

Points (B) and (C):

Trustees then considered whether it was unfair, as the complainant asserted, to allow Mr Stewart to make his points when the programme makers knew – or should have known – what his answers would be. The complainant also alleged:

“The segment in question was clearly planned and rehearsed. There was no other reason for John Rankin’s presence and Michael Stewart was responding to a scripted question from your presenter. It is reasonable to conclude that your presenter knew how Michael Stewart would respond...”

The Committee noted the question to Mr Stewart:

“It is a bit of a murky business for those of us on the outside looking in, Michael, in terms of players’ bonuses. But what’s your feeling? Have the club moved the goalposts here?”

The Committee noted the position of the programme team which was that the presenter asked:

“...an unscripted question within a discussion on the topic. It is clear from both sides that there were opposing views on the matter by club and players and the presenter asked the question based on this understanding.”

The programme team said they were not aware early on the day of broadcast of Mr Stewart’s tweet stating that the complainant was acting “in bad faith”. The team added that at no point in the pre-broadcast discussion:

“...was the contention raised that [the complainant] had acted ‘in bad faith’. We expected Michael Stewart, on the basis of these discussions, to be favourable to the players’ POV. Michael has outspoken – and sincerely-held – views on many issues in Scottish football, a trait appreciated by the audience.”

Trustees noted that the two interviewees had both confirmed to the Trust that the situation at the club was discussed in pre-broadcast discussion but the phrase “in bad faith” was not used.

Trustees agreed that this disposed of the suggestion that the BBC knew this point was going to be made and had asked a “leading”, scripted and rehearsed question. Trustees felt that the presenter was simply seeking the opinion of a pundit on an issue of interest and concern to Scottish football fans. Consequently, the Committee concluded that there had been no resulting unfairness to the complainant in posing this question about the club.

The next issue was whether, when the comment that the Chairman had acted in “in bad faith” had been made, the BBC should have done something about it in order to be fair to the complainant.

Trustees noted the Editorial Guidelines on Fairness said:

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

Trustees considered whether there was an obligation on the BBC to say that the Chairman of the club (the complainant) did not accept that he had acted “in bad faith” taking into account the BBC’s duty to be fair to the complainant or whether it could be taken as read by the audience that this was simply a robust opinion and that the Chairman’s view of the situation would be diametrically opposed to that of Mr Stewart.

Trustees noted that, although it could not necessarily be assumed that all *Sportscene* viewers would have been aware of the complainant’s position as outlined in BBC and other output, the programme was for football fans who might be expected to be generally up to date with the situation.

Trustees noted that the ECU had said:

“The format of the show is well-established and I assume that regular viewers expect contributors to express their opinions about the issues of the day ... I accept that the language he used on this occasion was critical of you but I am not persuaded it went so far beyond the audience’s expectations that it required a retraction or ... a right of reply.”

Trustees were of the view that it might have been preferable for the presenter to have acknowledged that the complainant did not share Mr Stewart’s version of events or interpretation of his actions. However, Trustees noted that *Sportscene* was not factual news content but a sports programme which regularly contained robust criticism of footballers, clubs and strategy, and where language was characteristically used in a powerful and even hyperbolic way.

Trustees considered that the charge was expressed in strong language but it was also expressed as a personal opinion in a live interview. It was entirely in line with the tendency to hyperbole which the audience would expect of a sports pundit. Consequently, Trustees concluded that this accusation of acting “in bad faith” did not amount to an allegation which (according to the Fairness guidelines) called for a right of reply.

Finding on Points (B) and (C): not upheld

Finding: not upheld

Closure of correspondence regarding description of Syriza as “far-left”

Background

The complainant's original complaint was about the BBC's use of the term “far-left” to describe the Greek political coalition/party, Syriza, in February 2014. He appealed to the Trust against the decision by Audience Services to stop corresponding with him.

The complaint

The complainant wrote to the BBC complaining about the use of the term “far-left” to describe Syriza. He said:

“Their policies of ensuring everyone receives health care is pure NHS; their halt on mass evictions of people on to the streets is common human decency; their determination to root out corruption and make everyone pay taxes, especially the super wealthy, is what the Labour party, and any decent government should support; their economic policies are mainstream Keynesian.”

“Germany has imposed 1930's economic policies on the Southern countries of the EU with 1930's results. If Harold Wilson were around today no doubt you would now label him far-left...”

The complainant said that Syriza's policies were

“what the Labour party, and any decent government should support”.

BBC Audience Services responded:

“We feel describing Syriza as ‘left-wing’ or ‘far-left’ is accurate. The party itself identifies itself as such as Syriza is an acronym meaning ‘Radical Coalition of the Left’.”

The complainant was offered a link to a story on the BBC News website which explains the meaning of the acronym and includes the line; “Syriza has moderated its stance since the peak of the Eurozone crisis”:

<http://www.bbc.co.uk/news/world-europe-30913028>

The complainant then asked on what objective grounds the BBC described Syriza as “far-left”

“with its implications for extremism? I am fully aware of how Syriza describes itself but ‘radical’ is not the same as extreme.”

“Syriza have not nationalised any land, finance companies, industries or services; they have not in fact carried out a single action that could be described as ‘far-left’.”

Audience Services replied:

“we can only reiterate that we feel our reporting has been fair and accurate. The

description ... was not intended as a value judgment; we are committed to impartial reporting and feel this was appropriate."

Audience Services said they were sorry they had nothing else to add and said that the complaint had not raised a significant issue of general importance that might justify further investigation.

(Audience Services subsequently acknowledged a mistake in that they had said "left-wing" instead of "far-left" in correspondence with the complainant.)

Appeal to the Trust

The complainant appealed to the Trust.

The Committee's decision

The Committee was provided with a report from an independent editorial adviser. Trustees noted the points made by the BBC and by the complainant who felt that the essence of his complaint had been ignored. They noted that he had also complained to the Trust about the use of the words "extreme" and "hard" left, but as these had not been raised with the BBC these terms would not be examined by the Committee. (This is because the Agreement between the Secretary of State for Culture, Media and Sport and the BBC explains that complaints must be directed to the BBC and not the Trust in the first instance.)

The Committee considered whether it had been reasonable for Audience Services to close down the appeal at Stage 1b. The Committee took into account that one reason for closing down a complaint is that it does not, in fact, engage the BBC's Editorial Guidelines.

The Committee decided that the decision about the way to describe Syriza in any particular content was generally an editorial and creative decision for the BBC but that, depending on context, the Editorial Guidelines might well be engaged.

The BBC's Editorial Guidelines can be found at this link:
<http://www.bbc.co.uk/editorialguidelines/guidelines/>

Trustees noted that the Editorial Guidelines stipulated that

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

They also note that:

"We must do all we can to ensure that 'controversial subjects' are treated with due impartiality in all our output."

With this in mind Trustees considered Syriza's political position. The Committee noted the advice of the independent editorial adviser that prior to their victory in the European Elections of May 2014 and while the centre-left PASOK still held a substantial number of parliamentary seats, the use of "far-left" to describe Syriza may have been justifiable. Trustees noted that the complainant did not agree with this but considered the advice to be reasonable.

Syriza then won the January 2015 Greek parliamentary election with 36% of the vote. The independent editorial adviser's report noted that at about this time an already advancing trend towards describing Syriza as "left-wing", not "far-left" became predominant in coverage. The BBC Europe Bureau Editor, in a reply for the Trust, explained that his advice to correspondents would be to use the term "radical left" and he believed that correspondents in the field did that 95% of the time.

The Committee recognised the importance of referring to political parties impartially and of accurate political labelling. It also recognised that parties can shift their position. The Committee also noted the practical difficulties of managing these issues across an organisation of the size and diversity of the BBC. The Committee agreed with the complainant that "radical left" and "far-left" were not the same thing. Trustees decided, however, that in principle it could have been duly accurate and duly impartial to describe Syriza as "far-left", depending upon the context. They noted that the complainant had not cited any particular coverage.

The Committee noted that the Head of BBC Communications and Complaints said in response to the appeal to the Trust:

"Without knowing the output he alleges, we can't reference when this was used (crucial in relation to their emergence over time as a significant radical party)."

Trustees noted that the Editorial Complaints and Appeals Procedure, which can be found here

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

explains that the BBC reserves the right not to investigate a complaint that

- "fails to raise an issue of breach of the editorial guidelines" (1.7.1)
- and that it asks that each complaint includes:
- "the name/title of the broadcast or publication you are complaining about" (2.5.1)
 - "the date and time of the broadcast or publication" (2.5.2)
 - "the channel or service on which it was broadcast, or the web address on which it was published" (2.5.3)

and that complainants are informed that

"The inclusion of these details (or as many of them as possible) is very important. A failure to provide them may mean that the BBC is not able to look into your complaint." (2.5)

It was very important, Trustees believed, that complainants specify the output complained of, as the complaints procedure required. Though it was understandable that frequent users of BBC services in particular might be unclear where or when a particular issue had arisen and might want to complain about output in general, a lack of specific examples made it very hard for the BBC to investigate effectively, fairly and with due regard to best use of Licence Fee income.

The Committee noted that it would have been preferable if the complainant had been asked at an early stage to identify examples of output in order to better investigate his complaint. However, Trustees accepted that due to the volume of unspecified complaints the BBC received, it was not proportionate to reply to each of these requesting further evidence.

The Committee concluded that the BBC had been reasonable to close down the appeal at the stage it did, as the complainant had not specified what precise content he was complaining about and without that it was not possible to assess content in context.

Trustees agreed that Syriza received a great deal of coverage on the BBC and this was significant as audiences would be able to form their own view on the party and its position on the political spectrum. However, Trustees also agreed that the complainant had raised an issue which the BBC Executive might wish to take note of, so the Committee would draw the case specifically to the attention of the Director of News.

Finding: not upheld

Today, Radio 4, 9 October 2014

Background

The item concerned featured in the 08:00 News bulletin on Radio 4. The full text follows:

“New figures from the Department for Transport show that country roads are the most dangerous in Britain. Sixty per cent of road deaths happen on rural roads – eleven times more than on motorways. Robert Pigott reports:

“Every day three people die on Britain’s country roads and many more are seriously injured. As the death toll has fallen in towns and cities, rural accidents have increased and now account for sixty per cent of all road deaths in Britain. The most common contributory factor to fatal accidents is drivers losing control when confronted with unforeseen hazards, often when they are travelling too fast. But the RAC Foundation, which researches road safety, says rural roads frequently lack safety measures such as crash barriers. Motorways which account for a fifth of traffic often moving at high speed recorded a hundred deaths in 2013 compared with the one thousand and seventy on rural roads.”

The complaint

The complainant objected to the emphasis on the negative when the Department for Transport (DfT) figures upon which the item was based had been largely positive, and he believed that listeners had been deliberately misinformed and misled.

BBC Audience Services responded to say that it was not always possible or practical to reflect all the different opinions on a subject within individual programmes. The BBC did not seek to promote any view.

The complainant took his complaint to Stage 2, the Editorial Complaints Unit (the ECU). The ECU did not uphold the complaint.

Appeal to the Trust

The complainant appealed to the BBC Trust and made the following points:

- The BBC news bulletin gave a grossly misleading account of the DfT report and thereby misled listeners.
- The negative figure about rural deaths was emphasised in the BBC news bulletin, but the overall figures in the DfT report were 90 per cent positive and the report did not make this clear. He said he had received no response to this point at Stage 2.
- He asked what the justification was for selecting a tiny bit of negative news when the report was littered with good news.
- He said that the DfT report highlighted the key points of its findings on its first page, but the increase in rural deaths had not been included as one of these points and so he queried why the news bulletin had focused on this aspect.

The Senior Editorial Adviser, BBC Trust, wrote to the complainant to say that she judged his appeal had no reasonable prospect of success. The complainant asked Trustees to review that decision.

He highlighted that the DfT report had said:

- “Fatalities on rural roads increased by three per cent to 1,070 in 2013, although this figure is still around eight per cent lower than 2011.” The complainant said that the broadcast only referred to the first part of this statement and made no reference to the latter, more positive part.
- “Both rural and urban roads have seen casualty decreases over the past decade.” The complainant said the broadcast made no reference to this.
- “In 2013, killed or seriously injured casualties of rural roads were nearly a quarter lower than the 2005-2009 average”. The complainant said the broadcast had made no reference to this positive news.

The Committee agreed to take the appeal.

The Committee’s decision

The Committee noted the points made by the BBC and by the complainant and considered the complaint against the BBC’s Editorial Guidelines on Accuracy: www.bbc.co.uk/editorialguidelines.

The Committee began by noting that it had become clear as a result of a report from an independent editorial adviser that the bulletin item had not been pegged to the Department for Transport’s “Reported Road Casualties Great Britain: 2013 Annual Report”, which had been published in September 2014, but to a Government-backed campaign to warn drivers of the dangers of rural roads. This had been launched on 9 October 2014, the day the report was broadcast.

The Committee noted that the headline for the campaign was “Country roads, deadlier than you THINK!” and that, among other things, it had highlighted that sixty per cent of people killed on Britain’s roads die on rural roads, three people die each day on average on rural roads, and that the number of people killed on country roads was nearly eleven times higher than on motorways.

The Committee noted that the campaign sought to persuade drivers to read the road ahead, anticipate potential hazards, select a safe speed and brake before the bend.

The Committee then noted that the introduction to the bulletin piece had not stated that the government was launching this rural roads campaign, so the audience would not have understood why country roads were the focus of the news report. This was because the introduction drafted by the reporter had been changed before the broadcast and this information had been omitted.

Given this, the Committee considered whether the item presented a duly accurate impression to listeners.

The Editorial Guidelines on Accuracy begin as follows:

“The BBC is committed to achieving due accuracy. This commitment is fundamental to our reputation and the trust of audiences, which is the foundation

of the BBC. It is also a requirement under the Agreement accompanying the BBC Charter.

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

The Committee noted that the Department for Transport’s “Reported Road Casualties Great Britain: 2013 Annual Report: Overview and trends in reported road casualties” stated that:

“Deaths are disproportionately likely to occur on rural roads: in 2013 they carried 53 per cent of the traffic, but accounted for around two thirds of road deaths.... Mile-for-mile, the risk of death on rural roads is 1.7 times that on urban roads and around 2 per cent of reported accidents on rural roads are fatal, compared to less than 1 per cent in urban areas.”

The Committee noted that the dangers of rural roads were not one of the main findings of the DfT report. It further noted that the report said that, with the exception of fatalities on rural roads, casualties of all road user types on both rural and urban roads had decreased in 2013. However, given that the Government was launching a campaign to highlight the dangers of rural roads and that a disproportionate number of deaths occurred on rural roads, the Committee considered that there was some editorial justification for making this the focus of the report. This explained the discrepancy that had concerned the complainant – which is that the September report had reported many positive findings and yet these had not been featured. The Committee thought it regrettable that listeners had not been made aware of the campaign, but that did not invalidate the story that was being explored in the item. The Committee considered, on balance, that the decision to focus the report on the issue highlighted by the campaign, albeit without mentioning that campaign had not breached the Editorial Guidelines.

The Committee then considered whether the bulletin item had misled listeners by failing to qualify the statistics it had used. In doing so, it noted the Accuracy guideline that states:

“We should report statistics and risks in context and avoid worrying the audience unduly, especially about health or crime. This may involve giving trends, taking care to avoid giving figures more weight than can stand scrutiny. If reporting a change, consideration should be given to making the baseline figure clear.”

The Committee began by considering whether it had been misleading for the report to state that “rural accidents have increased” when the statistics actually referred to related to deaths on rural roads rather than accidents. The Committee considered that, while the phrase could have been better chosen, the introduction to the item and the item itself signposted that the focus was on statistics regarding deaths on rural roads. Trustees decided that this was duly accurate and not misleading in context.

The Committee then turned to the complainant’s broader point which was that rural road deaths had decreased over time. The Committee noted that the DfT’s “Reported Road Casualties Great Britain: 2013 Annual Report” stated that fatalities on rural roads had increased by 3 per cent to 1,070 in 2013 but that this figure was still around 8 per cent lower than 2011.

The Committee noted that the complainant had argued that the 2011 figure was significant, as was the decreasing number of deaths on rural roads as an overall trend

since 2003. He had argued that this was relevant information which should have been included and had referred to the Accuracy Guideline which says:

“Accuracy is not simply a matter of getting facts right... When necessary, all the relevant facts and information should also be weighed to get at the truth.”

The Committee noted that the reporter had responded to the Trust investigation by explaining that:

“...the RAC Foundation, ...told me that the failure to sustain the decline in the death rate on rural roads was a matter of considerable concern, and I included in my report their view that it was for want of relatively modest spending on road safety features, for example at road junctions. They reinforced the impression given by the rural road deaths statistics, contained in the September report, that the upward trend of the last few years was not simply a random statistical blip but represented a significant problem of public interest.”

The Committee considered that the long-term trend and the recent upswing in rural road deaths were both of interest and that it would have been more informative if the item had included more analysis of trends. However, it noted that this was a short bulletin piece, so the amount of material that could be covered was limited. As a result, after taking account of the subject and nature of the content, it considered on balance that due accuracy had been achieved.

Finally the Committee noted that the complainant had been concerned that points he had made to the BBC had not been responded to and in his view had been ignored. He had questioned the motivation for this and wondered if it was so that the BBC could choose the points that suited its argument.

The Committee noted that the ECU had explained that its remit was limited to considering content against the Editorial Guidelines:

“The remit of this unit limits us to considering whether specific material broadcast or published by the BBC met the editorial standards of the BBC. That means I can consider your concerns about the accuracy of the material and whether it gave a materially misleading account of the report. However decisions about what stories to run and the newsworthiness of particular items fall under the legitimate exercise of editorial judgement. It was not therefore open to us to look at your complaint that the bulletin should have looked at another aspect of the story.”

Trustees agreed that the ECU had acted within its remit and had explained those limits to the complainant. The investigation undertaken by the Trust had made the fuller context and the reason for focusing on rural deaths clearer.

Finding: not upheld

News at One, BBC One, 22 August 2014

Background

The complaint related to a story about possible changes to the professional self-regulation of doctors by the General Medical Council (GMC). The changes included a proposal that doctors could be instructed to apologise by the GMC. The item included the following script line:

“In the wake of the scandal at Stafford Hospital where hundreds of people died unnecessarily, Health Secretary Jeremy Hunt says he is taking steps to improve patient safety and ensure doctors are held to account for poor care.”

The “scandal at Stafford Hospital” otherwise known as Mid Staffs – after the name of the NHS Foundation Trust to which the hospital belonged – concerned poor care, practice and standards at the hospital over several years.

The complaint

The complainant said that the phrase “hundreds of people died unnecessarily” was inaccurate and needed correction.

Stage 1 of the BBC’s complaints process

The BBC explained at Stage 1 that the error was rectified so that when the report was used in later broadcasts, it said people “suffered”, rather than “died”.

Stage 2 of the BBC’s complaints process

The complainant requested a correction and apology for the broadcast item. The Editorial Complaints Unit (ECU) said the error did not amount to a serious breach of editorial standards which might merit a broadcast correction or apology. It did not uphold the complaint.

Appeal to the Trust

The complainant appealed to the BBC Trust. The Trust Unit considered that the appeal had no reasonable prospect of success. The complainant asked the Trust’s Editorial Standards Committee (the Committee) to review this decision and the Committee decided to take the appeal.

The Committee’s decision

The complainant raised a number of points, which the Committee considered against the relevant BBC Editorial Guidelines on Accuracy and Accountability, which can be found in full at this link:

<http://www.bbc.co.uk/editorialguidelines/>

First point of appeal

The complainant said the phrase “hundreds of people died unnecessarily” was inaccurate.

The complainant said that it was impossible to identify by name more than two patients who died “needlessly” or “unnecessarily” in Stafford Hospital during the period investigated by the Francis Report: 2005-2008.

The complainant noted the word “died” was changed to “suffered” but in his reply to the ECU argued that the words “where hundreds of people suffered” was still inaccurate as Sir Robert Francis QC had not given a number. This was not specifically mentioned in the appeal to the Trust.

This point was considered under Accuracy guidelines 3.1, 3.2.1 and 3.2.2. These explain that the BBC must do all that it can to ensure due accuracy in its output. The term “due” means that the accuracy must be adequate and appropriate to the output taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. All BBC output (as appropriate to its subject and nature) must be well sourced, based on sound evidence, thoroughly tested and presented in clear precise language. The BBC should be honest and open about what it does not know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

The Committee noted that there have been a number of relevant investigations into the scandal at Mid Staffs, including:

- The Healthcare Commission started in April 2008 and published in 2009: “Investigation into Mid Staffordshire NHS Foundation Trust, Healthcare Commission, March 2009”.
- The “Independent Inquiry into care provided by Mid Staffordshire NHS Foundation Trust January 2005 – March 2009” was chaired by Sir Robert Francis QC and published in February 2010. It was commissioned by the then Health Secretary, Andy Burnham, in July 2009. It included a report about the use of statistics and what could – and could not – be expected of his investigation.

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_113447.pdf

- In June 2010, the new government announced a full public inquiry. This was also chaired by Sir Robert Francis QC and also covered January 2005 – March 2009. The final, 3-volume Francis Report was published on 6 February 2013. Sir Robert said in his press conference: “This is a story of appalling and unnecessary suffering of hundreds of people...”

<http://www.bbc.co.uk/news/health-21363513>

The Committee noted that one of the contentious parts of the investigations, and at the root of this complaint, was the debate about mortality statistics – including how they were used by medical professionals and how they were reported in the media.

The Hospital Standardised Mortality Ratio was developed by Professor Sir Brian Jarman at the Dr Foster Unit at Imperial College and is used to deliver statistical information to healthcare providers. The following definition is from Guy’s and St Thomas’ Hospital Trust:

“The Hospital Standardised Mortality Ratio (HSMR) is an indicator of healthcare quality that measures whether the mortality rate at a hospital is higher or lower than you would expect. Like all statistical indicators, HSMR is not perfect. If a hospital has a high HSMR, it cannot be said for certain that this reflects failings in the care provided by the hospital. However, it can be a warning sign that things are going wrong.

...

"Care is needed in interpreting these results. Although a score of 100 indicates that the observed number of deaths matched the expected number, in order to identify if variation from this is significant confidence intervals are calculated. A Poisson distribution model is used to calculate 95% and 99.9% confidence intervals and only when these have been crossed is performance classed as higher or lower than expected."

<http://www.guysandstthomas.nhs.uk/resources/membership/papers-2013/04-october/05-mortality-rates-briefing-definitions.pdf>

The Healthcare Commission (HCC) investigated the Mid Staffordshire NHS Foundation Trust because of the consistently high HSMR in patients admitted as emergencies. The published report did not contain any indication of the numbers of patients who may have died. However, an earlier draft of the report had included a reference to the greater than expected number of deaths and stated that there was a range of 400-1200 excess deaths between 2005 and 2008. These figures were leaked to the media around the time of publication. The HCC report said:

"Through our programme to analyse mortality rates in England, we received an unprecedented 11 alerts about high mortality at the trust, four of these after the investigation was launched. Six came from the Dr Foster Research Unit at Imperial College, London, as part of its analysis of data, and five from the Commission's own internal surveillance of data from all trusts.

"...Since April 2003, the trust's standardised mortality ratio (SMR) had been consistently higher than expected. If outcomes were the same as would be expected when compared with similar trusts, the SMR would be 100. For the three years from 2005/06 to 2007/08, the trust's SMR for patients admitted as emergencies aged 18 and over varied between 127 and 145. Looking at the three financial years covered by the investigation, we conducted a statistical analysis of the SMRs to examine to what extent they could have been due to random variation.

"We concluded that, for the three years we examined, there was a less than 5% probability that the high mortality rates at the trust for patients admitted as emergencies aged 18 or over were due to chance..."

Sir Robert Francis made the following reference to Mid Staffs' high HSMR in volume one of the report published in 2013:

"...whatever may be the vulnerabilities of HSMR to coding and data quality deficiencies, the Trust's results were significantly and consistently high over many years. Professor Jarman [who had given evidence to the inquiry] produced an analysis that he had shared with the HCC in December 2008, in which the Trust's HSMR for every quarter from 1996 to the third quarter of 2008 was shown. It demonstrates that the Trust's HSMR was significantly high for every quarter in that period apart from two, which were almost significantly high, and for the last two quarters, which were not complete. He also produced a breakdown of the HSMR by diagnostic group for the period April 2005 to March 2006: 13 out of the 56 groups were significantly high and none was significantly low."

Sir Robert was clear that the use of HSMRs could not identify an avoidable individual death:

"HSMR [hospital standardised mortality ratio] is a method of seeking to establish whether hospital mortality is higher or lower than expected. It cannot and does

not claim to establish whether any particular death or group of deaths was avoidable..."

He also made the following reference to Professor Jarman's evidence which considered the limitations of HSMRs:

"Professor Jarman told me that, in fact, over half the mortality alerts are explained by hospitals as resulting from data problems such as coding errors. This is accepted to be the answer in some cases, but, as he pointed out, the HCC did not accept this explanation from the Trust. He also made it clear that:

Within HSMR it is not possible to give an exact figure for the number of unnecessary or excess deaths but one can give a figure for the number by which the actual observed deaths exceeds the expected deaths and give 95% confidence intervals for this figure. It would be impossible to statistically calculate the precise number of deaths that were unnecessary, or to statistically pinpoint which particular incidents were avoidable. That, if it were possible, would require careful consideration of the case notes for individual mortalities themselves. The data only indicates, and can only indicate, the number beyond that which would be expected of a hospital with the case mix, admissions, demographics and other features that a hospital presents.

Professor Hutton, one of my specialist advisers, in effect agreed with this. He advised me that the issue of excess deaths was a paradox in that it caused attention to be drawn to the Trust but could not assist in the assessment of individual cases. He considered that it was not possible to put an accurate figure on the true number. Indeed, he pointed out that, although it was highly unlikely, there was still a chance that the excess deaths recorded were a statistical anomaly and not part of an underlying trend."

Sir Robert also cited evidence given by a consultant at the hospital:

"While he objected to the figures of 400–1,200 being quoted, and he did think that coding provided a partial explanation for the HSMR, the consultant was emphatic that it was not the whole of the story:

Q: So whilst the figures that are bandied around as you say, I think ranging from 400 to 1,200, may not be – it is a huge range in any event – may not be reliable; nevertheless it indicates that there was a serious problem, doesn't it?

A: There were serious problems.

Q: Which would have resulted in unnecessary deaths.

A: I would actually agree with that entirely. I think it is the magnitude of it."

Sir Robert described the debates about the coding of data as ultimately a "distraction" and stated:

"No method of analysing death rates is likely to be perfect, and all will be prone to variations due to the quality of data input. It is, however, difficult to avoid the conclusion, from the almost universal direction of the analyses available at the time, that the Trust had a problem with mortality that should not have been

attributed solely to coding issues, and that it warranted an urgent and comprehensive investigation of the quality of care.”

The Committee noted that there is an ongoing debate over the use of HSMR which has never been wholly resolved. Questions concerning how admissions are coded, whether the data is reliable and the methodology have been raised throughout. However, HSMR and the related SHMI (Summary Hospital-level Mortality Indicator) statistics were also used by Sir Bruce Keogh, following the Mid Staffs report, in his analysis of hospital trusts found to be performing below the optimum in 2013 and then put into special measures by the NHS Trust Development Authority. They continue to be used as an indicator of performance which might alert health care providers that further investigation is necessary.

In terms of identifying individual patients whose death could be shown to have been caused by poor care, Sir Robert made the following statement and made clear that it was not possible for him to further investigate and reach conclusions about individual deaths and whether or not they were preventable:

“Even if every such death were examined, with the help of relevant medical experts, it is highly unlikely that a satisfactory conclusion would be possible in many cases. There was often no post-mortem examination, and in many cases it would be quite impossible to say whether, for example, poor nursing care had contributed to the death. ... To impose an investigation on families that did not want one would be an unwarranted invasion of their privacy and could cause much needless distress.”

The Committee noted that Sir Robert made clear that he had heard countless stories of poor care and that hundreds of people had suffered as a result. However, while there have been concerns that many patients died as a result of poor care at Stafford hospital, the original suggestion of 400–1200 “excess” deaths that had been leaked from the draft HCC report, did not relate to identifiable patients, but to the number of deaths that occurred above a level that might have been expected, across a range of medical disciplines, over a period of time. The allegation that “hundreds of people died unnecessarily” is an extrapolation of those statistics.

The Committee noted that the BBC had said:

Stage 1: “It was an error in our report ... to state that ‘hundreds of people died unnecessarily’ at Stafford Hospital ... the error was spotted on the day and rectified. When the report was used in later broadcasts we said people ‘suffered’, rather than ‘died’ and we feel this accurately represented the Francis Report.”

ECU: “The reference to ‘unnecessary deaths’ stemmed from a briefing given at the time of publication of a report for the Healthcare Commission into deaths at Stafford Hospital in 2009. As was subsequently explained in 2011, figures for hundreds of excess deaths were removed from the report, despite author Heather Wood’s objections, because the idea of excess deaths would not, in the opinion of Sir Ian Kennedy, Chairman of the Commission, ‘be understood’.
(<http://www.bbc.co.uk/news/uk-england-stoke-staffordshire-13288896>)

"Nonetheless a figure of 1200 excess or 'unnecessary deaths' was quoted in articles in the Daily Mirror, Daily Mail and Daily Telegraph in 2009⁵...

"When [the] report aired at One O'Clock on August 22 members of the Health and Science Unit in News noticed that the reference to hundreds dying 'unnecessarily' was in conflict with the earlier editorial decision. Accordingly the script of the report for later broadcasts was altered to 'where hundreds of people suffered unnecessarily'."

The Committee appreciated that the debate about the evidence concerning how many people may have died unnecessarily at Stafford Hospital, is a difficult and complex one.

The Committee decided that there would never be more than a few people it would be possible to identify by name (as the complainant had requested) as having died directly because of failings of care. However, the Committee did not agree with the complainant's assertion that, for people to have died unnecessarily, they had to be identifiable as individuals who had been subject to a coroner's inquest.

Trustees decided that, given the explanation of the mortality figures, and the evidence in the HCC and Francis reports, there was a 95% probability of excess deaths occurring at Stafford Hospital at the time in question. The Committee understood that the 400–1200 figure from the HCC had been leaked, not published, but the Committee noted that the unspecified "hundreds" given in the news item was below or at the bottom end of that range. It also noted that the line in the news bulletin did not specify over what period hundreds had died unnecessarily. It noted that the Trust's HSMR for every quarter from 1996 to the first quarter of 2008 (except two) was significantly high.

The Committee agreed that it might have been preferable for the report to have qualified the line for example by saying "Hundreds of people may have died unnecessarily", given the debate and controversy around the statistics. But the Committee concluded that there was a high probability that a large number of patients amounting to hundreds had died unnecessarily at Mid Staffs over time. Additionally, the phrase that was the subject of this complaint had been tangential to the story covered in the news item, and it took that context into consideration when considering whether it had been duly accurate. The Committee concluded that there had been no breach of the Editorial Guidelines. The accuracy had been adequate and appropriate to the output.

For completeness the Committee also noted that although the complainant (at the end of stage 2) had objected to the wording of the later version of the report which said:

"where hundreds of people suffered unnecessarily"

this had been based on a statement by Sir Robert Francis who had said:

"This is a story of appalling and unnecessary suffering of hundreds of people..."

The Committee agreed that accuracy guidelines had not been breached. This line was duly accurate.

⁵ The Guardian's "Essential Guide to the Mid Staffs hospital scandal" states that "an estimated 400-1,200 patients died as a result of poor care over the 50 months between January 2005 and March 2009 at Stafford hospital"

Second point of appeal

The complainant requested a clear and unambiguous broadcast statement by the BBC as to how many actually died.

This point was considered under Accuracy guideline 3.2.4 & 3.4.26 and Accountability 19.1.2 & 19.1.3.

These require the BBC to acknowledge mistakes, encourage a culture of learning from them and to correct serious factual errors quickly, clearly and appropriately. Complaints and actions arising from them should be reported properly online.

The Committee noted that at Stage 2 the ECU did not consider an apology was required.

"If we conclude that there has been a serious breach it may be considered appropriate, in cases of inaccuracy, to broadcast a correction and/or an apology. However, the mere fact that something was inaccurate may not mean that we find there has been a serious breach of standards. That would only be the case where we conclude that the inaccuracy led to the audience being seriously misled concerning a significant point at issue in the report itself.

"I do not feel that this was the case here. The report was actually about the broader issue of improving the system of regulation of health professionals. The events at Stafford, which were inaccurately represented, nevertheless amounted to only half a sentence of general background information. Had the report been about Stafford Hospital itself, say, the inaccuracy would have assumed far greater importance in terms of the story as a whole than it did in this case where it had only a marginal bearing on the subject of the report."

The Committee also noted that BBC News said:

"This change [from died to suffered] was made immediately after the report went out and was included when the report was rebroadcast at 1400 on the News Channel and subsequently. No complaint had been received at that point and no call for an apology or a correction to be made. The change resulted from the consistent application of high editorial standards by BBC journalists and the practice of peer-review which is a key element in maintaining these standards."

The Committee decided that, as it had not upheld the first point of appeal and had not found the news item to be in breach of the Accuracy guidelines, no necessity arose for an on-air correction or apology. The Committee did not uphold this part of the complaint.

Finding: Not upheld

This World: Ireland's Lost Babies, BBC Two, 17 September 2014, 21.00

At the complainant's request, this finding has been partially anonymised in order to minimise distress to surviving relatives.

Background

Ireland's Lost Babies was first broadcast on 17 September 2014 as part of BBC Two's international current affairs strand This World. In the programme, journalist Martin Sixsmith investigated the role of the Irish Catholic Church in transatlantic adoptions where thousands of illegitimate children were sent abroad.

The programme featured four case studies all of which raised serious questions about the operation of the secretive Irish adoption process. Mary Theresa Monaghan's story was one of them. She was adopted in the 1950s by William O'Brien and his wife and taken to America. Throughout her childhood her adoptive father abused her. The Catholic Welfare Bureau, in accordance with the Church's policy at the time, had not vetted him. As an adult she searched for and found her birth mother, Mrs A. Her mother died in 2010.

Appeal to the Trust

This is an appeal by a family member on behalf of her uncle, Mr A. Mr A is the widower of Mrs A, Ms Monaghan's mother (but is not Ms Monaghan's father).

The complainant initially complained to the BBC that the production team responsible for *Ireland's Lost Babies* had not directly contacted, consulted or informed her uncle about the programme and that it was broadcast without his permission. She also said the team did not have her uncle's permission to use video footage filmed in his home which featured him and his late wife Mrs A; that it had not asked for his permission to film at her grave and that it did not have the cemetery's permission to film there. (The programme featured BBC footage of Ms Monaghan and journalist Martin Sixsmith, visiting Mrs A's grave at Slough Cemetery).

Additionally the complainant said that Mrs A was not treated fairly in the programme because she was portrayed to others in a light not befitting of her character. And it was inaccurate to describe Ms Monaghan's visit to her mother's grave as being her first visit.

BBC Audience Services and BBC News (the division responsible for the content) both rejected the complaint believing that no breach of the BBC Editorial Guidelines had taken place. However, BBC News apologised to the complainant and said that as a matter of courtesy the production team should have contacted her uncle about filming at his late wife's graveside and explained that the team had thought contact had been made through a third party. BBC News also apologised for the fact that the production team had not, as a courtesy, ensured her uncle knew about the use of video footage filmed in his home and supplied by a third party that featured a fleeting shot of the lower half of his face and clearly identified his late wife.

The complainant appealed to the Trust.

The Committee's decision

The Committee considered the appeal against the relevant editorial standards, as set out in the BBC's Editorial Guidelines. The Guidelines are a statement of the BBC's values and standards. They can be found at: <http://www.bbc.co.uk/editorialguidelines>.

The relevant guidelines concern privacy, fairness, and accuracy.

The Committee noted that this was a distressing situation and wished to reassure both Mr A and his niece, as well as Ms Monaghan, and all other affected friends and family members that this decision had been approached with the utmost care. However, the Committee acknowledged that in such a situation it was inevitable that its decision would not be able to meet the expectations of all concerned. It regretted this situation had arisen. Trustees hoped that in setting out clearly the factors that the Committee had considered, the reasoning of the Committee would be understandable even if the outcome did not meet all parties' wishes.

Point 1 – Mrs A's privacy

The Committee began by considering whether Mrs A (deceased) had a legitimate expectation of privacy in respect of the particular material broadcast about her.

The Committee noted that Mrs A died on 4 December 2010 and that she is survived by her husband of more than fifty years, Mr A, on whose behalf the appeal was brought. It also noted that a "fairness" complaint (which means a complaint about fairness or privacy) may be made by the next of kin of a deceased person.⁶

The relevant privacy guideline in the BBC Editorial Guidelines is:

"The BBC respects privacy and does not infringe it without good reason... The Human Rights Act 1998 gives protection to the privacy of individuals, and private information about them, but balances that with a broadcaster's right to freedom of expression. In regulation, the Ofcom Broadcasting Code states, 'Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.'"

The Committee agreed that *Ireland's Lost Babies* clearly identified Mrs A as the mother of an illegitimate child who was given up for adoption. The Committee noted that although there was no verbal reference to her name in the commentary script, Mrs A was inextricably linked with her daughter's adoption story and was identified in three particular ways. Firstly, she was featured visually in two video clips and in a still photograph provided to the BBC by her daughter. Secondly, her name was shown in a close up image of the inscription on her gravestone filmed by the BBC and thirdly her daughter said her name out loud as she spotted her mother's grave for the first time and read the inscription on it.

⁶(See Part 5 of the Broadcasting Act 1996, and in particular section 111(2). References to the BSC should be read as references to Ofcom (which took over the BSC's functions by virtue of the Communications Act 2003). The BBC is required by clause 45 (1) of its Agreement with the Secretary of State for Culture Media and Sport to comply with Ofcom's Fairness Code, which is comprised of the sections on fairness and privacy in the Ofcom Broadcasting Code.

The Committee agreed that in broadcasting *Ireland's Lost Babies* the BBC had identified Mrs A and revealed sensitive personal information about her which, according to the evidence before it, had not previously been in the public domain and that this had resulted in an infringement of Mrs A's legitimate expectation of privacy.

The Committee then considered whether this infringement of privacy was warranted. It noted that it must judge whether the intrusion into Mrs A's private life was outweighed by the public interest in telling the general story of Ireland's adoption scandal as well as the specific story of her daughter's transatlantic adoption, including the abuse she had suffered at the hands of her adoptive father. The Committee also noted that it must consider the balance between the public interest in the freedom of expression of Mrs A's daughter, Ms Monaghan, and the freedom of expression of the BBC with the intrusion into Mrs A's privacy when making its judgement about whether or not the intrusion was warranted.

The Committee noted that *Ireland's Lost Babies* was commissioned to give voice to the stories of some of the thousands of mothers and children who were separated as a result of the historic secretive adoption system then operated by the Catholic Church in cooperation with the Irish State. The team behind the programme said:

"When we started the project, the story was starting to gain momentum and Martin's (Sixsmith) book on unmarried mother, Philomena Lee, had become a Hollywood movie – what for decades had remained a 'dirty secret' for thousands of families, was starting to surface as modern day scandal. Gaining the evidence of what had happened to those in the Mother and Baby Homes would enable us, through Martin's journey, to try to get a response from both the Catholic Church and the Irish State. Martin was attempting to try and get answers on behalf of our four case studies, whose adoption stories raised serious questions about the operation of the Irish adoption process, in particular the vetting of prospective adoptive parents and how the mothers and babies were treated. In particular, the enduring stigma and trauma suffered while in the homes. He also wanted to address with the leaders of the Irish Catholic Church and State contemporary allegations made within the programme about the continuing negligence in dealing with these issues. As we edited the programme, the issue became a global news story with previously anonymous victims demanding redress and access to their records, at that point the wider editorial issues became even more important for Martin to pursue."

The Committee noted that *Ireland's Lost Babies* included four different personal stories of unmarried mothers and children whose lives were changed forever by their enforced separation. The production team said that Ms Monaghan's story and the vulnerabilities it exposed, including the circumstances of her adoption and the abuse she suffered in America, were central to the editorial thrust of its programme and helped it to address the larger issues raised by adoptions like hers.

The Committee agreed that *Ireland's Lost Babies* had exposed the injustice of the past adoption process in Ireland as it related to unmarried mothers and their babies and that it had disclosed significant historical and contemporary negligence on the part of the Church and the State, particularly in relation to the accessing of adoption records. It agreed that the programme had highlighted important information that allowed its audience to better understand the way mothers and their illegitimate children were treated in Ireland in the 1950s and 1960s.

The Committee felt there was a significant public interest in the way the programme revealed the scandal of the adoption system in Ireland, and that this combined with the public interest in the telling of Ms Monaghan's personal story and her right to freedom of expression, and the freedom of expression of the BBC, outweighed the privacy of Mrs A. Trustees also agreed that there was a public interest to this specific story because it demonstrated the inadequate vetting processes the Catholic Church had in place at that time which resulted in a child being adopted by an abusive father. The Committee therefore concluded that the infringement into Mrs A's private life was warranted and that the privacy guidelines had not been breached in this regard.

Finding: Not upheld

Point 2 – Contacting the family/issues of consent

The complainant raised several issues which all related to consent. They were:

A: The BBC did not seek her uncle's permission to film at the grave of his late wife.

B: The BBC did not have her uncle's permission to use video of him and Mrs A filmed in their home.

C: The BBC did not inform her uncle that his late wife was featured in *Ireland's Lost Babies*. The BBC did not directly contact, consult or inform her uncle about *Ireland's Lost Babies* and that it was broadcast without his permission.

The BBC said that it did not believe it needed any general permission to make and broadcast *Ireland's Lost Babies* or any specific permission to film Mrs A's grave or to use two video clips in which she was clearly identifiable.

The BBC said that it had asked Ms Monaghan to contact her mother's widower to check if he would like to make a contribution to the film even though he was not directly relevant to its story. The BBC said its decision to approach its potential contributor through a third party was made on the basis of the sensitive circumstances of Ms Monaghan's adoption story, the sensitive nature of her relationship with her mother and her mother's husband, the welfare and health of her mother's husband, and the vulnerability of Ms Monaghan herself.

The BBC production team said that Ms Monaghan had always maintained she told Mr A she was involved with the BBC and its programme about Irish adoptions and that she was talking about her adoption and her life story. It said that based on email and phone contacts with Ms Monaghan between March and May 2014

"...the production team were led to believe that Mr A had been informed via Mary Theresa [Monaghan] of the nature of her story and why she was filming in the UK and was generally aware of that part of Mary Theresa's story and her mother's role in it. We considered the impact on Mr A as part of our concern over Mary Theresa's vulnerability as a contributor in this long process of making a programme and endeavoured to ensure that whatever decision we made, or whatever filming we did, did not impact negatively on her existing or developing relationships with friends or family.

"...we were working on the understanding from Mary Theresa that Mr A was aware of and agreeable to our filming at the grave and had declined any interest in taking part. It was not our intention to ignore his wishes in this matter ... we respected this decision and did not attempt to continue to persuade him ... but kept the channel of communication open through Mary Theresa in order to make arrangements for the filming at the grave. As she was still in contact with him, extending her visit to stay with him following filming, there was no reason to suspect that Mr A was unaware of the project, especially as Mary Theresa continued to field questions from us to him, regarding the grave and if we might use his house as a meeting point."

The BBC said that it did not specifically ask Ms Monaghan to inform Mr A about, or ask his permission to use, amateur video footage of his late wife in the programme. But it said it did think he knew

"...both about the programme, Mary Theresa Monaghan's contribution and the filming at the grave, however it has transpired that we were wrong in that belief. So, given that we set out to inform him, albeit through a third party, we should have done more to confirm this had happened. This is a matter of courtesy and not, we think, a breach of BBC Guidelines."

At the end of Stage 2 of the BBC's complaints process the BBC had sent apologies to the complainant. The apology said:

"I am obviously sorry that Mr A was not contacted about the filming at the graveside as the team had thought. Given that it had set out to do this, I think it should have made greater efforts to confirm that this had happened. I agree with you when you say that it would have been a courtesy to do so. I do, however, regard it as exactly that – a matter of courtesy – rather than an editorial requirement ...I do not believe there has been a breach of the BBC's editorial guidelines which is the standard against which I must consider the matter at this stage of the complaints process. I am, however sorry that Mr A was not contacted as the team had thought about the filming at the graveside and I would like to apologise on behalf of the BBC for his and your distress."

And:

"In the programme, there was a brief sequence of pictures from a home video. It showed a fleeting shot of the lower half of what I take to be Mr A's face, before the camera moved to Mrs A. This half-shot of Mr A lasted for just over a second and was followed, after a clip of interview with Mary Monaghan, with a shot of her and her mother together on a sofa. The footage was labelled 'Mary's Home Video' and I understand it was taken some years ago by a named friend of hers with the friend's own camera.

"My view is that as this material was supplied by a third party, there was again no need to seek Mr A's permission for its use. He did not 'own' the material himself. The shots were taken indoors, and his home was not identifiable.

"The fact that the pictures showed his late wife and briefly the lower half of his face, though not in a way by which he could be generally identified, does however, persuade me that as a courtesy the programme team should have tried

to ensure that he knew about the use of this material. Again I am sorry this did not happen but I do not regard it as a breach of the BBC's editorial guidelines."

The Committee noted that the sequence in the programme that featured Ms Monaghan (MTM) and Martin Sixsmith (MS) visiting Slough Cemetery came at the end of the second part of her story. It noted that Ms Monaghan said her mother's name out loud when she first saw her gravestone and that the transcript for this section said:

MS: Mary.

MTM: Oh there are flowers here too.

MS: That's it isn't it?

MTM: [Mrs A]. OK I'm going to fuss around a bit here. I think I can just put these here. It's just unfortunate that she had to take so much shame to her grave.

MS: Yes.

MTM: It isn't right.

Close up shot of gravestone.

MS: It's been a difficult road but these are all steps on that road (Right) and today has been another (Yes) another step.

MTM: Yes, yes. A very positive one, yeah, yes. I hesitate to use the word spiritual but um... Maybe it is in a way, I don't know. But it has a calming effect on me, it really does. Yeah. My search has come full circle, so.

The Committee also noted that a close up shot of the gravestone was broadcast in this sequence. The shot was held for just over three seconds and the inscription on the gravestone could be clearly read. It said:

"In loving memory of my darling wife [Mrs A] who passed away 4th December 2010 aged 83 years Forever in our hearts"

The Committee then noted the two clips of video footage and a rostrum move on a still photograph of Ms Monaghan and her mother Mrs A that were included in the programme. It noted the first clip was seven seconds long and began with a two-shot of Mr and Mrs A each holding a cat. Ms Monaghan was just visible in the background. Mr A's mouth and chin, along with his mid-torso and right hand with a gold ring on his ring finger could be seen next to a mid-shot of Mrs A, which readily identified her. This shot was held for less than two seconds before the camera moved closer in on Mrs A. The Committee noted that the second clip, also seven seconds long, did not feature Mr A. It began as a two-shot of Mrs A and Ms Monaghan sitting together on a settee, with distinctive patterned curtains in the background. It then developed into a single shot of Mrs A with a cat. Finally a still photograph of Ms Monaghan and her mother was on screen for six seconds.

The Committee noted that the BBC said it had not filmed Mr A inside or outside his property and that the video it had used came from Ms Monaghan and showed the interior of an ordinary room, more than ten years ago, without distinguishing features. However, the Committee also noted that the complainant said that lots of family and friends had identified her uncle and his home from the video footage. The Committee noted that the presence of Mrs A made the shots of Mr A's home and so him more readily identifiable but agreed that the shots included in the programme did not include recognisable pictures of Mr A to those who did not know Mrs A.

The Committee agreed that the BBC was not obliged to seek consent from Mr A to film the gravestone which showed his wife's name or show the video which featured his late

wife and a fleeting shot of part of his face and which was filmed in his home. This was because (although he was Mrs A's next of kin) the privacy of Mrs A was outweighed by both the public interest in the programme and in the freedom of expression of Ms Monaghan and the BBC. In such circumstances it was not open to Mr A to veto the use of this footage, which did not reveal private information about Mr A.

The Committee then turned to (C). The Committee noted that the BBC accepted that it had not contacted Mr A directly about matters relating to the making and broadcasting of *Ireland's Lost Babies* but that it had approached him via a third party. In this case the third party was one of its key contributors, Ms Monaghan, and she was asked to make contact with Mr A for reasons that are detailed earlier in this finding.

The Committee noted that the BBC had thought Ms Monaghan had made Mr A aware of the programme and its contents although he had declined to take part in it himself and the BBC accepted that it should have done more to confirm this had happened. The Committee also noted that the BBC had apologised because the BBC did not inform Mr A that it planned to film at the grave of his late wife or that it intended to use video featuring his late wife in *Ireland's Lost Babies*. (The BBC had not apologised for failing to seek his permission to film at the grave or use the video but they were in fact not required to ask his permission.)

The Committee noted the Editorial Guideline relevant to this aspect of the appeal:

"Privacy: Revisiting Past Events

We must consider how to minimise any possible distress to surviving victims and relatives when we intend to examine past events which involved suffering and trauma ... so far as is reasonably practicable, surviving victims or the immediate families of the dead people who are to feature in the programme should normally be notified of our plans. We should proceed against any reasonable objections of those concerned only if they are outweighed by the public interest."

The Committee noted the complainant said Ms Monaghan telephoned her about six weeks before the programme was due to air to inform her about it and to ask her to ensure that Mr A did not watch it because it might include some images of his late wife. The complainant said that Ms Monaghan did not mention any filming at Slough Cemetery or any filming of Mrs A's grave. The complainant also said:

"...At first my uncle was not going to watch the programme as he was unwell and didn't want to be more distressed. However, this was his wife and a programme containing her was going to be shown on national television. We ... had little knowledge of what was going to be shown and we both decided we needed to watch it..."

The Committee agreed that given the subject matter of the programme (the Irish adoption scandal and Ms Monaghan's adoption story) and the detail included (identification of Mrs A as an unmarried mother who had given up her daughter for adoption in America and inclusion of images of her and the inscription of her name on her gravestone), the programme had examined past events that caused suffering and trauma and Mrs A's immediate family should have been informed in order to comply with the Editorial Guidelines. The point of this guideline is to minimise distress and it was unfortunate that the contact had happened at a late stage, through a third party and, without the BBC having a clear idea of exactly what information had been given to Mrs A's widower.

The Committee observed that the BBC had relied on Ms Monaghan to act on its behalf in contacting Mr A about *Ireland's Lost Babies*. It agreed that given the vulnerability of both Ms Monaghan and Mr A and the sensitive nature of Ms Monaghan's adoption story, it had been entirely appropriate for the BBC to make its first approach to Mr A through Ms Monaghan.

However, the Committee agreed that, although the BBC's motivation had been to act sensitively in these very unusual circumstances, it was not appropriate for the BBC to rely totally on the assurances of a third party that Mr A had been made aware of the nature of the programme and the inclusion of footage of the grave with his personal inscription to his wife, footage of her and information about his late wife's story which was not in the public domain.

The Committee acknowledged the BBC's two apologies for its lack of courtesy in ensuring Mr A had been notified about its filming of his late wife's grave and about the use of video footage that featured Mrs A. However, the Committee decided that the BBC's apologies stopped short of resolving this aspect of the complaint. This was because the BBC had not apologised for not contacting Mr A directly to tell him about the nature of the whole programme and the context in which the material, which identified her, was to be used within it.

The Committee decided that given the particular facts of the case the BBC had not demonstrated that it had taken sufficient steps to minimise any possible distress to Mr A when it examined past events, which involved suffering and trauma, by notifying him of the programme. The Committee therefore decided that the BBC was in breach of the privacy guideline 7.4.44. It should be noted, however, that Mr A would not have had any right of veto in this case as (see Point 1 above) the public interest would have outweighed any (reasonable) objections he may have had.

Finding: Upheld

Point 3 – Filming at the cemetery without consent from the cemetery

The complainant said the BBC did not have permission to film at Slough Cemetery.

BBC News confirmed with the Communications Manager at Slough Borough Council that the production team did not require permission to film in the grounds of Slough Cemetery or to specifically film at the graveside of Mrs A.

The Committee noted that as Slough Cemetery is public land, open 365 days a year, anyone could film or take photographs there, as long as they do not disturb other cemetery visitors or activities.

The Committee decided on the evidence before it that the BBC did not require permission to film at Slough Cemetery. This matter did not engage the BBC's Editorial Guidelines.

Finding: Not upheld

Point 4 – The depiction of Mrs A

The complainant said that *Ireland's Lost Babies* portrayed the memory of Mrs A to others in a light which was not befitting of her character and which was only based on one person's point of view.

The Committee noted that the BBC programme included evidence that supported Ms Monaghan's account of her birth, separation from her mother and her adoption by an American Catholic family, her efforts to find her mother, and their eventual reunion.

The Committee noted one particular section of the programme in which Ms Monaghan described her first reunion with her mother since her adoption. She said:

"Well that was quite a moment when we first met. I went up to her and I hugged her. She froze. She literally froze. So it came clear to me that I needed to tread lightly. It was very clear that I was to keep my mouth shut. You know I, I'm a secret, that I was a long lost cousin. Yeah. So I played along, best I could. But some people did guess."

In a submission to the Committee Martin Sixsmith, the journalist reporting in *Ireland's Lost Babies* wrote:

"I certainly don't think Mary was being critical of her mother or her mother's husband. The point she was making is that the Catholic Church made girls who had a baby out of wedlock feel excessively ashamed about their past.

"She was actually being considerate and compassionate towards her mother. The rest of her interview indicates that it is love and respect for her mother that dissuaded her from demanding to be acknowledged publicly as her daughter."

The Committee considered this part of the appeal against the BBC's fairness guideline 6.4.3, which says:

"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..."

The Committee observed that there was no criticism of Mrs A (or in fact any mother) in the programme. It was clear they had no choice and in fact in many cases they had not given consent at all (and if they had it was not informed consent as we understand it today) for their children to be taken away. The criticism within the programme was focussed on the Catholic Church and the Irish State. The Committee did not consider that this brief description by Ms Monaghan of the first meeting with her mother amounted to a criticism of Mrs A but was an insight into how difficult the trauma of having an illegitimate child had been for her. The Committee decided that based on all the evidence before it the BBC had been fair and accurate in its portrayal of Mrs A.

Finding: Not upheld

Point 5 – It was inaccurate to say the programme filmed the first visit of Ms Monaghan to her mother’s grave

The complainant said that the programme’s description of Ms Monaghan’s visit to her mother’s grave, as being her first visit, was inaccurate.

The Committee noted that the complainant had confirmed Ms Monaghan had stayed with her uncle for three days whilst she was in the UK and that she had visited her mother’s grave with him on the third day of her stay, although she could not confirm the exact date of that visit. She said:

“...She saw the grave on the third day but it is my belief she had already visited the grave. When visiting the grave with my uncle and my partner she was overcome with emotion because this was the first time she had seen it. She wanted to put two plant pots there as a sign of respect. However, in the programme, she states that that was the first time she had visited the grave... I cannot confirm the date of this visit.”

The BBC production team said that Ms Monaghan arrived in the UK early in the morning on Friday 16 May 2014 and that it provided accommodation for her on the three nights of 16, 17 and 18 May 2014 before she went on to stay with Mr A. All UK filming with Ms Monaghan took place on Sunday 18 May, including her visit to her mother’s grave. She left the UK on Friday 23 May 2014.

The BBC described what happened when it filmed Ms Monaghan, accompanied by Martin Sixsmith, on her visit to her mother’s grave:

“...on the morning of filming we spent a considerable amount of time searching for the grave. Even though Mary Theresa had given us the grave number and there was a map of the graveyard in situ this did not help. Mary Theresa seemed as concerned as we were about this and could not offer pointers as to where it might be and for a while we wondered if we would find it at all. (We) felt that her reactions that morning, whether during filming or not, were indicative of someone who was genuinely affected and had no reason to think differently.”

Martin Sixsmith wrote:

“I am confident that the day we visited the grave was the first time Mary had been there. She spent time looking for the grave and did not know its location. And she was genuinely overcome with emotion at seeing it for the first time.”

The relevant guideline is the accuracy principle 3.2.1, which says:

“We must do all we can to ensure due accuracy in all our output.”

The Committee agreed that the timeline detailed above made it clear that Ms Monaghan’s filming with the BBC occurred prior to her stay with Mr A. Therefore it concluded that on the basis of the evidence before it, the account in the programme that the filmed visit was Ms Monaghan’s first visit to her mother’s grave in Slough Cemetery, was accurate.

Finding: not upheld

Overall Finding: partially upheld

Top Gear, 8pm, BBC Two, 1 February 2015

Background

The presenters were sent to Australia to test drive three high-performance cars: a BMW M6; a Bentley Continental; and a Nissan GT-R. They decided to test the brakes because Australian animals “love to jump out in the road and kill you in a crash”.

Jeremy Clarkson explained that, according to the Highway Code, the cars would stop 240 feet after applying their brakes when driven at 60mph and the programme team had marked the road accordingly.

Jeremy Clarkson said:

“Here is what we’ve planned – Richard Hammond will drive down this road at 60mph. When he gets to the chequered flags over there, he will brake. Now, the Highway Code says he will stop 240 feet later on this line here, right where James May and I are standing.”

All three cars stop well before this distance. Jeremy Clarkson then stated:

“But, although the BMW had won, all three cars had made a very good point. When you go on a speed awareness course and the man goes, ‘It’ll take you 240 feet to stop,’ just put your hand up and go, ‘No, it doesn’t.’ We have to do 70mph in Britain on the motorway, because somebody might have a Ford Anglia and it will take them that long to stop. But if you’re driving a good car like this – well, any one of ours, really – you should be allowed to go 140...210mph.”

James May added:

“Yeah. I shouldn’t have to suffer because somebody’s still got an Anglia. Having established that our cars could stop on a stamp, we let them off the leash. 542 horsepower from a twin-turbo V6.”

The complaint

The complainant considered that the item demonstrating the braking distances of cars was inaccurate and irresponsible. He felt that the comments encouraged dangerous driving and so were harmful, especially to young people.

Stage 1 & 2 responses

BBC Audience Services explained the context of the item at Stage 1. The complaint was not upheld by the Editorial Complaints Unit (ECU) at Stage 2 of the Editorial Complaints procedure.

Appeal to the Trust

The complainant appealed to the Editorial Standards Committee of the Trust. He made the following points:

Point (A) The information given about the stopping distances was inaccurate.

Point (B) Top Gear disregarded “safety and respect on the road” and the encouragement of dangerous driving, ie faster than the speed limit, could be harmful to young people.

The Committee’s decision

The Committee noted the points made by the complainant and the BBC. The Committee was also provided with a report by an independent editorial adviser.

The sections of the BBC Editorial Guidelines relating to Accuracy and Harm and Offence are applicable in this case.

The Editorial Guidelines are available in full at:
<http://www.bbc.co.uk/guidelines/editorialguidelines>.

Point (A) The information given about the stopping distances was inaccurate.

The BBC Editorial Guidelines say that the BBC:

“...must do all we can to ensure due accuracy in all our output.”

The Guidelines explain that:

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

And that:

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

The Committee noted that in correspondence the BBC stated:

“When the presenters conducted the brake tests of their GT cars they were testing the brakes and the braking distance as opposed to stopping distance, made clear by James May and the fact they had a designated point at which to apply the brakes. The Highway Code splits ‘typical stopping distances’ into ‘thinking distance’ and ‘braking distance’. It is the braking distance that is 73m/240’ at 96kmh/60mph according to the Highway Code, though they clarify that the distances are ‘a general guide’.”

Trustees noted that the Highway Code states that when driving at 60mph, a driver should allow 18m (59 feet) for “Thinking Distance” and 55m (180 feet) for “Braking Distance”. The Committee, therefore, noted that the total stopping distance was therefore 240 feet. To be accurate the production team should have placed the marker at 180 feet, if they were just measuring “Braking Distance”.

The Committee agreed that the programme should have provided accurate information about what was said in the Highway Code. This was important because this was factual information about road safety. On this point, therefore, the Committee concluded that the suggestion that the “Braking Distance” at 60mph was 240 feet was inaccurate.

This point was upheld.

Point (B) Top Gear disregarded “safety and respect on the road” and the encouragement of dangerous driving, ie faster than the speed limit, could be harmful to young people.

The Committee noted that the content of the programme should be considered in relation to the BBC’s Editorial Guidelines concerning Harm and Offence.

These Guidelines say:

[The BBC must] apply “generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material’. The understanding of what constitutes ‘generally accepted standards’ will evolve over time and will be informed by relevant research. Applying ‘generally accepted standards’ is a matter of judgement, taking account of the content, the context in which it appears and editorial justification...”

“We should judge the suitability of content for our audiences, including children, in relation to the expectations of the likely audience, taking account of the time and day on which it is available, the nature of the service and the nature of the content...”

“We should take care to ensure that individual programmes... avoid including material that condones or glamorises ... dangerous or seriously anti-social behaviour, or material that is likely to encourage others to copy such behaviour, unless clearly editorially justified.”

The Committee noted that the complainant was particularly concerned with the potential effect this item might have on young people. (The BBC Editorial Guidelines define a young person as under 18 years of age. In the UK, 17-year-olds are allowed to drive on the roads.⁷) He argued that many young people do not appreciate the subtlety of the humour on *Top Gear* but absorb the macho disregard for safety and respect on the road. This was active encouragement of dangerous driving.

The Committee noted that the ECU said, in relation to audience expectations:

“...regular viewers will be familiar with the style and tone of *Top Gear* and have ‘pre-existing expectations’ of the content and how seriously it is intended to be taken. The programme has a well-established reputation for content which is deliberately and knowingly intended to be mischievous but good-humoured.”

In reply to the complainant’s issue with the effect these comments would have on young people, the ECU stated:

“I hope we can agree there was no danger of children imitating what was shown on this programme since they are not legally allowed to drive. I cannot, of course, be sure to what extent teenagers who are entitled to drive might have been influenced by what they saw and heard but my assessment is that any effect would, in practice, be minimal. I think it is reasonable to assume those aged 17 and above are likely to be able to discriminate between sections of the programme where cars are knowingly driven as fast as possible (such as road testing new models or putting ‘A Star in a Reasonably Priced Car’) and the stunts and challenges which are a regular aspect of the programme. I do not share your

⁷ an exception is made for young people who are in receipt of the higher rate disability living allowance who may drive at 16

view that viewers would be encouraged to drive very fast or close to the car in front on the basis of the controlled experiment shown in this sequence.”

Road Accident Statistics

The Committee noted information about reported road accidents involving young car drivers. This information is from a factsheet provided by the Department for Transport published in August 2012 about data for 2011:

- In the UK there were a total of 151,474 reported personal injury road accidents. 22% (33,322) of these involved at least one young (17 to 24 year old) car driver.
- Accidents involving young car drivers typically account for around a quarter of all road deaths.
- 27% of young car drivers involved in accidents were aged 18 or 19.
- When examining “why do accidents involving young car drivers happen?”, contributory factors included:
 - Careless, reckless or in a hurry
 - Travelling too fast for conditions
 - Exceeding speed limit
- These occurred in 28% of accidents involving drivers aged 17-24, whilst these were contributory factors in 12% of accidents involving drivers aged over 25.

Audience figures

The Committee noted that the total audience for this programme was 6.6 million. An analysis of the audience showed:

- Children represented 9% of the audience (57,000 children aged between 4-15 years).
- Young people represented 10% of the audience (63,000 viewers aged between 16-24 years).

Audience Research

The Committee noted that the BBC carried out audience research into attitudes towards regulation, responsibility and creativity on BBC channels. This is published in Taste, Standards and the BBC: Public attitudes to morality, values and behaviour in UK broadcasting (June 2009).

Although the report specifically refers to comedy, there were some points which the Committee found relevant to this case:

“Comedy is arguably the most complex genre for the audience in this area of taste and standards. It is an extremely wide-ranging genre and opinions are often very subjective. Individual taste may permit or sanction what others may feel is in poor taste. For the majority, comedy overall comes with its own licence and even more specifically, each style of comedy/comedian has their ‘own’ licence; although this does not make them immune to perceived lapses in taste if they are felt to be out of step with expectations of the programme audience.”

“...taste makes judgements quite subjective. How a line is delivered, and by whom, are crucial factors which define content as acceptable or unacceptable. “The absence of very strong language ... and lack of aggression are key discriminators, as is the personality of different presenters.”

Conclusion regarding Point (B)

The Committee took into account that this edition of Top Gear had a significant young audience and that a disproportionately high number of young adults are involved in road traffic accidents. The Committee noted the inaccuracy in relation to the Highway Code stopping distance. The Committee noted that, having carried out the experiment, Jeremy Clarkson had said that the information given on speed awareness courses was inaccurate and that drivers in “a good car” should be allowed to go much faster, up to 210 mph.

The Committee also noted, however, that Top Gear was a well-established format where many trials are undertaken with an emphasis on entertainment rather than for their information value. These trials often involve driving fast. The Committee acknowledged that, over the many years of this series, there was no evidence that any of these items had encouraged viewers to believe that the behaviour demonstrated in the stunts and challenges was permissible on a public highway.

The Committee took into account that any “advice” given in the programme was delivered with comic exaggeration and often contained hyperbole to better underline a point, and viewers understood this distinction. The Committee believed that the testing of the braking distances of these high performance cars would have been seen by the audience as part of this familiar format and these exaggerated comments would not have exceeded audience expectations for this programme. It noted too, however, that Jeremy Clarkson had made the point that the speed limit on a motorway was 70 miles an hour.

The Committee agreed that this feature would not have any effect on children’s behaviour as they were too young to drive. The Committee also decided that even impressionable young adult viewers would not see comments such as these in this comic context as a licence to break the law. Given this context, the Committee considered that there was sufficient editorial justification for including this item in the programme. The Committee decided that the programme did not condone or glamorise behaviour that was likely to encourage others to copy it.

This point was not upheld

Finding: partially upheld

Requests to review the Trust Unit's decisions on appeals

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

In each instance, the Committee was provided with the complainant's appeal/s to the Trust, the response or responses from the Trust Unit and the complainant's request/s to review that decision. The Committee was also provided with the relevant broadcast or published content.

Palestinian Territories Country Profile, BBC Online

The substance of the original complaint concerned content published on the Palestinian territories profile page on the BBC News website <http://www.bbc.co.uk/news/mobile/world-middle-east-14630174>.

The complainant alleged the profile was inaccurate in its (1) division of territory and (2) referral to the 'Israeli occupation of the West Bank'.

The complainant received responses to his substantive complaint at Stage 1 and 2 from the Executive, and appealed to the Trust on 3 January 2015 in order to complain about the handling of his complaint by the ECU Complaints Director. The Trust Unit responded to the complainant by way of a decision addressing both the substantive complaint and the handling complaint.

In relation to the handling complaint, the Trust Unit's Adviser stated that the complainant had been informed of the relevant complaints and appeals procedure in the final finding provided by the ECU Complaints Director on 25 November 2014 and that he was now out of time to make a complaint about handling. The complainant responded stating that he had not appealed on the substance of his complaint, but only wished to complain about the handling of his complaint by the ECU Complaints Director. He challenged the Adviser's decision on the basis that he had only been provided with the appeal procedure and not the complaint handling procedure until it was too late to make a complaint. The complainant stated that he would not provide his substantive handling complaint until he was informed whether or not he would have a right of appeal.

The Panel was informed that the correspondence showed that the complainant was informed of the relevant complaints procedure on 23 December 2014 when he directly requested this information from the ECU Complaints Director. This was the last day available to the complainant to appeal the ECU's decision. As such, the Trust Unit was on notice that the complainant wished to make a handling complaint, and that the complainant did not receive (as he did not request) the relevant complaints procedure until it was too late to make the complaint.

The Trustees agreed to allow the complainant twenty working days from receipt of the Trust's decision to make a handling complaint directly to the Trust as the ECU had

confirmed to the Trust Unit that they were content for the complaint to be made to the Trust. The Trust Unit would then consider admissibility in the first instance. However, Trustees wished to make it clear that they would not accept a complaint on the substance of the matter which had not been appealed.

“Israeli woman and soldier killed in two knife attacks”, BBC News Online

The complaint

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold her complaint about an article published on the BBC website in November 2014 about the deaths of two Israelis in separate knife attacks in Tel Aviv and the West Bank. The incidents took place amid rising tensions in the region following the shooting two days earlier by Israeli police of a “young Arab man”, Kheir Hamdan. The article can be found at <http://www.bbc.co.uk/news/world-middle-east-29993066>

The article includes the line:

At the weekend, Israeli Arabs threw stones at police in mainly Arab towns in Israel after police shot dead a young Arab man, who they said had attacked them with a knife.

The complainant said the article was another example of “the one-sided reports made by the BBC regarding occupied Palestine”. She made the following points in relation to the accuracy and impartiality of the article:

- the incidents were presented from the Israeli perspective
- the article failed to mention the existence of a video which showed that Kheir Hamdan had not attacked the police but had been murdered whilst running away
- the correct descriptor for Palestinian citizens of Israel is “NOT an ‘Israeli Arab’ as the Israelis say” but “Palestinian”.

The Stage 1 responses from BBC Audience Services included the following information:

- an amendment had now been made to the original article to make it clear that it was the police who said the man had attacked them with a knife (as opposed to it being a statement of fact)
- whilst the incident was mentioned only briefly in this article, another article elsewhere on the BBC website discussed the controversy over the killing
- Kheir Hamdan is clearly shown attacking the police vehicle before he retreats and is shot in the CCTV footage of the incident [hosted on the *Jerusalem Post* website and linked to from the second BBC article]
- Palestinians with Israeli citizenship are known officially as Israeli Arabs.

At Stage 2 the Editorial Complaints Unit (ECU) made the following points:

- the article includes the Israeli narrative but does not endorse it
- the article notes the protests following the man's death
- whilst recognising the debate over the term “Israeli Arabs”, it was an effective shorthand descriptor in this context.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of her complaint, reiterating the points she had made earlier and stating that many would have been misled by the fact that the video was not shown in the article “Israeli woman and soldier killed in two

knife attacks". She stated that whilst Israeli Arab might be the official Israeli term for Palestinian Israelis, the correct term was Palestinians and therefore describing Kheir Hamdan as an "Arab man" was inaccurate.

She noted also the wider issue she had raised in her original submission at Stage 1. She said her specific aim (in bringing the complaint) was to illustrate the BBC's "general unwillingness to expose Israel's daily crimes against the indigenous Palestinians ... under the pretence of 'security/defence'". She said 52 Palestinians had been killed since the war in Gaza last summer and that Israeli attacks were hardly reported.

The Trust Unit's decision

The Senior Editorial Adviser (the Adviser) decided that the complainant's appeal did not have a reasonable prospect of success. The Adviser noted that all BBC output was required to meet the standard of "due" accuracy and impartiality which was defined in the Editorial Guidelines as follows:

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

The Adviser noted the relevant additional sections of the Accuracy guideline as also applicable to the points raised by the complainant:

3.2.2

All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

3.2.3

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

The Adviser noted the article which was the subject of the complaint and the headline which signposted the article's editorial focus: "Israeli woman and soldier killed in two knife attacks".

The Adviser noted that the matters raised in the appeal related to a different incident, namely the shooting of Kheir Hamdan by Israeli police, which had occurred two days earlier and was mentioned only briefly, in one short sentence, in this article. The Adviser noted the reply from Audience Services which had referenced a different article published two days earlier on the BBC website at <http://www.bbc.co.uk/news/world-middle-east-29968181> where Mr Hamdan's death had been covered in detail. She noted that that article was headlined "Fatal Israel police shooting probed as video emerges". The Adviser noted that, on that occasion, the report included a direct link to the website of the *Jerusalem Post* which carried the video referred to by the complainant, and that the article also reflected the controversy over the actions of the Israeli police.

The Adviser noted the editorial purpose of referencing the earlier incident in the article which was the subject of this complaint, i.e. to set the knife attacks which had killed the two Israelis in the context of the wider tensions in the region.

The Adviser noted the opening paragraph of the article which was the subject of this complaint:

"Two Israelis have been killed in separate knife attacks in Tel Aviv and the occupied West Bank.

The first attack in Tel Aviv targeted a soldier. A Palestinian from the West Bank city of Nablus was arrested.

An Israeli woman was later stabbed to death near the Alon Shvut Jewish settlement in the West Bank. The assailant was shot by a security guard.

The stabbings come at a time of heightened tension between Israel and the Palestinians.

At the weekend, Israeli Arabs threw stones at police in mainly Arab towns in Israel after police shot dead a young Arab man, who they said had attacked them with a knife."

The Adviser considered that whilst there remained a requirement not to mislead the audience, there would not be any additional expectation of greater detail about the earlier event nor was it needed in order for the audience to reach an informed understanding about the killing of the two Israelis. The Adviser noted that, following an amendment to the article which was made as a result of the complainant's comments at Stage 1, the article met the guideline requirement that stated material facts that cannot be corroborated should normally be attributed: the article now attributed to the police the claim that Mr Hamdan had attacked police with a knife. The Adviser agreed also with the ECU's point that the reference in the article to protests over his death would have been likely to lead the audience to conclude that the police version of events was disputed. The Adviser did not agree with the complainant that the existence of the video should also be mentioned in order not to mislead the audience.

The Adviser considered the allegation that the description of Mr Hamdan as an "Arab man" was inaccurate. The complainant said:

"I complained about the term "Arab man", which is a **most inaccurate** way to describe a Palestinian citizen of Israel or a Palestinian anywhere in the world. There may be a 'debate' on this and it could seem to be a 'shorthand descriptor', but there is no good excuse for it. I repeat: The BBC uses the vocabulary favoured by the Israelis and Zionists who have us believe that the 'Arabs' are recent invaders of Palestine – not the descendants/mixed descendants of the original people of that land. The CORRECT TERM for the original inhabitants is PALESTINIANS, even if they 'are known officially as Israeli Arabs'"

The Adviser noted that in common with the majority of mainstream media in the UK and around the world the BBC generally uses the phrase "Israeli Arab" or "Arab" (depending on the context) to describe citizens and residents of Israel who are of Arab origin. She noted that whilst the issue may be controversial, Palestinians living within the Occupied Territories had a different status in law from their ethnic counterparts in Israel and that

the description "Israeli Arab" remained accurate. She noted too that according to the International Press Institute, Palestinian media refer to the population as "Internal Arabs" or "48 Arabs"⁸.

The Adviser concluded that there was no evidence that in continuing to use the descriptor "Israeli Arab" the BBC was using the vocabulary "favoured by the Israelis and Zionists" or that it might lead the audience to believe that they were "recent invaders" as suggested by the complainant in her appeal.

She noted that the ECU had acknowledged that there was a debate about the use of the phrase "Israeli Arabs". However, she noted it was a widely used description and considered Trustees would be likely to conclude it was duly accurate.

Taking all the above into account the Adviser considered Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost effective to proceed with the appeal and did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She said this was a follow-up to other complaints about the way the BBC presents reports on "Arabs" who attack "Israelis" and on the "security situation" for Israelis and never for Arabs. She objected that:

- a link to the video showing the shooting of Kheir Hamdan had not been added to the story about the deaths of two Israelis in separate knife attacks in Tel Aviv and the West Bank
- the map showed Jerusalem (wrongly) as being situated in Israel
- had the audience followed the link to the Jerusalem Post video showing the shooting of Kheir Hamdan in the earlier BBC story they would have seen that "the cold-blooded murder is presented as an innocent mistake", " 'the man hitting a police vehicle' being a threat to the apparently surprised but heavily armed police who shoot him in the back..."
- The BBC had not followed developments in this story.
- the article's emphasis on the killing of Israelis was not a reason "to keep on trying to excuse the murderous intent of the Israeli police"
- the Adviser had said that "Israeli Arab" was a duly accurate way to describe citizens and residents of Israel who are of Arab origin. The complainant said it was "simply another insult" to the pre-1948 Palestinians. She said that in many other countries people who happen to speak Arabic are always called by their proper names, such as in Iraq or Syria. She said the BBC was under no obligation to follow the "mainstream media in the UK and around the world" (in using the term Israeli Arab).

⁸ <http://www.freemedia.at/publications/other-publications/use-with-care.html>

The complainant included additional detail to support her complaint that the BBC was failing to reflect attacks on Palestinians by Israelis.

The Committee's decision

The Committee noted that the complainant had raised the positioning of Jerusalem on the map in the article in her request to Trustees to review the Adviser's decision. Trustees noted this had not been raised before and agreed that it should not be considered. This was because the Agreement between the Secretary of State for Culture, Media and Sport and the BBC required that all complaints had to be raised with the Executive in the first instance.

The Committee considered that in an article where the editorial focus was on reporting that day's news, namely the deaths of two Israelis in separate knife attacks in Tel Aviv and the West Bank, there would not have been a requirement to include additional detail about the prior incident concerning the shooting of Kheir Hamdan.

The Committee noted the complainant's view that the BBC does not report attacks on Palestinians by Israelis and that it was this wider point which she wanted the Trust to consider. Trustees noted that the shooting by Israeli police, and the controversy it had provoked about their behaviour, was covered in some detail in a standalone article dedicated to the incident at the time it happened. The Committee understood that the complainant felt this article wrongly depicted the shooting as an innocent mistake but did not agree. The article began by saying:

"Israeli police are investigating the fatal shooting of an Arab-Israeli man in northern Israel, as video emerged raising questions over the events.

Police said the man, 22, tried to attack officers with a knife in Kfar Kana and, 'with their lives in danger', fired at the suspect.

Video shows the man hitting a police vehicle. An officer then gets out and shoots the man as he walks away."

...

"The Jerusalem Post quoted an initial statement from Northern District police as saying Mr Hamdan was carrying a knife and tried to attack the officers. They fired a warning shot in the air, police said, and that 'with their lives in danger the officers fired at the suspect'.

The newspaper also carried what it said was video footage of the incident."

It then described what the video showed having linked to *The Jerusalem Post* and the video:

"It shows the man hitting the police vehicle on the side windows, possibly with an object in his right hand.

The man backs away and an officer emerges from the van. The officer raises his gun and fires as the man turns his back.

Three other officers then emerge from the vehicle, drawing guns.

The Jerusalem Post says no warning shots can be seen and that, in a longer version of the video, 'the wounded man can be seen still moving as police pick him up and place his body in the patrol vehicle'.

The man died later in hospital in Afula."

...

[Ynet] "The security cameras clearly show that there was no danger to the lives of the officers.

'The video shows him running away from the officers; this horrifying incident could have been avoided, but unfortunately they decided to kill him in a cruel way.'"

The Committee was satisfied that this description did not amount to suggesting that an innocent mistake had occurred. It did not consider this article supported the complainant's assertion of generalised bias in favour of the Israeli narrative.

On the assertion that "Israeli Arab" was not an accurate descriptor, the Trustees said they were satisfied from the arguments made at Stages 1 and 2 and the additional context provided in the Adviser's decision that were the issue to reach them on appeal they would be likely to agree that the phrase was duly accurate.

Trustees agreed there was no reasonable prospect of success for this appeal. It was not cost effective, appropriate or proportionate to take this on appeal.

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

23.00 News, BBC News Channel, 30 July 2014

The complaint

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Standards, BBC News, not to uphold his complaint about a report on the BBC News Channel.

The 11pm bulletin on 30 July 2014 was dominated by the ongoing conflict between Israel and Hamas and in particular the mounting international concern over the level of civilian deaths in Gaza. This had stemmed from an Israeli air strike which had hit a UN school in Gaza, killing 15 people sheltering there and injuring 200 more.

The main headline that evening was that the UN Secretary General Ban Ki-moon had condemned the air strike. After the headlines, the news presenter stated that the number of casualties in Gaza so far was more than 1,300 – an onscreen graphic sourced a total casualty figure of 1,336 to the Gaza Health Ministry.

The first news package was a report from Gaza on the immediate aftermath of the attack. The output which is the subject of this appeal was the second package of the segment. The presenter cued in the report saying: "Our correspondent, Orla Guerin, reports from Tel Aviv on the Israeli military strategy."

Her report opened with footage of a large Israeli gun that was seen firing and the following script:

"Israel's big guns, pounding Gaza again today. Israel calls this Operation Protective Edge, but this massive assault has now killed more than 1,300 Palestinians – the vast majority of them civilians..."

The report went on to consider the significance to Israel of destroying the tunnels leading out of Gaza. It included the opinion of a senior military figure that it was possible that Israel would re-occupy Gaza; it reflected public opinion in Israel that overwhelmingly supported the military action – albeit regretting the civilian deaths; it concluded with footage of an anti-war rally that had been staged a few days previously; it reported the chanting of "extreme right demonstrators" who had heckled the rally and reported they were saying: "There's no school in Gaza, there are no children left".

There was a third item in the segment, a report from a BBC Correspondent in New York explaining how the attack on the UN school had provoked the strongest diplomatic outrage, both from the UN and from the White House, since the crisis began.

The complainant contacted the BBC on 31 July 2014. He complained the statement that the "vast majority" of deaths in Gaza were of civilians was wrong. He stated that Al Jazeera published lists of those who had died and an analysis of that list did not support the statement. He stated that in 2009 there had also been differing assessments as to the number of civilian deaths and he considered the BBC had previously overstated the figure and was doing so again.

BBC Audience Services responded on 10 August:

"...most news organisations have been quoting these figures from the office of the UN High Commissioner for Human Rights (OHCHR), which leads a group of humanitarian organisations known as the Protection Cluster.

"Up to the date of 6 August, 1,890 Palestinians have lost their lives in the conflict."

The response included a link to the UN Office for the Coordination of Humanitarian Affairs for further information.

Further correspondence at Stage 1 and Stage 2 focused on whether the BBC was right to rely on UN figures, what other sources were available, what might be inferred from the breakdown by age and gender of the casualty figures, whether the UN was not an impartial organisation and whether the BBC ought to do more to question its bona fides.

The complainant received responses at Stage 1 from BBC Audience Services and at Stage 2 from BBC News.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 11 November 2014. He appealed on the substance of his complaint, that the statement in the commentary that the "vast majority" of Palestinians killed had been civilian was inaccurate. The final paragraph of the appeal summarised the main points of complaint (emphasis is that of the complainant):

"Given the absolutely clear cut institutional bias of the UN against Israel and the fact that the BBC relied on the UN for its figures. Given also that analysis of the casualties so far from sources that have proved more accurate than the UN in their analysis of casualties in previous Gaza conflicts indicate that about half of those killed in Gaza in July were combatants there was clearly no basis for [the reporter] to say that the **vast majority** of Palestinian dead (in the Gaza fighting in July) were civilian. It was then and is now wildly inaccurate dependent on a very biased source and was totally lacking in impartiality."

The complainant noted evidence that Hamas had urged Gazans to refer to anyone who died as a civilian, and he asserted that "in most cases combatant dead were disguised as civilians". He said the Health Ministry in Gaza (one of the sources for the data used in the UN figures) was acting throughout the war as an organ of Hamas. The complainant suggested that in past conflicts the Israeli figure had turned out to be much more accurate than those given by the UN and Hamas. He cited data published by Israel in October 2014 suggesting that the split between combatant and civilian deaths in the war was roughly 50:50.

In January 2015 the Senior Editorial Adviser (the Adviser) noted that the Stage 2 response had focused on the complainant's assertions about the UN – namely that it was biased and its figures were not accurate, that the BBC should not rely on it as a source and that the BBC should question its bona fides. She referred the complainant's substantive allegation back to BBC News, requesting a fuller response to the allegation that the phrase "vast majority" was "wildly inaccurate".

At the same time the Adviser notified the complainant of her decision about that part of his appeal which related to the alleged bias of the UN. She considered that element of the appeal did not have a reasonable prospect of success and should not be put before Trustees.

The Trust Unit's decision

The Adviser noted the following from the complainant's appeal to the Trust (the complainant's hyperlinks to relevant web pages have been omitted):

"Let's get to the heart of my [*sic*] of this issue. In my Stage 2 appeal I said 'The UN is very far from being an impartial organisation. In fact it is institutionally biased against Israel. In 2013 the UN General Assembly passed 21 resolutions against Israel and 4 against all other countries together. That was by no means untypical. In 2012 it was 22 and 4. The UNOCHA is a body created by the UN General Assembly and which reports to it. In the light of this when quoting the UN as a source on matters relating to the Israel/Palestine dispute, not only should the BBC treat what the UN have to say with considerable caution. They should also tell their viewers, listeners and readers that the UN data and reports are likely to be biased against Israel, because that is their institutional bias.' "

The Adviser noted the additional detail supplied in the appeal which the complainant said supported his assertion of UN bias.

The Adviser noted also the following from the letter of appeal (emphasis added by the complainant):

"I agree that the UN has made claims as to the number of Palestinians killed and the number of those who are civilians. And that the BBC frequently, but by no means always, reports these numbers attributed to the UN which is of course an internationally recognised organisation. In this case, I believe, **[the reporter] did not attribute the figures to the UN.**"

The Adviser noted that the complainant's original focus was on the content of the broadcast output. But following the information in BBC responses – that although the overall figure and the proportion of civilian deaths had not been attributed it was in line with UN figures – the focus of the correspondence switched: it became dominated by claims about UN bias.

The Adviser noted that the complainant had submitted evidence which he said highlighted the biased treatment of Israel by the UN and its constituent bodies, and which demonstrated that the UN was institutionally biased against Israel. She noted the complainant's contention that in the previous Gaza conflict the figures for combatant deaths were subsequently revised upwards from those stated by the UN at the time, because there had been an over reliance by the UN on figures sourced from Hamas-controlled authorities in Gaza, and that he considered that the updated figure reflected almost exactly what Israel had been saying throughout about the relative proportion of civilian to combatant deaths amongst Palestinians.

The Adviser noted that the complainant had received a response from the Head of Editorial Standards, BBC News, at Stage 2 which supported the BBC's use of UN data. It stated:

"Ms. Guerin did not repeat the attribution of the overall casualty figures, although these were in line with the UN's calculations, as was the civilian composition she described: the UN Office for the Coordination of Humanitarian Affairs bulletin of the next day stated '1,373 Palestinians killed, including at least 852 civilians, of whom 252 are children and 181 are women.' I would accept that attribution would

have provided greater clarity, particularly for the level of civilian deaths which the introduction did not highlight...”

The Adviser considered that her role was to consider the allegation against the content of the BBC report:

“This massive assault has now killed more than 1,300 Palestinians, the vast majority of them civilians”

The Adviser noted the relevant clauses from the Accuracy guideline against which the content should be tested to ensure due accuracy:

3.2.2 - All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

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

The Adviser noted that the proportion of civilian deaths was made as a statement of fact in the report and neither in the report or elsewhere in the segment was any link made between UN data and civilian deaths.

The Adviser acknowledged that were she required to evaluate the merits of the substantive allegation on appeal, she may think it relevant to take the UN data (amongst a range of other sources and arguments) into account in reaching a conclusion as to whether it would be likely to be considered duly accurate to state the “vast majority” of Palestinian deaths had been civilian.

But although the flow of arguments at Stages 1 and 2 had involved substantial debate about the reliability or otherwise of the UN data, the Adviser decided this would not be her main consideration as there was nothing in the report to indicate that UN figures were being referred to. She considered it would be even more tangential to the original output and complaint to undertake a review of the impartiality of the UN.

The Adviser considered that, based on the output, rather than the debate at Stages 1 and 2, the complainant's allegations about the UN, in relation to the content he had specified, did not in and of themselves raise a matter of substance which were capable of being tested against clauses 3.2.2 and 3.2.3 of the guidelines.

The Adviser therefore concluded that the allegation that the UN was institutionally biased did not qualify to proceed to appeal.

A further Stage 2 reply

The Head of Editorial Standards, BBC News, provided a further Stage 2 response in February 2015. He noted that whilst he had gone into some detail in his previous response as to why he did not support the complainant's case that the UN figures were not to be trusted or that it was institutionally biased against Israel, he had been asked by the Trust to address the specific question of whether the reporter's use of the words “vast

majority" accurately reflected the position for civilian casualties as it was understood at the time.

In his response the Head of Editorial Standards noted that at the end of the conflict the Israeli Prime Minister had said that Israeli forces had killed "approximately 1,000 terrorists" (out of a total of 2,104 deaths).

"If you accept the Prime Minister's estimate for the number of people he called terrorists ... this would still put civilian deaths in the majority...

"As I stated in my previous reply, the UN's calculation at the time of this report was that 852 civilians had died out of an overall death toll of 1,373. This would indicate a civilian death rate at the time of the report of 62%. In electoral terms in this country, the figure of 62% for any single party might indeed represent a vast majority of the vote. But in a very different and sensitive area of coverage, where the level of civilian casualties was an important aspect of the conflict, I would accept that the adjective could usefully have been avoided. The UN figures, for example, suggest a sizeable, substantial or significant majority of civilian deaths but not necessarily a 'vast' one. Other sources, largely, tend to show a lesser majority but a majority nonetheless, as might combining the figures from the Prime Minister and UNOCHA, and I am of course aware of the particular provisions of international humanitarian law to protect civilians during conflict."

The Head of Editorial Standards concluded that viewers would not have been materially misled by the reporter's phraseology and did not accept the complainant's assertion that the report was "wildly inaccurate".

The complainant resubmitted his appeal to the BBC Trust on 7 March 2015 challenging the further response from BBC News. He reiterated the substance of his allegation:

"From the evidence available to [the reporter] at the time it was always extremely unlikely that 'a vast majority' of the Palestinian dead in the Operation Protective Edge up to 30th July were civilian. Saying that they were was both inaccurate and misleading."

The complainant nevertheless focused his resubmitted appeal, and further emails sent subsequently, on his earlier assertion that the UN was a biased institution and that the data it published could not be relied upon.

The complainant submitted in support of his allegation a preliminary analysis by an Israeli intelligence research group of the first 150 or so deaths in Operation Protective Edge which was published on 28 July 2014, two days before the broadcast of the report which was the subject of this complaint⁹. It indicated that civilians comprised 53% of casualties analysed.

The Trust Unit's decision

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

⁹ http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf

The Adviser noted that the majority of points made in the complainant's appeal and subsequent emails related to his assertions regarding the UN. She noted that those issues had been addressed in her previous response.

The Adviser noted that her consideration in this response was to assess the merits of the complainant's appeal in terms of the outstanding element of his complaint – which related to the reporter's use of the words "vast majority" when describing the proportion of Gaza's casualties who were civilian, as it was understood at the time.

The Adviser noted again the relevant phrase, which was in a section of commentary in a location report from Tel Aviv during the height of last summer's conflict:

"Israel's big guns, pounding Gaza again today. Israel calls this Operation Protective Edge, but this massive assault has now killed more than 1,300 Palestinians – the vast majority of them civilians..."

The Adviser noted that in the complainant's initial appeal to the Trust he had stated that the heart of the issue, to him, was that he considered the UN was not an impartial organisation and that it had an institutional bias against Israel. She acknowledged the substantial material he had submitted to support the grounds on which he was appealing. However, she did not believe an assessment of the merit of those claims to be the relevant consideration in determining whether the allegation should proceed to appeal.

The Adviser noted that, in submitting his appeal to the Trust, the complainant had not engaged with the arguments presented by the Head of Editorial Standards, BBC News. However, she thought that the response from the Head of Editorial Standards, BBC News, had captured the relevant consideration and had directly addressed the substantive allegation. She noted the Head of Editorial Standards' view that, whilst the adjective "vast" could "usefully have been avoided", all parties agreed at the time (and also at the end of the war) that civilians comprised a majority of the victims.

The Adviser noted too that at the time the report was broadcast, the UN figure suggested that the proportion of civilian deaths was 62%. She noted and shared the view expressed in the Stage 2 response that, whilst this might suggest a "sizeable, substantial or significant majority of civilian deaths", "vast" might not be considered the appropriate adjective to describe the proportion of civilian deaths.

She then noted the relevant extract from the Israeli intelligence research group which was published on 28 July and cited by the complainant in his appeal:

"Out of the names of 152 individuals who were killed, that were examined by the ITIC, 71 were identified as terror operatives and 81 as non-involved civilians. The percentage of terrorist operatives among all those examined is 46.7%, while the percentage of non-involved citizens is 53.3%. This ratio may vary as the ITIC continues to examine the names of those killed in Operation Protective Edge."

The Adviser noted this was the same proportion as suggested by the Israeli Prime Minister's comment at the end of Protective Edge, based on the final total of just over 2,100 deaths. She noted that, whilst it was a smaller majority than that in the UN figures, it was nonetheless a majority.

The Adviser noted how the Head of Editorial Standards had weighed the likely interpretation of the adjective "vast" in this particular context, taking account of the fact

that this was a sensitive area of coverage and that the level of civilian casualties was an important aspect of the conflict.

The Adviser was conscious that the charge against Israel at the time was that the number of civilian deaths was disproportionate. She noted, as had BBC News in its final Stage 2 response, the particular provisions of international humanitarian law to protect civilians during conflict.

The Adviser considered that the audience's impressions on the issue would be formed not just on the interpretation of the raw numbers but on a range of other factors, for example the number of children killed (252 at the time of broadcast), the requirement to protect civilians during conflict and that night's report which reflected an attack on a UN school in which 15 had died and more than 200 had been injured. She considered that whilst "vast" might not have been the most accurate adjective to have used, the audience was not likely to have been materially misled and she considered that Trustees would be likely to conclude that the report was not, as the complainant had claimed, "wildly inaccurate".

The Adviser decided that the complaint would not have a reasonable prospect of success and should not proceed to appeal

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal and reiterated the points he had made in his earlier submissions. He said that accuracy guidelines 3.2.1, 3.2.2, 3.2.4, 3.4.2 and 3.4.26 had been breached as had impartiality guidelines.

He said that, in terms of his concerns that the wording was inaccurate,

- the word "assault" implied the fighting had been started by Israel and yet it was in response to rocket attacks by Hamas
- the wording meant more than 1,300 had been killed by Israel but many of those killed who were not combatants had been killed by Palestinian militant action (between 17-30 July more than 100 rockets fired by militants from Gaza fell short into Gaza)
- the report said that the "vast majority" of the more than 1,300 dead were civilians but he had provided evidence that about half of the Palestinian dead were combatants.

He also said that, in terms of his concerns that the wording failed to be impartial,

- it was not mentioned that Israel disputed that the vast majority of casualties were civilians
- it was implied the fighting was a massive assault by Israel on Gaza by implication with no reference to the rocket barrage on Tel Aviv which was the reason for Israel's response
- the reporter knew that there was doubt that the vast majority of casualties were civilians.

In terms of evidence:

- He referred to a Time Magazine article published prior to the BBC report which analysed the Palestinian fatalities and pointed to a preponderance of young men (57% of all fatalities).
- He noted that the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) had suggested reasons for the high number of male casualties which was not based on the suggestion that they were combatants. The complainant drew attention to a report on Ukraine where the same UN Commissioner suggested that a gender imbalance in casualties “may indicate that members of the armed groups who are predominantly male constitute a considerable number of the casualties”.
- The imbalance in Gaza and the Ukraine was very similar.
- Hamas urged Gazans to refer to anyone who died as a civilian (cf the Interior Ministry on Facebook).
- The Adviser’s response had quoted him as saying that “the Health Ministry in Gaza was acting throughout the war as an organ of Hamas”. He said he had gone further than that and that the Adviser’s comment had been misleading because the Health Ministry in Gaza “IS an organ of Hamas”. (The Ministry of Health is part of Hamas and their ambulances were used by Hamas and other militia. Hamas HQ was based in Shifa hospital, as reported by the Washington Post and Liberation.)
- Quoting Forbes magazine he said that the UN figures were an almost perfect match for Hamas figures.
- The Adviser had said that he had suggested that in the past Israeli figures had turned out to be much more accurate than those given by the UN and Hamas. The complainant said that he had done more than that. He had said that: “two of the sources used by the UNOCHR in assessing the casualty figures are the Palestinian Centre for Human Rights (PCHR) and BeTzelem [the Israeli Information Centre for Human Rights]. Both organisations co-operated with the Hamas Ministry of Health in compiling Gazan casualty figures in 2009”. He added that Israel objected at the time although the BBC ran those figures without questioning them; many combatants were listed by the PCHR as civilians; and that Hamas eventually acknowledged their casualties and they were very similar to the figures Israel had been giving.
- He had cited specific data previously which named individuals, said if they were combatants, and, if so, who they belonged to. The split between combatant and civilian deaths was roughly 50:50.
- He referred again to the report by Israeli intelligence which had been published before the BBC news report. This examined the first 152 individuals who were killed and said that 71 were identified as terror operatives and 81 as non-involved civilians. He said as time went on and more July deaths were analysed it showed that by the end of July a small majority were terror operatives. [These reports were posted after the BBC report in question.]

- The figures the reporter based her assertion on came from UNOCHA, a body created by, and which reports to, the UN General Assembly (UNGA), which is biased against Israel. The UN routinely condemns Israel four times as much as all other countries put together. (In the current session 20 resolutions against Israel and 3 against the rest of the world.) He referred to the US Secretary of State's remarks on the UN Human Rights Council in March [after the BBC item was broadcast]. He commented upon Israel being condemned in the only country-specific resolution in 2013 by the World Health Organisation (WHO).
- He referred to a Forbes report [which post dated the BBC report and] which included an interviewee saying the UN relied on the Hamas Health ministry for casualty names.
- He referred to a Times article [which post dated the BBC report and] which said that all of Gaza's fighting units have female combatants.

The Committee's decision

The Committee noted the points made by the complainant, the BBC and the Trust's Adviser. It considered the item which was the subject of this complaint and the context within which it was broadcast. Trustees noted that it was the second report in a segment of three items reflecting events from the region and that the editorial focus of the BBC's coverage from Gaza that day was the charge against Israel that civilian casualties were disproportionate.

Trustees agreed that the evidence which post dated the report was not relevant to the Committee's consideration of the request for a review of the Adviser's decision that the appeal should not proceed. The issue was what information was reasonably available to the reporter at the time.

Trustees noted that the most significant point of difference between the complainant and the BBC was not whether the majority of deaths had been civilian, but the size of that majority; the report stated that civilians constituted the "vast majority" of deaths whereas the complainant argued this was "wildly inaccurate" and alleged that the reporter would have known that this was in doubt. Trustees considered the acknowledgement by the Head of Editorial Standards, BBC News, at Stage 2 that the adjective "vast" could "usefully have been avoided". Trustees agreed that "vast" had not been an appropriate adjective to use, but they saw no evidence that the correspondent had used it knowingly to mislead. They considered that the casualty figures available at the time of the broadcast certainly indicated that a substantial majority of deaths had been among civilians. They judged that the difference between "substantial" and "vast" in this context was not so significant as to amount to a material inaccuracy and that it was therefore duly accurate.

The Committee noted the range of sources cited by the complainant which suggested that any majority might have been marginal. However, the Committee was satisfied that there was well-sourced evidence at the time of broadcast to support the statement that most of those killed had been civilians. It noted the complainant's assertion that many of the non-combatants killed had been killed by rockets fired by Hamas that fell short but did not consider that it was possible to evidence that with certainty at the time of the report.

The Committee noted the complainant's assertion that the UN was not an impartial body and was biased against Israel and so was not therefore a reliable source on which to rely

for accurate casualty figures. The Committee noted that it was generally preferable that when statistics are quoted they should be attributed. In this case after the headlines, the news presenter stated that the number of casualties in Gaza so far was more than 1,300 – an onscreen graphic sourced a total casualty figure of 1,336 to the Gaza Health Ministry. This introduced a number of reports including the one that was the subject of this complaint. These figures were in line with UN figures published the following day. As BBC News explained:

“...these were in line with the UN’s calculations, as was the civilian composition she described: the UN Office for the Coordination of Humanitarian Affairs bulletin of the next day stated ‘1,373 Palestinians killed, including at least 852 civilians, of whom 252 are children and 181 are women.’”

Given the BBC had not attributed the figures to the UN it was not necessary to consider the UN as a source further. It was not proportionate to take an appeal based on a failure to attribute the statistics given there had been an attribution at the start of the bulletin.

The Committee considered whether an Israeli view should have been included regarding the allegation that a “vast majority” of the dead were civilians. Trustees noted that the complainant had drawn their attention to an Israeli intelligence report published just before the BBC report which examined the first 152 individuals who were killed and said that 71 were identified as terror operatives and 81 as non-involved civilians. Trustees agreed it would have been helpful for the BBC to have been more nuanced on the statistics, given that they would be the subject of claim and counter claim, but that at this time the evidence suggested the majority were civilian and that therefore Israel’s view was not necessary to achieve due impartiality.

The Committee noted that the complaint had objected to the word “assault”, arguing that Israel was responding to the rockets from Gaza. The Committee acknowledged his view but agreed it was a duly accurate description of the Israeli action (a violent attack). It also noted that an Israeli Major General who was interviewed in the report referred to Hamas firing rockets into Israel, and the reporter explained that “Israelis see this as self-defence”. In context Trustees agreed that there was sufficient reference to Israel’s position to achieve due impartiality.

Trustees decided that it was not proportionate, appropriate or cost effective to take this matter on appeal. It had no reasonable prospect of success.

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

Letter from Africa, BBC News Online, 26 September 2014

The complaint

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about an article which was headlined "Letter from Africa: Emptying Eritrea".

The article focused primarily on the issue of migration from Eritrea, but also looked more broadly at the political situation in the country. It began:

"In our series of letters from African journalists, film-maker and columnist Farai Sevenzo considers why Eritreans endanger themselves so much to reach Europe."

The complainant raised a number of issues about the article:

- It misunderstood and misrepresented the reasons why Eritreans are leaving the country: the Eritrean government was right to say those leaving are economic migrants.
- It quoted an Amnesty International report which claimed that the Eritrean government had imprisoned 10,000 of its citizens since independence – but this figure was exaggerated and the number has not been verified.
- It should not have described some Eritreans living outside the country as "a people estranged not from their country, but from their leader", because the author is not in a position to describe how these Eritreans feel towards their country and its leader. The complainant said there was proof of this in the fact that several thousand Eritreans attended a seminar by the Eritrean president in New York.
- A clarification made to the article on 12 December 2014 ["This report has been amended to clarify that while tensions remain between Eritrea and Ethiopia, they have not been solely caused by any actions of President Isaias"] incorrectly implied that the Eritrean President is "somewhat responsible for the tensions" between Eritrea and Ethiopia.

The ECU responded to the complainant stating that:

- Whilst the author did put forward a number of possible reasons for Eritreans leaving the country, he also reflected the view of the Eritrean government in his own words and through a quote from the Eritrean ambassador to Italy.
- The figure of 10,000 people imprisoned was attributed to Amnesty International, "a respected international organisation which is widely regarded as independent" and supported to some extent by statements from Human Rights Watch, the UK government and the UN Office of the High Commissioner for Human Rights.
- When the author stated that, "they are a people estranged not from their country, but from their leader," he was referring to some Eritreans but not all, and that,

“there was no suggestion that other Eritreans living abroad do not hold President Isaias Afewerki in esteem”.

- The Complaints Director agreed that the clarification issued on 12 December 2014 indicated that the tensions between the two countries were the result of actions on both sides, but considered this appeared to be supported by the evidence. He noted that the term “tensions” was a broad one which did not, for example, hint at military action and noted that the complainant’s view that “it is the Ethiopian government that seems to be beating the drums of war” was a question of perspective.

The complainant escalated his complaint to the BBC Trust on 13 March 2015, saying that he was unhappy with the response received at Stage 2.

The Trust Unit’s decision

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

She noted that, in this case, the relevant Editorial Guidelines were those related to Accuracy and Impartiality and that all BBC output was required to meet the standard of “due” accuracy and impartiality, which was defined as follows:

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

She also noted the following Editorial Guidelines related to Accuracy:

3.2.2 “All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don’t know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.”

3.4.12 “We should normally identify on-air and online sources of information and significant contributors, and provide their credentials, so that our audiences can judge their status.”

She also noted the following Editorial Guidelines related to Impartiality:

4.1 “We must be inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected.”

4.2.2 “News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument.”

4.2.3 “We seek to provide a broad range of subject matter and perspectives over an appropriate timeframe across our output as a whole.”

4.2.4 “We are committed to reflecting a wide range of opinion across our output as a whole and over an appropriate timeframe so that no significant strand of thought is knowingly unreflected or under-represented.”

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

The Adviser noted the way in which the article was introduced to the readers. She believed that the Trustees would be likely to conclude that the “signposting” in the first paragraph would enable readers to understand that this was not a news piece, but rather an opinion piece as part of a series where different authors were asked for their personal views and reflections on aspects of Africa.

She agreed that the article questioned whether everyone leaving Eritrea was an economic migrant. But she did not think that the Trustees would believe that this was done in isolation of the Eritrean government’s view. She noted the following passage in the article:

“The Eritrean government maintains those leaving are economic migrants.

“‘This phenomenon where the youth are leaving their countries to go to the richer countries is an international phenomenon and it should be fought by the international community,’ Eritrea’s ambassador to Italy Zemedet Tekle Woldetatos told the BBC last year, blaming human traffickers.”

The Adviser noted the complainant’s view, “that the motive behind this [the quote above] was not to be fair but to discredit the Eritrean government”. However, she had no information which supported this. She noted the response from the ECU which explained that other poorer countries had lower levels of migration – suggesting that factors other than economic ones lay behind some of the migration patterns. She considered the Trustees would conclude that the article was duly impartial in this respect.

The Adviser noted the ECU’s detailed response to the complainant’s contention that the figure of 10,000 political prisoners was exaggerated. She accepted that there could be no definitive number of people imprisoned in Eritrea, but she considered it was acceptable journalistic practice to quote statistics provided by a reputable independent organisation and to ensure they were properly attributed so that readers could reach their own assessment on their likely accuracy. She considered Trustees would be likely to conclude this was within the Editorial Guidelines.

In respect of the assertion in the article that some Eritreans “are a people estranged not from their country, but from their leader,” the Adviser noted the complainant’s point that the article did not mention that several thousand Eritreans turned up to a seminar delivered by the Eritrean president in New York. She accepted that it might have helped readers gain a fuller understanding if the article had reflected the level of support for the president outside the country. But she also noted the following lines from the article:

“There are other Eritreans who left before the rush to escape.”
“They are dotted all over the world...”
“They run little corner shops in cities like London...”

The Adviser believed that the Trustees would conclude that readers would have understood that the author’s comments did not apply to all Eritreans living outside the country and that he was speaking about a group of people who left the country some time ago.

The Adviser noted the complainant’s view that a clarification made to the article on 12 December 2014 [“This report has been amended to clarify that while tensions remain between Eritrea and Ethiopia, they have not been solely caused by any actions of President Isaias”] incorrectly implied that the Eritrean President is “somewhat responsible for the tensions” between Eritrea and Ethiopia. She also noted the detailed correspondence between the ECU and the complainant on this point. She believed, however, that Trustees would note that there was a border dispute between Eritrea and Ethiopia and there were a sufficient number of views – from the countries themselves and from independent organisations like the UN – for the clarification to stand without breaching the BBC’s editorial guidelines on accuracy and impartiality.

The Adviser therefore concluded, having taken account of the content and the context in which it appeared, that Trustees would be likely to consider that the article did not breach the BBC’s editorial standards. As the complaint had no reasonable prospect of success she therefore did not propose to put it in front of Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He reiterated the substance of his complaint and also made some additional points:

- Although an opinion piece, it did not give the author a licence to disseminate inaccurate information about Eritrea.
- He noted Eritrean migrants having reached Southern Europe then further risked their lives to go to the UK and asked why? [The implication being that they are economic migrants as opposed to refugees.]
- The Adviser cited in her decision Section 4 (Impartiality) of the Editorial Guidelines. This referred to the inclusion of a broad perspective.
- The Eritrean ambassador was only included to disprove his point and without fully examining the situation.
- Many call themselves Eritreans to gain preferential treatment but are from other countries.
- Section 4.2.3 of the Impartiality guidelines states that a broad range of subject matters and perspectives are presented over an appropriate timeframe; this had not happened here: the BBC only ever presents Eritrea from a single, negative perspective ignoring stories which would put the country in a positive light.
- The BBC had ignored a report by the Danish Immigration Service in 2014 which in some instances contradicted the BBC and has been used to change UK immigration policy towards Eritreans.
- He did not accept that it was correct that those who left before the rush were estranged from their leader and not Eritrea.
- He doubted corner shops owned by Eritreans existed.

- He said the claim that Eritreans discussed the kinship between the Eritrean President and the late Ethiopian Prime Minister was made by Ethiopians and no self respecting Eritrean would discuss it.
- It was surprising that the BBC was unable to see that Amnesty International's claim about the number of political prisoners was made up. The Danish Immigration Service report cast doubt on the number of political prisoners.

The Committee's decision

The Committee noted that the complainant had highlighted his general concern about what he considered to be the BBC's ongoing lack of impartiality in its coverage of Eritrea. The Committee noted this would be a relevant consideration in deciding whether this complaint should proceed to appeal only if it was likely to conclude that the article had not achieved due impartiality in its own right. Trustees therefore considered the points in his challenge as they related to the article itself.

The Committee noted the complainant's assertion that a number of points made in the article were either inaccurate or lacked supporting evidence. The Committee considered that the Adviser, and the ECU before her, had provided detailed and appropriate responses on all the points previously raised by the complainant.

The Committee noted that in the case of the number of prisoners jailed since independence, it was not possible to prove the absolute accuracy of Amnesty's figures. Trustees considered that the Trust Adviser had addressed this to its satisfaction by pointing to the bona fides of Amnesty International as a respected organisation and noting that the figure on prisoner numbers was attributed to Amnesty. The broader issue highlighted by the claim, that a significant number of Eritreans are in jail because of their opposition to the Government, had been widely documented by other bodies and did not rely on Amnesty International. The Committee did not consider that absolute clarity as to the exact number was necessary for the audience to understand the wider point.

Trustees noted that, in the complainant's challenge to the Adviser's decision, he had claimed that the numbers of Eritrean migrants had been "artificially swelled" by nationals of countries like Sudan and Ethiopia claiming to be Eritrean in order to receive preferential treatment from European Governments. This in the Committee's view was also not capable of determination, but regardless of whether some migrants who claimed to be Eritrean were in fact citizens of another country, there was considerable evidence, some of which was presented in the article, that a large number of Eritreans had left Eritrea because of conditions there, including the fact there was compulsory conscription up until the age of 40. The fact that some tried to reach the UK was not material. It was possible to be a refugee and wish to live in the UK.

The Committee then turned to the complainant's concern with how the perspective of the Eritrean Government had been reflected in the article and his assertion that the comments from the country's ambassador to Italy were included only to disprove them. It noted the relevant content:

"The Eritrean government maintains those leaving are economic migrants.

"This phenomenon where the youth are leaving their countries to go to the richer countries is an international phenomenon and it should be fought by the international community,' Eritrea's ambassador to Italy Zemedu Tekle Woldetatis told the BBC last year, blaming human traffickers.

"He said continuing conscription was the fault of Ethiopia's refusal to withdraw from the border town of Badme, awarded to Eritrea by the UN more than a decade ago.

"Kinship forgotten

"But the numbers speak for themselves – a population of 6.3m is responding with their feet and emptying the country with despairing frequency.

"The UN estimates that as many as 3,000 people every month are trying to leave his rule by any means possible."

The Committee noted that the complainant had highlighted concerns he had that the article practically called the ambassador a liar. Trustees did not agree. The reflection of the ambassador's view in the article, both in direct quotes and paraphrased, were presented unchallenged. This was followed by figures on refugee numbers sourced to the UN which pointed up that whatever the reason for the exodus, the numbers leaving were considerable. Trustees noted that the complainant had referred to a report by the Danish Immigration Service but were satisfied that it was not necessary to refer to the report to achieve due impartiality and accuracy.

The Committee noted that the complainant had reservations about the author having enough knowledge to write about the Eritrean community and doubted that:

- those who left before the rush were estranged from their leader and not Eritrea.
- corner shops existed owned by Eritreans
- Eritreans discussed the kinship between the Eritrean President and the late Ethiopian Prime Minister as no self-respecting Eritrean would discuss it.

The Committee noted his points but were content that these were minor issues and were not material to the accuracy or impartiality of the article.

The Committee were therefore satisfied for all the reasons above that were this complaint to proceed to appeal it would likely conclude that the article had achieve due accuracy and due impartiality in its own right.

The Trustees agreed that it would not be cost-effective, appropriate or propionate to take this matter on appeal. It had no reasonable prospect of success.

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

Test Match Special, Radio 4 LW, 7 August 2014

The complaint concerned Geoffrey Boycott's use of the word 'Christ' during his commentary on *Test Match Special*.

Stage 1

The complainant made the following points:

- He did not think that Mr Boycott should have used the word "Christ" in such a context.
- Blasphemous language was offensive, whether it was directed towards Christians, Muslims, Jews, Hindus, Buddhists or any other religious denomination.
- It was unnecessary to use blasphemous language – there were numerous other words in the English dictionary which could be used instead.
- He rarely heard offensive language in BBC output, but he felt that on the rare occasions when he did, the person concerned should be told about it.
- In response to Audience Services' first reply, he said he did not accept that tone and context could be used to justify the use of blasphemous language.

Audience Services made the following points:

- They apologised for any offence caused by Geoffrey Boycott's comment on 7 August 2014. They said it was made as a spur of the moment reaction during a live broadcast. No direct offence was intended.
- The BBC was aware that the casual or derogatory use of holy names or religious words could be a source of particular offence to some members of the audience, but judgements about its use were difficult because they depended on tone and context.
- There was no consensus about words that were acceptable, when, and by whom, as different words could cause different degrees of offence to different people.
- Some words that could cause offence have become part of everyday language and it would be unrealistic for broadcasters to suggest they are not widely used in a range of contexts.
- The BBC respects the fundamental human right to exercise freedom of thought, conscience and religion; that included an individual's freedom to worship, teach, practise and observe. Whilst the BBC has a duty to reflect society as it really is, it also tries to ensure the output is not used to denigrate the beliefs of others.

Stage 2

The Editorial Complaints Unit (ECU) considered the complaint against the BBC's Editorial Guidelines concerning Harm and Offence. The Complaints Director made the following points:

- He stated that the Editorial Guidelines did refer to “blasphemy” and noted that, while there was no offence of blasphemy, the use of religious language was not prohibited in the Editorial Guidelines but programme-makers were cautioned to avoid giving unnecessary offence.
- An important consideration weighing in the balance was freedom of expression.
- Other sections of the guidelines required that language which might give offence should be used only where there was a clear editorial purpose.
- He concluded that the use of the word “Christ” by Geoffrey Boycott in the context of his comment in *Test Match Special* met the requirements of Harm and Offence guidelines in terms of “generally accepted standards”.
- The BBC was not oblivious to the offence which can be caused to Christians by the use of Christ’s name as an expletive. He noted that the BBC had already apologised to the complainant for the offence caused, and said that Geoffrey Boycott had been spoken to and advised to be more careful with his use of language; he would also be reminded of his responsibilities in this respect ahead of the cricketing summer.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance and handling of his complaint. He made the following points in addition to the concerns he raised in his original substantive complaint:

- He was concerned that letters he had sent to the ECU following the provisional decision not to uphold his complaint at Stage 2 had been delayed in reaching the Complaints Director.
- He was unhappy that everyone seemed to assume that he used the internet – he did not.
- He wished to pursue a request he made during his Stage 2 correspondence with the ECU for a written apology from Geoffrey Boycott.
- He thought that complaints or suggestions made as feedback to the BBC were never taken up.

The Trust Unit’s decision

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

The Adviser noted that all BBC output was required to meet “generally accepted standards” relating to the Guidelines on Harm and Offence. These were defined as follows:

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

services, with our responsibility to protect the vulnerable and avoid unjustifiable offence.

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

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

The Adviser acknowledged the complainant’s concern about Geoffrey Boycott’s use of the word “Christ”, and his view that the context of the comment did not lessen the offence. However, she believed Trustees would be likely to agree with the ECU that Mr Boycott’s use of the word did meet the BBC’s definition of “generally accepted standards” as required by the Editorial Guidelines.

She noted that the BBC had acknowledged that Mr Boycott’s comment had caused offence to the complainant, and that the BBC had apologised for this. She also noted that the Complaints Director had explained that Mr Boycott had been spoken to personally about the comment, and had been “advised to be more careful with his use of language”. She noted that the BBC intended to remind him “of his responsibilities in this respect ahead of the cricketing summer”.

The Adviser noted that the complainant had made a request in his appeal to the Trust for a written apology from Mr Boycott, but she observed that he had not made such a request until his Stage 2 correspondence with the ECU Complaints Director. Previous to this, in his original complaint he had stated:

“I very rarely hear any offensive language in any way, shape or form, and on the rare occasions when it does [happen], the person concerned should be told about it.”

She noted that the Complaints Director had confirmed to the complainant that Mr Boycott had been spoken to, and had also been reminded of the need to be careful with his use of language in the future.

She believed Trustees would consider that the BBC had acted reasonably in apologising to the complainant for the offence caused, and they would be likely to conclude that this apology, together with the confirmation that Mr Boycott had been spoken to about the incident, resolved the complaint.

She acknowledged the comments made by the complainant with regard to the handling of his complaint, and was sorry to hear of the delays to his written correspondence with the ECU, as well as his view that there was an erroneous assumption that he used the internet. She noted that the Complaints Director had acknowledged the delay in the

complainant's response to his Provisional stage 2 finding reaching him, and although he was unable to explain it, he stated that, in spite of the delay, he had carefully considered the complainant's further correspondence "in case there was anything in it which might cause me to reconsider. I'm afraid to say there is not and most of the points you make have already been covered in the ECU provisional finding." The Adviser believed Trustees would be likely to agree that, though regrettable, the inexplicable delay had not had an impact on the ECU's decision not to uphold the complaint.

The Adviser also acknowledged the points made by the complainant about the BBC's complaints procedure. She appreciated that systems could always be improved and the BBC welcomed feedback and suggestions. She acknowledged the complainant's view that the BBC did not act on audience feedback; however, she noted that, at Stage 1, Audience Services had informed the complainant that all comments and complaints were sent to senior managers within the BBC.

Taking all this into account the Adviser considered Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal and did not propose to put it before Trustees.

Request for review by Trustees

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

- He rejected Audience Services' apology for Mr Boycott's blasphemy; he said he expected an apology from Mr Boycott himself and an assurance such language would not be used again.
- He expected the BBC to have asked for this apology and assurance itself.
- He rejected that this is "everyday language" justified by tone/context/"heat of the moment" live broadcasting.
- He considered this to be a serious breach of BBC standards.
- Bad language was rare in sports broadcasting.
- He referred to a response from the BBC he received on this subject over four year ago.
- He felt the way in which his complaint had been handled had been a waste of resources; it should have been a straightforward matter.

The Committee's decision

The Committee listened to the output on which this complaint centred. Trustees understood why the complainant had objected to Mr Boycott's use of the word "Christ" in his commentary. The complainant felt that this was not "everyday language".

The Committee noted that the Adviser had considered the complaint against the BBC's Editorial Guidelines on Harm and Offence:

"We must be sensitive to, and keep in touch with, generally accepted standards as well as our audiences' expectations of our content, particularly in relation to the protection of children. Audience expectations of our content usually vary according to the service on which it appears."

Trustees felt that *Test Match Special* and its presenter were very familiar to many listeners and, in general, the audience would understand that in a live match and in the heat of the moment a commentator might sometimes use language the audience did not expect. Trustees appreciated that the language used had the potential to offend some of *Test Match Special's* listeners, who were a notably engaged and loyal audience. This was very much to be regretted. However, Trustees agreed with the Adviser that there was no reasonable prospect of finding there had been a breach of the Editorial Guidelines.

In his request to Trustees, the complainant had asked for an apology. The Committee noted that the complainant felt the apology he had received from the BBC was insufficient; he wanted an apology from Mr Boycott rather than the BBC as a whole.

Trustees saw that the Complaints Director had informed the complainant that Mr Boycott had been spoken to on this matter and been "advised to be more careful with his use of language". Trustees felt that this chimed with the complainant's perspective when he said:

"I very rarely hear any offensive language in any way, shape or form, and on the rare occasions when it does [happen], the person concerned should be told about it."

Taking in conjunction the apology offered by the BBC with the fact the presenter was spoken to directly about his use of language, Trustees considered the matter to have been handled appropriately by the BBC. It is the BBC which is responsible for content of its broadcasts and therefore it had been right that it was the BBC that had apologised to the complainant.

With regard to the complaints handling aspect of this appeal, Trustees noted the delay at Stage 2 in dealing with the complaint. However, the delay had been acknowledged and Trustees felt it had not had a negative impact on the consideration of his complaint.

Trustees agreed this appeal had no reasonable prospect of success.

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

Eritrea Profile – Timeline, BBC News Online

The complaint

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about the timeline on the Eritrea profile page of BBC Online.

The complainant said an entry on the timeline for April 2013 which referred to the defection of a female Eritrean pilot had never been verified and the BBC had not carried it at the time (reinforcing his view that it was untrue).

The complainant said the following was also untrue:

“2013 May - Brutal repression, including extrajudicial killings, is forcing thousands to flee Eritrea, says UN human rights reporter Sheila Keetharuth.”

The BBC News website team responded on 12 January 2015 explaining that the Saudi press had reported that the female pilot had applied for asylum although no mention had been made of her eventual fate. They added that if the complainant had additional information which would cast doubt on the story, the news website could qualify the entry by adding “allegedly” or “reportedly”.

Regarding the UN’s human rights rapporteur’s allegation that thousands of people were fleeing brutality, they explained that the entry was intended to give a snapshot of what was happening in the country at that point in time.

The complainant responded saying that the similarity in coverage of the defection incident in “the Saudi press” suggested only one source. He queried again why the BBC had not written about the defection at the time. He added that the lack of detail suggested that the story was not “well-sourced”. He said that given that the purpose of a timeline was to highlight significant events in history, “placing an unsubstantiated event such as the supposed defection of a few Eritrean pilots is an attempt to demean the history of Eritrea”.

On the veracity of the UN report in May 2013 the complainant said this was not “a snapshot” but a long established view of the UN. He said that the BBC had failed to mention the confirmed defection of Ethiopian pilots to Eritrea which demonstrated bias against Eritrea.

The BBC news website team responded that there could have been many reasons why the defection of the pilot was not reported at the time. It had been included in the timeline because it appeared to be an interesting case among apparently numerous defections.

They added that the entry on the timeline had now been amended to reflect the fact that it was uncertain as to whether the pilot’s defection had succeeded:

“2013 April - Military pilot sent to Saudi Arabia to reclaim a jet stolen by two fellow officers seeking asylum, reportedly also seeks asylum.”

They also included web links to several Saudi reports of the incident. They also included a link to the report by the UN human rights rapporteur and explained that it had been

included in the time line because both the content of her report and the fact that she had released a report were newsworthy.

The complainant appealed ECU. The ECU carried out further research to establish whether or not the summary included in the timeline met the required standards as set out in the BBC's Editorial Guidelines on Accuracy. They included extracts in their response from a report by the United Nations Monitoring Group on Somalia and Eritrea in July 2013 in which it referred specifically to the defections of all three pilots, and the ECU explained that other media sources had also reported the event.

As the ECU had concluded that the paragraph in the timeline was factually accurate, they saw no evidence that its inclusion demonstrated bias against Eritrea.

The complainant responded, noting what he considered to be anomalies in the July 2013 report of the United Nations Somalia and Eritrea Monitoring Group (UNSEMG).

The ECU did not uphold the complaint.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of his complaint, that a paragraph in the timeline on the Eritrea Profile section of the BBC news website was inaccurate and that its inclusion demonstrated bias against Eritrea. The complainant said the UNSEMG report cited by the ECU was fundamentally flawed and could not be relied upon and that the BBC itself had acknowledged that there was significant doubt about the story. The complainant added that "the BBC has included a contentious 'fact' on the Eritrean Timeline" where he considered only "hard facts" should be included.

The Trust Unit's decision

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

The Adviser noted the BBC's guidelines on Accuracy:

"We must do all we can to ensure due accuracy in all our output.

"All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

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

The Adviser noted that the complainant felt that the inclusion of the paragraph on the Eritrean pilot was inaccurate:

"2013 April - Military pilot sent to Saudi Arabia to reclaim a jet stolen by two fellow officers seeking asylum, reportedly also seeks asylum."

The Adviser noted that the ECU had carried out additional research to try to establish what had been known about this matter. She noted that in their response they had included quotes from the UNSEMG report. She also noted they had referred the complainant to other media sources which had previously reported the event including Arab News. This had then been picked up by the Reuters news agency and reported elsewhere including in the British press.

The Adviser noted that the complainant had included in his correspondence what he considered to be evidence which cast doubt on the authenticity of the UNSEMG report. She noted that the ECU Complaints Director had also responded to each of these points but had concluded that he was satisfied that "the evidence I cited in my provisional finding, which included the information gathered by the United Nations Monitoring Group and was confirmed by the Saudi authorities, was sufficient to justify the language used in the online article".

The Adviser noted that the paragraph in question had been rewritten to include the word "reportedly". She considered that the inclusion of this word would lead readers of the article to assume a degree of doubt about the defection of the Eritrean pilot and that the fact of her defection had been claimed and reported on, but was not definitely proven. She therefore did not believe that this paragraph was misleading.

The Adviser noted the complainant's view that to include the paragraph about the unverified defection of the female Eritrean pilot where other certified defections, for example that of no less than fifty Ethiopian air force pilots, had not been included, was evidence of an anti-Eritrean bias.

She considered, however, that which events to include on the timeline was a matter of editorial judgement and there had been no requirement to include the defections of any Ethiopian pilots to Eritrea in the timeline. She considered that the omission of these events could not be seen therefore as evidence of an anti-Eritrean bias by the BBC.

She also noted that the Royal Charter and the accompanying Agreement between the Secretary of State for Culture, Media and Sport and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case.

Taking this into account the Adviser considered that Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal and did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He continued to maintain that the UN was a biased source with regard to Eritrea and that the BBC was wrong to rely on its findings of extra-judicial killings in Eritrea. He said the BBC and the ECU had not contacted the Saudi authorities and had relied on second-hand sources to confirm the timeline entry regarding the defection of the Eritrean pilots, supplying additional detail himself about where he suspected the story originated

from and reasons why he thought it was a hoax. The complainant said he had not complained about the decision not to include the Ethiopian pilots' defection in the timeline. He said the point he was making was that as the BBC had treated the Eritrean pilots' supposed defection and the Ethiopian pilots' defection differently this was evidence of bias.

The Committee's decision

The Committee noted the points made by the complainant and by the BBC.

The Committee noted the complainant had raised concerns about the following timeline entry:

"2013 May - Brutal repression, including extrajudicial killings, is forcing thousands to flee Eritrea, says UN human rights reporter Sheila Keetharuth."

It noted the following:

- the information was sourced to the UN
- the report, links to which had been provided to the complainant, noted that Sheila Keetharuth herself had travelled to refugee camps on the border with Eritrea and spoken to refugees who had supplied first hand testimony regarding extra-judicial killings.

The Committee considered that the summary of the UN's finding in the timeline on the BBC webpage would appear to be consistent with what Ms Keetharuth had reported.

The Committee noted that the complainant had also raised a concern about the following timeline entry which had had the word "reportedly" added during the course of the complaint:

"2013 April - Military pilot sent to Saudi Arabia to reclaim a jet stolen by two fellow officers seeking asylum, reportedly also seeks asylum."

The Committee noted the basis on which the complainant had challenged the Adviser's decision:

- the BBC appeared to be fixated on the alleged defections of Eritrean pilots whilst ignoring the defection of Ethiopian Air Force pilots
- neither the BBC nor the ECU had made any effort to verify the story but had relied on second-hand reports
- the UN report referring to the incident gave the false impression that it had carried out an extensive investigation
- the President of Eritrea had never been known to have used the plane in question which had no Eritrean markings
- the story was first reported on a radio station run by a person who is known to be against the government of Eritrea.

The Committee noted the following:

- the story was widely reported in the local and regional media, including by authoritative sources such as the Reuters news agency
- those reports included direct quotes from officials in Saudi Arabia

- all three pilots were identified by name
- Eritrea had not issued a denial of the story or of any of the reported detail
- the word “reportedly” had been added which indicated that this story had been reported elsewhere but had not been verified by the BBC.

The Committee did not consider the complainant had supplied any substantive evidence to support his theory that the defections had not occurred such as would warrant investigating this issue on appeal. It noted that BBC News regularly relies on established third party news agencies, such as Reuters, to supply it with news content and would not generally carry out independent verification for an item where the information was to be used only for a news brief, as was the case here.

Trustees agreed that it was for the BBC to decide whether or not to include the Ethiopian pilots’ defection. Treating the two incidents in a different way did not amount to evidence of bias, as different news judgements could be taken about the two events.

Trustees decided that if they took this case on appeal they would be likely to conclude that both extracts from the timeline were duly accurate and duly impartial.

Overall it was not cost effective, appropriate or proportionate to take this matter on appeal. It stood no reasonable prospect of success.

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

Landward, BBC Two Scotland, 28 November 2014

The complaint concerned an edition of the BBC Scotland countryside programme *Landward* which looked at grouse shooting. The themes explored in the programme included the history of the sport, the effect of grouse shooting on the rural economy, the management of the grouse moor including the control of predators, the role of the gun-dog and a look at how a shoot worked.

The complainant made the following points:

- The programme had breached the BBC's guidelines on impartiality.
- The programme had failed to reflect sufficiently the animal welfare implications of grouse shooting.
- A range of views was not reflected in the programme. Six views were from people with shooting interests, one was from a conservation body, and none represented animal welfare.
- Grouse shooting was an issue in its own right and was not therefore balanced by coverage of other animal rights issues.
- *Landward's* treatment of history ignored the impact of grouse shooting on the environment and the people who lived on the land taken for grouse shooting.
- *Landward* misled the audience by claiming that it would show exactly what is involved in a grouse shoot and said "this week it's all about grouse, from the heather-clad moor to the dinner plate and everything in between". However, it totally ignored the plight of the grouse.

Audience Services made the following points at Stage 1:

- The programme was not about the rights and wrongs of grouse shooting but about the sport and an insight into it.
- The programme had said that there were many who were against it on animal welfare grounds, and it had looked at the significance in the recent changes to legislation around the general licence.
- It had constantly referenced the fact that not everyone agreed with grouse shooting and went on a shoot to give some context into exactly what was involved.
- It was very important that the range of views was reflected fairly but this was a wide ranging topic and it was impossible to cover everything within a half hour programme.
- *Landward* covered animal rights issues frequently and the coverage of the grouse moors was balanced across the series.

The Editorial Complaints Unit (ECU) did not uphold the complaint and made the following points at Stage 2:

- The BBC's guidelines did not require the range of perspectives to be covered within a single programme, provided that any controversy was clearly signposted.
- There was no evidence of the degree of opposition to grouse shooting that would have required the programme to include an opposing voice in order to meet the guidelines on impartiality.
- Sufficient acknowledgement of the element of controversy was provided in the programme.
- The introduction to the programme was a fair and accurate description and gave the audience a clear indication of what they were about to see.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of his complaint and expressed dissatisfaction with the replies he had received from the BBC. He said that the programme had breached the BBC's guidelines on impartiality and had made false claims about its content.

The Trust Unit's decision

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

The Adviser noted that all BBC output was required to meet the standard of "due impartiality" which, under the Editorial Guidelines, was defined as follows:

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

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

The Adviser noted that the complainant felt strongly that *Landward* should have included within this programme references to the animal welfare issues surrounding grouse shooting. She noted, however, that the BBC guidelines did not require the full range of perspectives to be covered within a single programme. She noted also that the programme had referred to the controversy surrounding the sport on several occasions:

"Grouse shooting is a key part of the Scottish rural economy but it's also controversial and we've been spending the past few months finding out about its past, present and future."

"Nowadays, despite some people having strong objections to grouse shooting on animal welfare grounds, others are prepared to pay a lot of money to experience a day's shooting in Scotland."

"Of all the blood sports associated with sporting estates it's grouse shooting that for many is the most controversial..."

The Adviser also noted that the BBC had assured the complainant that the coverage of the grouse moors was balanced across the series.

The Adviser noted also that the complainant felt that the programme had made false claims about its content and that it had promised to show exactly what is involved in a grouse shoot and "everything in between" the "heather-clad moor and the dinner plate". The complainant had believed therefore that the programme would address animal welfare issues.

The Adviser considered the Guidelines, which stated that the BBC “must not knowingly and materially mislead its audiences”, and should not “distort known facts, present invented material as fact or otherwise undermine our audiences’ trust in our content”.

The Adviser considered the introduction to the programme:

“Hello and a very warm welcome to Landward. This week it’s all about grouse, from the heather-clad moor to the dinner plate and everything in between. It’s one of the best known dates in the British calendar – the 12th of August, better known as The Glorious Twelfth and the beginning of the grouse season. Grouse shooting is a key part of the Scottish rural economy but it’s also controversial and we’ve been spending the past few months finding out about its past, present and future. The season finishes next month on the tenth of December and for many estates it’s been the most successful on record. Later in the programme Sarah and I will be joining a shoot on Royal Deeside and Nick will be cooking up what we’ve bagged. Euan will be investigating the impact of new legislation on grouse moor management and Kipper, the new star of the show, will be finding out if he has what it takes to become a successful gun dog.”

The Adviser did not agree that this introduction had suggested there would be any exploration of welfare issues. She considered this introduction to be an accurate representation of the programme’s content.

She also noted the phrase “we wanted to find out exactly what a shoot is like”. The presenter had followed this by saying they had been invited to find out “how a shoot works”. This section of the programme then looked at the logistics of the shoot, the role of the beater and featured some of the challenges of the sport. Again the Adviser did not consider that this had misrepresented the content of the programme.

Taking these points into account the Adviser considered Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal and did not propose to put it before Trustees.

Request for review by Trustees

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

- The Adviser noted that the programme had referred to “the controversy” surrounding the sport. He said this suggested there was only one controversy – namely raptor control, which he thought was misleading.
- The Adviser noted the BBC had assured him that the coverage of the grouse moors was balanced across the series. He said this was not the issue he had raised. He was complaining about “the specific issue of grouse welfare during a grouse-shoot”. He said: “The BBC keep trying to defend their failings by widening the issue onto grounds that I have not raised.”
- He rejected the Adviser’s view that the programme’s introduction was an accurate representation of the programme’s content. He said the presenter falsely claimed that the programme was “all about grouse from the heather-clad moor to the

dinner plate and everything in between". He said that this should then have included consideration of grouse welfare.

- The Adviser noted that *Landward* used the phrase "we wanted to find out exactly what a shoot is like", and "how a shoot works". The complainant said these phrases were misleading because an important part of how a shoot works is what happens to the grouse; sometimes they are wounded and need to be manually killed, for example. He said there was no mention of this on the programme which means "the programme did not show exactly how a shoot works, or anything like exactly how a grouse shoot works".
- *Landward's* approach misled the audience into thinking that grouse shooting is not as cruel as it is. He felt the programme offered "no more than what we see every year on the BBC's Reporting Scotland on the 12th August".
- He felt the programme had been manipulated into producing a promotional feature for grouse shooting.
- The handling of the complaint suggested a policy of "admit no wrong: never apologise", such as when a member of Audience Services said that the programme had acknowledged that there were "many" against grouse shooting on animal welfare grounds when the complainant said that the programme only referred to "some" which he felt conveyed a "tiny minority" which is not accurate. There should have been an apology for this.

The Committee's decision

The Committee noted the output at the centre of this complaint. Trustees understood the complainant to object to the lack of information given on animal welfare in a programme which claimed to be "all about grouse". Specifically, the complainant felt that an important aspect had been omitted from the exploration of "how a shoot works".

Trustees noted that the Editorial Guidelines did not require all perspectives to be covered in a single programme. They considered the programme had made adequate reference to the existence of controversy around grouse shooting. They did not accept that this automatically suggested a controversy around raptor control.

Trustees noted the programme's introduction:

"This week it's all about grouse, from the heather-clad moor to the dinner plate and everything in between."

Trustees understood that the complainant argued that the programme should therefore have included consideration of grouse welfare. However, they did not agree that not including arguments or information about grouse welfare amounted to a failure to be duly accurate given that the programme clearly signalled that grouse shooting was controversial. Trustees considered that the programme's introduction: "This week it's all about grouse from the heather-clad moor to the dinner plate and everything in between", would have been generally understood to mean that the whole programme was about this subject. It would not have been regarded as the programme's intention to cover every single aspect of grouse shooting.

The Committee saw no evidence that the programme had been manipulated by the industry to produce a programme promoting grouse shooting.

Trustees concluded that were they to take this case on appeal they would reach the view that the output did not concern a possible breach of the Editorial Guidelines.

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

Remembrance Sunday: the Cenotaph, BBC One, 9 November 2014

The complaint concerned the BBC's coverage of the Battle of Arnhem during the Remembrance Sunday Cenotaph coverage, which did not include any reference to the glider-borne troops involved in the battle, but did include personal recollections of members of the Parachute Regiment.

The complaint

Stage 1

The complainant, who was a glider pilot himself at the Battle of Arnhem, made the following points:

- The broadcast gave a misleading impression that the Battle of Arnhem was fought by the Parachute Regiment. 5,500 men were taken to Arnhem by glider, whereas 4,500 were dropped by parachute. The battle was fought by the 1st British Airborne Division – not just the Parachute Regiment.
- Although 1,000 more men were landed in gliders than were dropped by parachute, only members of the Parachute Regiment were interviewed – there was no mention of the glider-borne troops.
- The troops brought in by glider were not “dropped”, they were landed, and did not have parachutes. He felt that by using the word “dropped” exclusively to describe the landing of troops, the report denied the existence of the majority of the force.
- He understood the BBC could not interview members of every regiment, but he felt that by ignoring the Glider Pilot Regiment, which flew in the majority of the troops, the BBC had caused offence and resentment.
- It appeared that the director of the programme was ignorant of the make-up of the 1st British Airborne Division and he hoped the BBC would accept it was at fault and apologise. Such an apology could then be printed in the magazine of the Glider Pilot Regimental Association.
- It had taken far too long to investigate his complaint which dated from 9 November 2014.
- Initial responses from Audience Services failed to understand the complaint. They responded as if he was complaining about BBC coverage of the 1st British Airborne Division, when his substantive complaint was actually about the failure to give coverage to the Glider Pilot Regiment which existed *within* the 1st British Airborne Division. Audience Services also initially thought he was complaining about the Royal British Legion Service of Remembrance which was incorrect.

BBC Audience Services acknowledged that the programme did not make specific reference to the glider-borne troops at Arnhem but, after viewing the programme and discussing the complaint with programme-makers, they said the coverage did pay tribute to all of the troops' efforts in the battle by referencing the 10,000 men of the British Airborne Division.

They explained that it was not possible to mention specifically all the ground and airborne troops who took part in the battle, but it was not the BBC's intention to ignore the incredible effort of the glider-borne troops.

Stage 2

The complaint was initially referred to the ECU who considered that the BBC coverage did not constitute a material inaccuracy, nor did it have the potential to cause the sort of widespread offence that the BBC's Editorial Guidelines seek to guard against.

The Complaints Management & Editorial Standards team then replied making the following points:

- All the short films had to work within the context of the live ceremony at the Cenotaph, which meant there were only 3 or 4 minutes for any one story and it was not possible to go into great detail of any battle. The aim of the films was to convey personal experience and remembrance.
- In this case, the BBC wanted to reflect on and recognise the losses at the Battle of Arnhem, a battle which is often over-shadowed by D-Day. The programme-makers were also keen to show the special relationship that exists to this day between the veterans and the people of Arnhem. They were careful to say "10,000 men of the British 1st Airborne Division landed near the Dutch town of Arnhem" so every unit that fought at Arnhem was included. The two veteran interviewees happened to be members of the Parachute Regiment, but they were not chosen because of their Regiment. They both had a specific personal experience to tell.
- The BBC wanted to assure the complainant that there was no intention to diminish the heroic role of glider pilots in the film and apologised if the complainant was upset in any way.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust making the following points:

- The BBC coverage at the Cenotaph on Remembrance Sunday gave viewers the impression that the Battle of Arnhem was fought by the Parachute Regiment alone, when in fact it was fought by the 1st British Airborne Division, comprising approximately 5,500 men landed in gliders and 4,500 men dropped by parachute.
- He said that responses at Stage 1 and Stage 2 ignored the crux of his complaint: that the offence caused could have been avoided by the addition of just a few words to the commentary, "Men landed in gliders and paratroops". The inclusive term would have been "airborne troops".
- His complaint had been ongoing for five months and he felt the attitude of the BBC had been delay and prevarication when all that was needed to close the complaint was a simple apology for the omission of any reference to the majority of the force that fought the Battle of Arnhem.

The Trust Unit's decision

The Senior Editorial Adviser (the Adviser) reviewed all the correspondence at Stage 1 and Stage 2, and acknowledged the strength of the complainant's feelings about the lack of any mention of the glider pilots and glider-borne troops at the Battle of Arnhem. She acknowledged that he felt considerable offence had been caused by that omission. However, she decided that the complainant's appeal did not have a reasonable prospect of success.

She acknowledged the complainant's concern that the matter he raised had been going through the complaints system for several months when all that was needed was an apology. Given the complainant's personal knowledge, as a glider pilot who took part in the landing of troops at Arnhem, she sympathised with his frustration at the BBC's use of terms which did not, in his opinion, convey a sufficiently complete picture of events on that day. She was sorry that the BBC's coverage had caused him offence. However, she believed Trustees would be likely to agree with the ECU that the omission of any mention of glider-borne troops in the context of the BBC's Cenotaph coverage did not either constitute a material inaccuracy or have the potential to cause widespread offence, and therefore did not engage the BBC Editorial Guidelines.

The Adviser noted that the response from the Complaints Management & Editorial Standards team explained the context of the short films shown during the Cenotaph coverage, and the fact that there was very little time to go into the detail of any particular battle. The aim of the films was to convey personal experience and remembrance. She noted that the BBC had explained why the two veteran interviewees had been chosen to share their personal experiences, and had stated that they were not chosen on the basis of their regiment but on the basis of their experiences. For instance, one of them was one of very few veterans still alive who reached the bridge.

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was defined as a duty that was the responsibility of the Executive Board. Editorial decisions about the content of the personal recollection films shown during the Remembrance Sunday Cenotaph broadcast were the responsibility of the BBC Executive rather than the Trust.

The Adviser believed that Trustees would be likely to consider that the BBC responded appropriately at Stage 2 by stating that "in no way did we intend to diminish the heroic role of glider pilots in our film and we are very sorry if we have upset you in any way". She did not consider that Trustees would be likely to conclude, based on the content of the programme, that a further apology would be required.

The Adviser acknowledged the complainant's dissatisfaction with the way his complaint had been handled; in particular the delays he had experienced in making his complaint, and initial misunderstandings about the exact nature of his complaint by Audience Services at Stage 1. However, she noted that Audience Services had apologised for these misunderstandings and she believed Trustees would consider this aspect of the complaint resolved.

Taking all this into account the Adviser considered Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success. She therefore did not

consider it was appropriate, proportionate or cost-effective to proceed with the appeal and did not propose to put it before Trustees.

The Adviser understood that the complainant would be disappointed by the decision not to proceed with his appeal, but she hoped the historical information he had provided would be of interest to the BBC and, as he had already indicated his agreement to the Trust Unit, she had passed his details on to programme makers who might be in a position to follow up his story.

Request for review by Trustees

The complainant asked why his complaint was rejected and if Trustees could review the decision not to proceed with his appeal. He noted that more men landed in gliders than were dropped by parachute and while he accepted that time did not allow for every regiment to be mentioned, to have included a few words noting that some men were landed in gliders could easily have been accommodated.

The Committee's decision

Trustees sympathised with the complainant's disappointment at the omission of any mention of the Glider Pilot Regiment during the 2014 Remembrance Day Cenotaph coverage. However, they noted that the Adviser's decision not to proceed with the appeal was based on the view that Trustees would be unlikely to conclude that there had been a breach of the Editorial Guidelines on accuracy and offence.

Trustees understood the complainant's point that it would have been easy to include a few words explaining that many men were landed in gliders. However, failure to include this information in the programme had not constituted a breach of the Guidelines.

Trustees thought that the BBC Executive had explained the editorial reasons for concentrating, within a limited amount of time, on the recollections of two veteran survivors of the Parachute Regiment and that the BBC had not intended to cause any offence.

The Committee acknowledged the length of time it had taken since his complaint was lodged but, overall, considered that he had received a full and reasoned response to his concerns. Trustees decided that the BBC had responded appropriately at Stage 2 by stating that "in no way did we intend to diminish the heroic role of glider pilots in our film and we are very sorry if we have upset you in any way". The Committee did not believe it would be likely to conclude, based on the content of the programme, that a further apology would be required.

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

Panorama, The War of the Tunnels, BBC One, 23 September 2014

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

The complaint

The complainant contacted the BBC to say that the programme was inaccurate and biased in favour of the Israeli viewpoint. The main points from his submissions at Stages 1 and 2 are summarised below; alongside each is a bullet point summary of the relevant responses from BBC Audience Services and the Editorial Complaints Unit (ECU). None of the complainant's points was upheld:

- 1 It was misleading to characterise what happened as a war; it was an onslaught on a trapped and occupied civilian population by one of the world's most sophisticated military powers; the dictionary definition of a war is "strife between nations".
 - The word "war" does not imply a conflict between equal forces.
 - It was widely described by media and governments as a "war", and also by both parties.
 - The asymmetrical nature of the war was clearly explained in the programme, both in terms of weaponry and the consequences for the population of Gaza.
 - The programme included the basic facts about the nature of the occupation and the blockade.
- 2 The tunnels were Israel's "ex-post-facto" excuse for the war; the programme helped Israel with its propaganda by implying in the title that Israel's offensive was aimed mainly at closing tunnels whereas it had many other causes and aims.
 - Viewers would not assign such weight to the title as to be misled by it.
 - The focus on tunnels was because they were a stated Israeli war aim.
 - Other aspects of the conflict were also discussed and viewers would not have been misled into believing there was no more to the conflict than the tunnels.
 - Acknowledging the tunnels as part of Israel's rationale for the conflict did not mean the programme ignored the motives of one side in favour of the other; Khaled Meshal (the Hamas Chairman) said in his interview for the programme that the tunnels were part of the Hamas strategy.
- 3 It was stated that Hamas fighters had used a tunnel to attack a village in Israel; this was inaccurate as it was an attack on an Israeli military post, justified under the Geneva Convention covering resistance against armed occupation.
 - The pictures (of the Hamas tunnel attack) made it clear what was being attacked (i.e. soldiers in a gated compound surrounded by mesh fencing) and the programme clearly stated it was soldiers not civilians who were being killed.

- 4 The programme was inaccurate and biased in stating that Hamas ousted the Palestinian Authority to gain control of Gaza in 2006; Hamas won fair elections across Israeli-occupied Palestine.
 - While this might have been better-worded, considered in context it would not have misled viewers into a misunderstanding about Hamas's passage to power. As the complainant stated, Hamas won the vote, but it was nevertheless necessary for them to remove their opponents by force.

- 5 The programme misrepresented the Hamas position in stating that it wished the destruction of Israel: Hamas has made statements in support of one and two-state solutions, and signed and maintained ceasefires with Israel.
 - That some Hamas leaders have made statements in support of a two-state solution and signed and maintained ceasefires does not gainsay the fact that the clause in their charter calling for the destruction of Israel remains.

- 6 The ruling Likud Party in Israel insists the West Bank must be part of Israel, which is against the Oslo Accords, but this was not mentioned
 - It was not the purpose of the programme to discuss the Oslo Accord but the Chairman of Hamas made it clear in the programme that the military response to Israel was because of its "occupation and settlement policy".
 - This point and the Hamas Charter's statement on Israel are not direct equivalents.
 - The editorial guidelines do not suggest that balance can be precisely quantified – or require every reference to the approach of one side in a conflict to be "balanced" by reference to another.

- 7 It was inaccurate and biased to state that Israel's onslaught was provoked by Hamas: Israel fired the first shots; and it was members of Palestinian factions in Gaza who fired the first rockets into Israel; the inaccurate version in *Panorama* favoured Israel's view of events.
 - Whilst recognising there is a distinction between rockets fired by Hamas and those fired by other groups over which they may exercise little control, there was no simple chronology, as was evidenced in the programme's detailing of the different events which preceded the descent into "all-out war".
 - The audience would not have been materially misled by what was said given that it is a matter of record that Hamas did fire rockets into Israel in early July.

- 8 There was no mention that the Hamas leadership denied planning the killing of the three Israeli boys or knowing about it in advance.
 - The Hamas Chairman clearly accepted responsibility for the murder of the three Israeli teenagers in the interview for the programme.
 - He referred to those who carried out the killings as a "cell"

- 9 There were more Israeli spokesmen in the programme than Palestinian.
 - Hamas's military, with rare exceptions, were not interacting with the media.
 - Interviews on the programme with Palestinian civilians outnumbered those with Israelis.

- The main spokesmen for both sides were afforded equal time.
- 10 The statement by the Israeli minister that “five million (Israeli) civilians are under heavy rocket attack” should have been challenged, given the largely ineffective nature and limited range of Palestinian rocket attacks.
- The Israeli minister was responding to a challenge from the reporter to charges that Israel's actions were disproportionate.
 - The source of the comment would have equipped the audience to decide what weight to place on it.
 - Viewers had already been told that the rockets fired from Gaza were “crude” and that the majority of them were intercepted by Iron Dome.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint. He said:

- 1 The title of the programme, *The War of The Tunnels*, with its two definite articles, implied incorrectly that Israel's invasion of Gaza last summer was primarily aimed at closing down Gaza's system of military and economic-lifeline tunnels. This was a spin that Israel put on its assault on Gaza when it became apparent that Hamas had survived the attack and that world opinion had been outraged by Israel's actions.
- 2 It was inaccurate, misleading and a point of pro-Israeli bias to call this attack on Gaza “a war”. A war involves two states or a state and an entity (such as ISIS) in which both sides' forces have access to a range of heavy weapons and can be said to be matched and wilfully engaged. The Gazans are an occupied people and place, mostly civilians, with a group of militias with access to small arms and ballistic rockets, who resist a continuing economic and military siege. Israel has one of the world's most developed and powerful armed forces.
- 3 *Panorama* implied that Israel's attack was a response to Hamas rockets. This is inaccurate. It also breaches the code of impartiality because it means the BBC is adopting an Israeli version of cause and effect.
- 4 The Editorial Complaints Unit seemed tentatively to take the complainant's point about the careless and inaccurate way in which Hamas is described as “taking control” of Gaza, leaving the misleading interpretation in viewers' minds that there was a Hamas coup in Gaza after the elections of 2006.
- 5 To say simply that Hamas's Charter calls for the destruction of Israel is inaccurate, unless it is put in the corrective context that Hamas continually deals with Israel, agrees ceasefires with it (which Israel violates) and has clearly stated that in circumstances of a just peace and a lifting of the siege it is prepared to live side by side with Israel.

The Trust Unit's decision

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

The Adviser noted that all BBC output was required to meet the standard of “due accuracy and due impartiality” which, under the Editorial Guidelines, was defined as follows:

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

The Adviser noted how the programme signposted the scope of its ambition in the programme’s opening sequence:

This summer Palestinians in Gaza were pounded by Israeli bombs. More than 2,000 people died, a quarter of them children.

(Palestinian interview) ...I felt so angry...this is war crime

(unidentified interview) Get down – incoming etc...

We find out what it’s been like for Israelis living under a barrage of Hamas rockets from Gaza

(Israeli interview) ...nobody can live with this situation. Nobody!

This war’s fuelled anger not only in Gaza but around the world.

(natural sound) ...wailing

We investigate how and why the battles were fought in tunnels deep underground.

(Israeli interview) These terror tunnels, their whole purpose is just to kidnap and murder Israelis.

Peace talks are due to begin but what has either side achieved in this war of the tunnels?

The Adviser considered that the clarity of the signposting had managed audience expectations about the extent to which wider issues, i.e. beyond those which were highlighted, would be reflected or explored in this programme. The introduction also clearly signposted to viewers that the programme was not only about the tunnels. The Adviser noted, however, that there nevertheless remained a requirement that in choosing to focus on specific aspects of the issue the content must not mislead or risk being biased by omission. The Adviser noted the following paragraph from the guideline on Impartiality:

Due Weight

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

The Adviser agreed with the complainant that the fact of the blockade and the asymmetrical nature of the conflict was relevant information in the context of the themes being discussed. She also noted, however, that the programme had reflected these facts in the commentary and in the interview with the Hamas Chairman. She noted in particular the following sections of commentary and interview clips:

On the blockade:

When Israel imposed a blockade on Gaza, Hamas dug tunnels into Egypt to smuggle in everything from household goods to weapons.

Last year when a new Egyptian government destroyed those tunnels Hamas lost its economic lifeline – seriously affecting its ability to govern.

Hamas was preparing for a showdown with Israel – to ease the blockade they claimed was strangling Gaza.

But Hamas have made no solid gains in this war – there's no guarantee the blockade will be lifted or they'll get the airport and the seaport they're demanding to open Gaza to the outside world.

(Khaled Meshal, the Chairman of Hamas:) If the international community doesn't deliver this or if Israel manoeuvres and deceives we will fight and resume our struggle. These are our rights and the whole world will be responsible for keeping Gaza under siege.

And on the asymmetrical nature of the conflict:

But the crude rockets are no match for Israel's Iron Dome.

This half billion dollar anti-missile system has destroyed nearly 90% of the thousands of Hamas rockets which have targeted Israel.

In this asymmetric war Hamas deployed a weapon they too had spent years developing.

An even more complex network of tunnels - these ones built under the border into Israel.

(Khaled Meshal): Everybody knows that 'necessity is the mother of invention'... These tunnels were dug by... the Resistance in self-defence against a superior technological and military power.

The Adviser noted also that the programme spent considerable time conveying the effect of the war on the civilian population of Gaza in pictures, commentary and interviews with Palestinians inside Gaza. Overall the Adviser considered the audience would have been accurately informed as to the status of Gaza, the nature of the disagreement between the two parties and the disparities in the strength and effectiveness of their respective military machines. How the programme had chosen to represent those issues was a matter of

editorial judgement which came within the remit of the BBC Executive; under the Royal Charter the Trust should not take a view on such matters, unless there is a potential breach of the Editorial Guidelines.

The Adviser noted the complainant's concerns about the use of the word "war" to describe the events of the previous summer. She noted the responses given at Stages 1 and 2, and took the view that these were comprehensive and well-reasoned and adequately covered the complainant's points. In essence, almost any word in isolation can be capable of bearing numerous definitions; in considering a complaint on an issue like this, it is the wider context which requires to be taken into account. The Adviser considered the audience was not likely to be misled as to the nature of the conflict by the fact that the programme chose to call it a war.

The Adviser considered the complainant's assertions about the framing of the "tunnels" issue in the programme and noted they had also been addressed comprehensively at Stages 1 and 2. The Adviser did not agree that the use of the definite article "the" in the title bore the interpretation placed upon it by the complainant: the programme did tell the war of the tunnels, but alongside it, as signposted in the introduction, the programme addressed a range of other issues in the war.

With regard to the complainant's assertion that the programme had adopted Israel's narrative, the Adviser observed how the programme detailed the chronology of events, making it clear that the tunnels assumed the significance they did only "as the war went on", and stating also that the Israelis did not appear to have been aware of the extent of the network at the outset:

As the war went on the Israelis discovered what a huge investment of time and money Hamas had made in these tunnels – dug by hand

Why didn't you know about these tunnels before?

Brigadier General Edelstein: We were aware of those tunnels, ... but it's very complicated... it's not enough to find it in Israel because you have to destroy it all the, all the way into Gaza....

And that's just what Israel did.

On July 17 the Israelis launched a ground offensive that would destroy more than thirty tunnels inside Gaza.

The Adviser considered that even if the complainant were right, i.e. that Israel was attempting to justify its actions in Gaza after the event by citing the tunnels as a legitimate reason for the offensive, this was not a claim made or explored in the programme.

The Adviser then considered the allegation that it was Israel who fired the first shots and that the programme misled audiences on this point. She noted the relevant section of commentary:

With tensions boiling over, Hamas fired a barrage of rockets into Israel and Israeli jets bombed Gaza.

By the beginning of July it was all-out war.

She noted that there was no simple chronology of cause and effect, but a series of events before the descent into what the programme called “all-out war”. The Adviser noted the complainant’s view that it was a group unrelated to Hamas who had fired the first rockets, but also observed that Hamas had fired rockets into Israel in early July and also that the murder of the three Israeli teenagers was, by the Hamas Chairman’s own admission, carried out by Hamas cells. The murders were widely considered to be one of the triggers that led to all-out war. The Adviser agreed with the Stage 2 finding that the audience would not therefore have been materially misled on the issue.

With regard to the manner in which Hamas took control of Gaza, the Adviser noted the relevant section of commentary:

I was in Gaza ... when Hamas took charge, ousting the more moderate Palestinian Authority government.

She noted that the commentary was factually accurate in that, albeit they had won the most seats in the election, Hamas had subsequently taken charge only by removing their opponents by force. She agreed with the ECU at Stage 2, that it might have been better worded, but observed that this was a brief reference in a programme where the editorial focus was elsewhere.

Finally the Adviser noted how the programme characterised Hamas’s attitude towards Israel:

Hamas is considered a terrorist organisation by Britain, America and Europe. The militant Islamist group has sworn to destroy Israel

The Adviser noted that official Hamas policy is that Israel should cease to exist and be replaced with a Palestinian state. Whilst the Adviser noted that from time to time individual Hamas leaders had indicated support for a long term truce, on those occasions when Hamas had been invited to reconsider its calls for the destruction of Israel it had chosen not to do so.

The Adviser therefore concluded that Trustees would be unlikely to consider that the programme breached the BBC’s editorial standards. As the complaint had no reasonable prospect of success she did not propose to put it in front of Trustees.

Request for review by Trustees

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

- He disagreed with the Adviser’s view that the opening sequence signposted that the programme would deal with issues beyond the tunnels:
 - The sequence mentions exaggeratedly and inaccurately “a barrage” of Hamas rockets; it says “**the** battles were fought in tunnels deep underground”; it quotes an Israeli as saying, without answer, “these terror tunnels, their whole purpose is just to kidnap and murder Israelis”; it terms the struggle “this war of the tunnels”; the implications here are clearly that the Gaza attack last summer was mainly to address the tunnels. This is not only inaccurate but supports the Israeli attempts being made at the time

the *Panorama* film was being made to retrospectively find and publicise a reason to brand Israel's attack on Gaza a success, Israel having failed to suppress Hamas and its resistance.

- The statement "Hamas was preparing for a showdown with Israel" was partial. It would have been impartial to say, as was the case, that both sides were preparing for a showdown: Hamas because of the siege, Israel ever-prepared and preparing to find a reason to crush the Hamas-led Palestinian resistance.
- Showing Palestinian death, destruction and damage does not have relevance if the context of how and why Israel launched the campaign is not properly set out and is, further, weighted by inaccurate emphases and statements.
- The dictionary is clear that "wars" are fought between states or alliances of states. To term the Gaza conflicts "wars" substantiates the Israeli interpretation as one of a state, Israel, fighting for its survival against some menacing and equivalent opponent.
- The people of Gaza number among the more than 3 million people under Israeli rule in the Israeli-Occupied Palestinian Territories and Israel is bound by the laws of war going back to the beginning of the last century to protect these people and to answer legitimate armed resistance by proportionate means. This is evidently not the case, but the *Panorama* programme does not make this vital point.
- *Panorama* wrongly implied that Hamas rockets provoked the Israeli assault. *Panorama* made no mention of the fact that Israel daily carries out lesser armed attacks against the civilians and civilian properties in Gaza.
- Hamas was part of the elected 2006 Palestinian Authority government but was the object of an attempted armed coup by Fateh, with Israeli and Western backing, which it defeated by force of arms. The way in which the programme mischaracterised how Hamas assumed control in Gaza was more than "a brief reference": it turned events on their head and left Hamas appearing to be the aggressor. The effect of this was pro-Israeli bias and inaccuracy.
- The Hamas Charter states that members of all religions in Palestine can only flourish "under the shadow of Islam". It identifies the enemy as Zionism, which (just as Hamas lays claim to the concept of all Palestinian Arab territory being part of the Islamic Waqf) lays claim to original Palestine, from the Mediterranean Sea to the Jordan River. If the BBC is repeatedly to refer to the "destruction of Israel" then it is only fair and impartial to weight this claim with the fact of increasing Israeli possession and acquisition of Arab lands by force of arms and Israeli law, and the nonexistence so far of any but a notional entity called Palestine.

The Committee's decision

Noting the points made by the complainant at Stage 2, in his request for an appeal, and in his request to review the Adviser's decision, the Committee thought the essence of the complaint was that the programme was inaccurate, and biased in favour of an Israeli narrative. In particular, it had not reflected sufficiently the broader context in which the conflict had taken place; had not given adequate weight to Israel's strategy and conduct in the Gaza Strip or to the legitimacy of Palestinian demands; and had not adequately

reflected Israel's responsibility for the escalation in the fighting or accurately reflected how it had pursued its aims.

The Committee noted how the complainant's concerns had been addressed by the ECU and in the Adviser's decision, and considered that they demonstrated how the programme had adequately and appropriately reflected the main perspectives. While it may not have done so in the way the complainant would have wished, content producers are entitled to use their editorial judgement as to what to include and not to include, and it is not the job of Trustees to second-guess that. Trustees agreed with the Adviser that the programme had made clear to the audience from the outset the focus of its attention and therefore managed expectations as to how far it would discuss the conflict as a whole, and were satisfied that it had demonstrated editorial justification for concentrating on the war underground, with new and compelling images and information about that part of the war. The Committee agreed that in doing so the programme had not misled the audience on the broader issues.

The Committee commented that the characterisation of how Hamas assumed control back in 2006 might have been better expressed, but Trustees did not accept the complainant's view that it turned the issue on its head or that it had materially affected the audience's understanding of the wider story. It agreed that the audience would not have been looking to this programme to inform them in detail about historical events.

The Committee agreed that this appeal did not have a reasonable prospect of success, and that it would not be proportionate, cost effective or appropriate for the Committee to accept the appeal and consider it in greater depth.

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

BBC News Channel 6.28pm 14 September 2014 & BBC website article: "John Lewis warns prices 'likely' to rise on 'Yes' vote"

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

The complaint

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about "a general bias towards the 'Better Together' campaign in the Scottish Referendum". His appeal related to two pieces of BBC content:

- 1 On 14 September 2014 BBC royal correspondent Nicholas Witchell reported that the Queen had told a member of the public that she hoped people "will think very carefully about the future" when casting their vote in the referendum. The complainant believed that the BBC implied that the Queen did not want an independent Scotland, and this was at odds with her stated position.
- 2 On 11 September 2014 the BBC News website¹⁰ reported that the retailer John Lewis had warned that prices were likely to rise if there were a 'Yes' vote. The complainant was concerned that the BBC was reporting a certain, immediate price rise whilst the view of John Lewis was in reality less definite and related to longer term possible rises.

The Trust Unit's decision

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

BBC News Channel 6.28pm 14 September 2014

The Adviser noted that the complaint related to a "two-way" between presenter Adam Parsons and royal correspondent Nicholas Witchell, as follows:

Adam Parsons: The Queen has made a small intervention in the Scottish referendum campaign urging voters to think very carefully before casting their ballots on Thursday. She made the remark to members of the public while attending church at Crathie near Balmoral. Our Royal Correspondent, Nick Witchell joins us now on the phone. Nick, whenever the Queen expresses any opinion on a topic as contentious as this it's bound to be scrutinised from all angles.

Nicholas Witchell: Yes, not so much an intervention I think, more an observation. This was outside Crathie Kirk near Balmoral – she is up there of course on her summer holiday still. There are always well-wishers there and apparently somebody in the crowd joked with her "well we mustn't talk about the referendum" to which the Queen, perhaps a little surprisingly, she could have just moved on and ignored that comment, but the Queen chose to say simply this:

¹⁰ <http://www.bbc.co.uk/news/business-29153022>

“Well, I hope people will think very carefully about the future”. Now that is a comment which is neutral, which I’m sure both sides in the referendum debate will be able to agree with, clearly people will be thinking very carefully about the future, that’s what they’re doing an awful lot of at the moment up in Scotland. But she chose to say that. She is very experienced, clearly, at staying the right side of the line and I think most people will certainly feel that she has done so on this occasion. Buckingham Palace, they’re not challenging the fact this comment was made and they are just reiterating the statement that was made earlier this week when they said of course that the Queen maintains constitutional impartiality, she is neutral they would say as to the outcome of the referendum. It is, so far as the Queen is concerned, a matter for the people of Scotland. But she has, as it were for the first time, just said something, this observation today uttered to a member of the public outside Crathie Kirk, “I hope people will think very carefully about the future”.

The Adviser noted the complainant’s view that “the bulk of the broadcast was not on reporting the facts but alluding to private views ... creating a sense that the Queen was wishing to intervene”. The Adviser noted that this was the first time the Queen had made any public comment about the referendum so this was newsworthy but there were very few facts to report: simply the circumstances of the comments, what exactly was said and whether the comments were neutral. She noted that Mr Witchell had observed that the Queen could have ignored the question but instead she had chosen to make a neutral comment. The Adviser could not agree with the complainant’s view that “the bulk of the broadcast was not on reporting the facts but alluding to private views” and that this created a sense, in the complainant’s words, that the Queen wished to “intervene”.

The Adviser was unable to find any reference in the broadcast to the Queen’s private views, so she was surprised that the BBC had said at Stage 1 that it was appropriate for Mr Witchell to mention the Queen’s “private opinions”. She noted the complainant’s concern that the ECU had contradicted this part of the Stage 1 finding, but she decided that this simply demonstrated that the ECU had taken an independent view. She also underlined the independence of the Trust in examining complaints.

Finally, the Adviser noted the complainant’s wish for a Professor of English to study the transcript of the broadcast “to state that the transcript is a neutral reporting of facts and that the reporters are not hinting at and alluding to the Queen having private views at odds with her officially stated opinion”. The Adviser noted that the BBC’s guidelines on due impartiality took account of “the likely audience expectation and any signposting that may influence that expectation”, rather than a more academic perspective. In this case she concluded that the likely audience understanding was that the Queen, who is required to be politically impartial, had chosen to make a comment on the referendum, and that whilst this was unusual, she had “stayed on the right side of the line” by not expressing an opinion.

The Adviser could therefore find no evidence to support this element of the complaint and she considered that Trustees would be likely to conclude that the BBC had not breached its guidelines on accuracy or impartiality.

BBC website article: “John Lewis warns prices ‘likely’ to rise on ‘Yes’ vote”

The Adviser noted that the website article reported the views of the John Lewis Chairman, Sir Charlie Mayfield, and that it also included a video clip from a *BBC Breakfast* interview with him the same day. She noted that he also expressed his views in a BBC Radio 4

Today interview that morning, and that he made very similar points in both interviews:

- business was thriving for John Lewis in Scotland and it was an important part of the John Lewis Partnership
- it was not his place to tell people how to vote in the referendum
- nothing would change immediately after the referendum but things might change over months or maybe even years if there was a divergence in terms of employment regulations, tax, pensions or currency
- if there was a “Yes” vote, it would have economic implications
 - a) because of the general economic uncertainty created by the vote
 - b) because it cost more money to operate in parts of Scotland and if there was a “Yes” vote those costs might not be absorbed by John Lewis across the rest of the UK (as they are at the moment), so costs would be likely to rise.

The Adviser noted the view of the complainant that the article was inaccurate in its reporting of Sir Charlie Mayfield’s comments, and that this inaccuracy resulted in bias towards the “Better Together” campaign.

The Adviser noted the complainant’s view that the BBC was reporting a certain, immediate price rise whilst the view of John Lewis was in reality less definite and related to longer term possible rises. However, she noted that the article’s headline referred to “likely” price rises and the opening paragraph stated that prices “may be higher” in Scottish branches of John Lewis and Waitrose than in the rest of the UK if the country voted “Yes”. She considered that this phrasing made it clear that the price rises were probable but not definite and that this accurately reflected Sir Charlie’s view.

The Adviser noted the complainant’s view regarding the Stage 1 conclusion that:

“the detail given by Sir Charlie Mayfield about extra costs of doing business in Scotland – both current and potential after a “Yes” vote – means there is no other conclusion you could possibly reach other than “divergence” meaning rises in Scotland rather than falls.”

The complainant felt instead that “some prices may rise some may fall”. The Adviser noted that the complainant was entitled to disagree with Sir Charlie but the role of the BBC was to accurately report Sir Charlie’s view and the Chairman had clearly stated that “it does cost more money to trade in parts of Scotland and therefore those higher costs in the event of a “Yes” vote are more likely to be passed on”.

The Adviser agreed with the ECU that it would have been better if the article had been more explicit about the timescale of any changes, for instance by reporting Sir Charlie’s comments that nothing would happen the day after the referendum vote. However, she noted that there was no suggestion made in the article that price rises would take effect immediately; indeed, as these costs were still being talked of as uncertain she noted that readers would consider them unlikely to take effect one week later (the interview being broadcast on 11 September, the referendum taking place on 18 September 2014).

The Adviser noted the complainant’s view that Sir Charlie’s concern about economic uncertainty needed to be put into context with other risks such as a referendum on leaving the EU. She noted that Sir Charlie had made no reference to this issue during his interview and she agreed with the ECU that she could not see why it would have been necessary or relevant to refer to the possible consequences of an EU referendum to achieve due impartiality in the reporting of a businessman’s view of the likely implications

of the Scottish referendum.

The Adviser considered that Trustees would be likely to conclude that the BBC had not breached its guidelines on accuracy and impartiality.

Taking this into account the Adviser considered Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost effective to proceed with the appeal and did not propose to put it before Trustees.

Request for review by Trustees

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

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- he wished to complain on procedural grounds. The ECU and the Adviser had contradicted an element of the Stage 1 finding and the complainant believed it was not impartial for them to be seeking to put forward fresh defences
- he asked for Nick Witchell's sources referred to by Audience Services at Stage 1
- what was the purpose of the report if it contained very little fact – was it scripted?
- the fact that Adam Parsons said "The Queen has made a small intervention" meant the BBC implied the Queen had intervened in the debate
- he had reached a different conclusion to the Adviser and therefore felt it reasonable that a reputable independent professional should review the transcript
- the Queen did not have private opinions; she was the Monarch at all times and so it was bias to suggest she had avoided expressing an opinion.

BBC website article: "John Lewis warns prices 'likely' to rise on 'Yes' vote"

- the Adviser was incorrect. The complainant had not said he disagreed with the views of Sir Charlie Mayfield, which he thought were quite balanced; he disagreed with the Stage 1 conclusion that "there is no other conclusion you could possibly reach other than 'divergence' meaning [price] rises in Scotland rather than falls".
- Sir Charlie Mayfield talked about it "presently costing more to operate in parts of Scotland and that those costs might be absorbed across the whole of the UK". Sir Charlie Mayfield was also talking about the divergence of regulations, tax, pensions and currency so it is not possible to conclude that all prices would rise across all of Scotland. Divergence may result in rises and falls.
- the headline neglected to include the timescale to which Sir Charlie was referring and it did not put the scale of risk from the economic uncertainty into context which was biased. The BBC did not give the scale of any increase which was necessary context.

The Committee's decision

Trustees noted the points made by the complainant, the BBC and the Adviser.

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The Committee addressed the complainant's procedural question first. Replies at Stage 1 of the editorial complaints procedure normally came from BBC Audience Services and

could include input from the content producers. There was normally no independent investigation at this stage. An investigation into an editorial breach by the BBC Executive took place at Stage 2 of the BBC's complaints procedures and was undertaken by the Editorial Complaints Unit which sat outside the content producing divisions and so was independent of content producers. This decision was appealable to the Trust. The role of the ECU, and of the Committee, was to judge whether a broadcast item had met the standards set down in the BBC guidelines. One of the reasons for offering escalation was that errors made at an earlier stage of the procedure could be rectified or fuller investigation take place. Different stages of the complaints process could reach a different decision or the same conclusion for different reasons. The Trustees' decision was final. Therefore it was not procedurally wrong for the ECU and the Adviser to disagree with the decision at Stage 1.

The item had to be seen as a whole. Trustees noted that Adam Parsons introduced the two-way by saying "The Queen has made a small intervention" but that he did not imply she had endorsed one side of the campaign over another. They noted that Nicholas Witchell qualified the introduction, saying, "not so much an intervention I think, more an observation".

Trustees could find no evidence in the broadcast that the item had alluded to the Queen's private views or indicated whether she had private views. It had explained that she had said "Well, I hope people will think very carefully about the future".

There was no indication that this was scripted (and that was in any event irrelevant to the question as to whether the item was biased or not). The decision to cover the fact that the Queen had spoken and how much time to give to that was an editorial decision for the BBC and not a matter for the Trust (Royal Charter, Article 38(1)(b)).

The Committee noted the complainant's request for an independent professional to read a transcript of the two-way. Trustees agreed this was not necessary. The meaning of the broadcast was clear. The Trust Unit and thus the Adviser was outside the day-to-day operations of the BBC and the Committee itself was the final arbiter of appeals.

Trustees agreed with the Adviser that an appeal that this item was biased on one or other side of the referendum had no reasonable prospect of success.

BBC website article: "John Lewis warns prices 'likely' to rise on 'Yes' vote"

The Committee noted the complainant's view that Sir Charlie Mayfield was also talking about the divergence of regulations, tax, pensions and currency so it was not possible to conclude that all prices would rise across all of Scotland. Trustees noted that the context of Sir Charlie's comments was quite specific: he stated that "it does cost more money to trade in parts of Scotland, and therefore those higher costs in the event of a 'Yes' vote are more likely to be passed on".

Trustees noted there was some circumspection in the way the article was written:

"Prices in Scottish branches of John Lewis and Waitrose may be higher than in the rest of the UK if the country votes 'Yes' to independence.

The chairman of the John Lewis said it was 'most probable' that prices will rise, with costs passed on to customers."

Trustees noted the article also covered the view of the Scottish finance secretary John Swinney who said:

“Charlie Mayfield is entitled to his opinion.

“I think the argument is one that is firmly contested by other retailers who do not take the view that has been expressed this morning by Charlie Mayfield.”

Trustees decided that it was clear that the article was reporting Sir Charlie Mayfield’s view and that it was appropriately written to indicate that prices might have risen and that others disagreed.

Trustees agreed that it would have been helpful if the article had been more explicit about the timescale of any changes but they agreed with the Adviser that there was no suggestion that price rises would take effect immediately, particularly as the costs were still being talked of as uncertain with only one week remaining before the referendum.

The Committee did not consider that further context on the scale of the risk or increase was necessary to achieve due accuracy and impartiality. Trustees agreed that there was no prospect that they would uphold a complaint of bias on this issue.

Trustees concluded that it was not appropriate, proportionate or cost effective to proceed with the appeal as it did not have a reasonable prospect of success.

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

Appeals against the decision of BBC Audience Services not to correspond further with the complainant

The BBC's editorial complaints system has three stages. During the first two stages complaints are considered and replied to by the BBC. At the third stage the Trust may consider an appeal against a decision by the BBC.

Complaints are answered at Stage 1 by BBC Audience Services. Where complainants remain dissatisfied after a Stage 1 response, they can request a further response at Stage 1. If they are still dissatisfied they may escalate their complaint to Stage 2. Complaints at Stage 2 are answered either by the BBC's Editorial Complaints Unit, or by a senior manager within the BBC.

However, under the Complaints Framework, it is open to the BBC to close down correspondence at any stage – this means the BBC notifies the complainant that it does not wish to respond further. The complainant can appeal to the Trust if they consider the BBC was wrong to close down the correspondence. This is what happened in the following cases. Where a complainant appeals to the Trust in these circumstances, and Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The Editorial Complaints and Appeals Procedure¹¹ explains that:

At all stages of this Procedure, your complaint may not be investigated if it:

fails to raise an issue of breach of the Editorial Guidelines; or

is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In all of the following cases the complainants had appealed on the substance of their complaints but as BBC Audience Services had ceased handling the complaints at Stage 1 the point put to the Trustees was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

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

The Committee was provided with the complainant's correspondence with the BBC, the complaint's appeal/s to the Trust, the response/s from the Trust Unit and the complainant's request/s to review that decision. The Committee was also provided, where appropriate, with the relevant broadcast or published content.

¹¹ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

Decision of BBC Leeds not to respond further to a complaint about Look North, BBC One, 27 March 2015

The complaint concerned a report broadcast on *Look North* following the decision by York Council's planning committee that day to approve plans for a new stadium for York City Football Club. The complainant considered the item had not included relevant information relating to the costs of the project and where the burden of funding would fall.

Stage 1

The complainant contacted *Look North* directly and made the following points:

- He stated he was writing on behalf of an organisation and its members in Haxby.
- He considered a broadcast by *Look North's* political editor into the stadium decision was biased and politically motivated.
- He considered the report lacked information about who would pay for the stadium, who would underwrite it, what the cost of the stadium would be and what financial input it was likely to need each year from tax payers.
- He considered the political editor had many political conflicts of interest.
- He referred generally to "dark forces" at Wakefield and Doncaster Councils.

The Editor of *Look North* responded the next day, making the following points:

- The political editor had not reported on the planned new stadium but had been working on a story about the Liberal Democrat's election campaign.
- He stated he would be happy to respond to complaints from the organisation's members in Haxby if they wished to contact him directly.
- He sent the complainant a link to the BBC Complaints website to allow him to register an official complaint.

In subsequent correspondence, the complainant queried why he had not received a response and the Editor, *Look North* stated that he had replied the previous evening. The complainant requested a copy of the output and said that he expected the BBC to be transparent. The Editor, *Look North* sent the following response:

"As I said in my first email on Sunday, if your associate would care to contact me directly I'd be happy to answer his or her concerns about our report last Friday.

"As I also said in the same email, if you wish to make a formal complaint, please use the link I attached before...

"I do not intend to correspond further about this at this stage. Having sent you three emails already this week, partly in response to inaccuracies you'd written about the BBC, I'm afraid I must now prioritise other matters as my time is limited."

Appeal to the BBC Trust

The complainant appealed to the BBC Trust and made the following points:

- The BBC had broadcast a "biased/unbalanced programme about York City Football club finances".

- The complainant had requested a copy of the output in order that he could show it to the police or to people who “may be induced to give grants” but it had not been sent to him.
- The Editor, *Look North* had demanded contact names and addresses of members of Voice, which he could not give because of data information rules.
- The Editor, *Look North* had said he would not correspond further on this matter, which the complainant considered was a “cover up” and part of a multi-million pound fraud.

The Trust Unit’s decision

The Senior Editorial Adviser (the Adviser) read the correspondence that had passed between the complainant and the BBC. She acknowledged this was a matter the complainant felt strongly about; however, she considered his appeal did not have a reasonable prospect of success.

The Adviser noted that all BBC output is required to comply with the Editorial Guidelines and the guidelines for Impartiality state that all output must reach the standard of “due impartiality”. This is defined as follows:

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

The Adviser looked at the relevant output; she noted that the reporter had reported live from York on that day’s decision by the council’s planning committee to approve plans for York City’s new stadium. His report had included a recorded package that had briefly outlined the history behind the plans and how they had developed from being a proposal for a relatively small stadium to a far larger commercial development that would include restaurants, a cinema, shops and a leisure centre. The report had noted that some traders in the city had objected to the proposals due to concerns about the commercial impact it would have on their business. The report noted that the new stadium would provide a home to both York City Football Club and York City Knights rugby league club and would also be a community hub to improve access to sport for the region.

The report was followed by a live interview with the Project Director who outlined the next steps – namely, that the proposals needed to be approved by the Secretary of State and that there would also need to be an archaeological excavation before building work could go ahead.

The Adviser considered that Trustees would conclude that, on the day of a significant decision about the proposed stadium development, there was clear editorial justification for the report. She noted that decisions about what elements of a story to include in a report were matters of editorial judgement that rested with the BBC – and that Trustees would become involved only if there was a possible breach of the BBC’s Editorial Guidelines. She did not consider that was the case here. The Adviser agreed that queries about how the stadium would be funded were reasonable ones, but she did not agree that there was a requirement to include them in this report.

The Adviser noted that *Look North* had declined to send the complainant a copy of the output and noted there was no requirement for complainants to be sent copies of output at Stage 1 as this would place an unreasonable burden on the BBC.

She noted that the Editor, *Look North* had not demanded the names and personal details of members of the Voice community group, as the complainant had stated, but had said that he would be happy to respond to any of their concerns if they contacted him directly.

The Adviser noted that when the complainant had first contacted *Look North*, the main point of his complaint had been that the report had been biased and had been compiled by a journalist who the complainant considered was not impartial. She noted that the complainant had been advised that the journalist he had complained about was not responsible for the report.

The Adviser considered Trustees would be likely to conclude that the output met the requirements for “due impartiality” and that the separate element of complaint – that the report had been compiled by a journalist who was biased – was inaccurate and did not warrant further investigation. The Adviser therefore considered Trustees would be likely to conclude that *Look North’s* Editor had behaved appropriately and in the interests of all licence fee payers in declining to correspond further with the complainant. The Adviser did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees.

Request for review by Trustees

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

- Complaints handling by BBC Leeds
- Failure by the Editor, *Look North* to send a copy of the programme
- The political editor, Yorkshire had “been embedded in his job far too long”
- Transparency and accountability were paramount in the interface between BBC and the viewers
- Questioning whether the BBC was attempting to cover up an “unlawful undertaking” in relation to the stadium plans.

The Committee’s decision

Trustees noted the report broadcast live from York on the day the planning committee approved new stadium plans. They understood that the complainant was unhappy with the detail he felt had been omitted from the report.

The Committee saw a clear editorial justification to report on this story on the day the council approved the plans, and it agreed with the Adviser that, as required by the Royal Charter, decisions about which elements of a story to include in a report rested solely with the BBC Executive.

Trustees noted that the complainant had requested a copy of the output. The Committee noted that the Adviser had explained that there was no requirement for this to be done. Trustees wanted to make it clear that the BBC will not normally provide copies of broadcast programmes in response to individual requests, because to do so would be prohibitively expensive and would result in less money being available for the making of programmes in the first place.

Trustees considered the complainant’s view that his complaint had not been well-handled by BBC Leeds but they saw no evidence that this had been the case.

Trustees agreed with the complainant that transparency and accountability were cornerstones of the relationship between the BBC and the viewers. However, the Committee found no reason to believe the Editor, *Look North* had acted in any way that could be deemed to be not transparent or to represent a failure of accountability.

It was agreed that the BBC had been justified in closing down the complaint at Stage 1 as there was no evidence of a breach of Editorial Standards. This appeal therefore had no reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further about BBC radio weather forecasts on the Chris Evans Breakfast Show, Radio 2, 28 January 2015

The complaint concerned non-specific references to regions of the United Kingdom on the *Chris Evans Breakfast Show* on Radio 2. The complainant would have preferred greater clarity about exactly which areas were being referred to in the weather forecast.

The complaint

Stage 1a

There were several exchanges between the complainant and BBC Audience Services.

The complainant made the following points:

- The BBC used unnecessarily vague terms, such as “the north west” in some weather reports. For clarity, he wished to be informed exactly which area was being referred to.
- He repeated his request to know to which area “the north west” referred and queried whether the person who had written the report knew which part of the UK was being referred to.
- He had noted on other BBC output too – for example Steve Wright’s Sunday Love Songs – that the weather report had referred to “the north” over several years and he considered here too there should be clarity.

BBC Audience Services made the following points:

- They acknowledged his irritation and his view that there needed to be more clarification of which part of the country the weather forecast presenter was referring to.
- They had reviewed the radio weather report concerned and noted that prior to the *Chris Evans Breakfast Show* the news reader had referred to “sleet and snow showers in the north north west of the UK”. But she had then referred to “the north west of the country” during the *Chris Evans Breakfast Show*. Audience Services acknowledged that this was quite a vague term and said they appreciated the complainant taking the time to let the BBC know of occasions when he believed the BBC had fallen short of its own standards.
- The BBC tried to ensure weather forecasts were clear and easily understood but appreciated the complainant’s view that areas needed to be more clearly defined.

Audience Services in their final response said they had nothing further to add and that they did not believe that the complaint had raised an issue that justified further investigation.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of his complaint about the lack of clarity in weather reporting. He also made the following additional points:

- He was concerned that the BBC continued to use general references even though he considered the BBC had agreed with him that it was “pointless” using vague terms.
- He considered that the general terms used were particularly unhelpful to people living in Scotland.
- He said that the BBC had not told him where the North West was.
- He considered that the BBC had a tactic of trying to appease and divert complainants and he was dissatisfied by the response that the BBC had nothing further to add and that it had “unilaterally” ended the communication.

He stated:

“In order to resolve my complaints I would like the BBC to confirm in writing that in addition to agreeing with me yet again that referring to the “North” and other vague references is pointless, it commits itself to ceasing to use such pointless references.”

He added references to previous complaints he had made on the same issue and replies from the BBC offering action.

The Trust Unit’s decision

The Senior Editorial Adviser (the Adviser) noted that Audience Services had ceased handling this complaint at Stage 1 and that it had not gone to Stage 2. She decided that the point she should consider was whether an appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. The Adviser decided that the complainant’s appeal did not have a reasonable prospect of success.

She acknowledged that the complainant found terms such as “the north” and “the north west” vague and unhelpful, and that he had not received a response from Audience Services giving him a specific definition of the exact national areas covered by these terms.

She noted that Audience Services had acknowledged the complainant’s views as feedback which would be seen by the appropriate senior management teams and would help to inform their decisions about current and future output.

The Adviser noted that the BBC’s Royal Charter draws a clear distinction between the role of the Trust – which determines the overall scope of the BBC’s services and sets its standards – and that of the BBC Executive – which runs the Corporation and decides on how weather forecasts should be presented.

She considered that decisions relating to the wording used in weather forecasts were editorial judgements that rested with the BBC. She noted that Radio 2 broadcast across the UK and that its weather forecasts were likely to be broad in their approach and she

considered this was likely to be understood by the audience. However, she noted that the BBC transmitted more detailed regional and local weather forecasts on its regional and national services and also included a searchable map online, which she thought the complainant might find useful; a link to that can be found here:

<http://www.bbc.co.uk/weather/2635167>.

The Adviser noted that the complainant's appeal included points that had not been raised earlier in the complaints process. However, under the Complaints Framework, complainants were required to raise all the points they wished to have addressed at Stage 1 and Trustees could consider only those elements of complaint that had been answered by the BBC.

She acknowledged too that the complainant was also unhappy that the BBC had "unilaterally" closed down his complaint after responding at Stage 1. She noted that the BBC was entitled to end correspondence when it did not wish to respond further¹². She noted that the complaints process was intended to respond to complaints in a way that was efficient and proportionate and that this was in the interests of all licence fee payers. She acknowledged that the complainant considered Audience Services had sought to "appease or divert" complainants. She noted, too, that this was a subject about which the complainant had been in contact with the BBC dating back to 2009 and that Audience Services were entitled to close down those complaints which were repetitious.

The Adviser acknowledged the comments made by the complainant about the complaints process and appreciated that systems could always be improved. She thought the complainant might be interested to know that in 2013, the Trust had carried out a 'mystery shopping' exercise to assess how Audience Services responded to complaints at Stage 1. The results have been published:

http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html

Taking all this into account the Adviser considered that Trustees would be likely to conclude that it would be a disproportionate use of the licence fee to investigate the complaint further. She believed Trustees would be of the view that Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said the points he made in his appeal to the BBC Trust still stood. He added:

"I am struggling to understand how the BBC itself struggles so to make such a simple improvement to their weather forecasts – an improvement that the BBC agrees ought to be made."

In support of his argument, the complainant passed on a letter he had received from the Director-General which included a response from the Head of BBC Weather, the first paragraph of which read:

¹² http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

“We do ask our presenters to geo-locate broader areas referred to in weather forecasts, in order to avoid the vagueness you have highlighted. I will remind the production team again of this requirement.”

The Committee’s decision

The Committee noted the points made by the complainant and by the BBC.

The Committee agreed with the Adviser that the language used in weather forecasts was in the first instance an editorial decision and so rested with the BBC. The use of a general phrase such as the North or North West on a weather forecast on a UK network station such as Radio 2 would usually be expected to refer to the UK (as it did on this occasion). Consequently, it was agreed that the BBC was correct to close this down at Stage 1 as the Editorial Guidelines were not engaged.

However, Trustees had sympathy with the general point the complainant was making, even though detailed weather forecasts were also available at all times via the BBC weather app or online. Listeners in the North of England and in Scotland would benefit from clarity about terms such as “North West”. Trustees agreed it was helpful that the Head of BBC Weather would remind presenters of the guidance to locate geographically areas referred to in weather forecasts.

Trustees noted the complainant’s comments on the complaints process and his view that Audience Services had sought to “appease or divert” complainants. The Committee considered the replies he had received were reasonable. The complaints procedure did offer escalation where a complainant was not satisfied with the reply he received from Audience Services.

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

Decision of BBC Audience Services not to respond further to a complaint about Countryfile, BBC One, 28 December 2014

The complaint

The complaint concerned a *Countryfile* item about the South Devon crab; the item included a shot of a crab in boiling water.

The complainant made the following points:

- He said a crab had been shown being boiled alive and there was no reference to the extreme cruelty involved in doing this.
- There was also a contest in dismembering crabs (Crackacrab) – though these crabs were dead.
- Crabs are sensitive creatures with advanced nervous systems and can remember painful experiences for at least 24 hours.
- RSPC guidelines are clear that crabs should not be boiled alive.
- In showing a crab being boiled alive, *Countryfile* showed bias against animal welfare and promoted extreme cruelty.
- There was “exceptional taxonomic bias”. Many crabs are bigger than kittens and the BBC would be unlikely to show shots of kittens being boiled alive.
- He acknowledged that there was no actual shot of a live crab being placed in boiling water but felt there should have been an investigation into whether this was the case. He felt it had been implied that the crab was alive.

BBC Audience Services made the following points:

- There was no actual footage of live crabs being placed into boiling water, though they acknowledged the complainant considered this was implied.
- They acknowledged the complainant’s strongly held views on the humane treatment of crustacea.

Audience Services said they had nothing further to add and that they did not believe the complaint had raised an issue that justified further investigation.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance and handling of his complaint. He made the following points:

- He was concerned that *Countryfile* appeared to show a crab being boiled alive without any comment on the animal welfare implications.

- He felt it was sophistry on the BBC's part to say that the footage did not actually show the crab being put into boiling water. Because of the context, he thought it highly unlikely the crab was dead when placed in boiling water. He suggested that to resolve this doubt, the BBC should ask the programme-makers about this point, but the BBC had refused to do this.
- Even if the crab was dead before being put into boiling water, he felt that *Countryfile* should have commented on the animal welfare implications of boiling live crabs.
- He said the online complaints process was long-winded and there was something wrong with the BBC's IT system: the last email he received from Audience Services was blank, and it was not until he pressed "reply" that the text came up.

The Trust Unit's decision

The Senior Editorial Adviser (the Adviser) watched the relevant output and carefully read the correspondence that had passed between the complainant and the BBC. She decided that the appeal did not have a reasonable prospect of success.

The Adviser acknowledged the strength of the complainant's feelings that to show a crab being cooked in boiling water was unacceptable and also noted his opinion that there should be an investigation into whether the crab was alive or not when placed into the pan.

The Adviser noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that it had not gone to Stage 2. She decided that the point she should consider was whether an appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

The Adviser noted that Audience Services had explained that there was no footage of a live crab being placed into boiling water, although she noted that the complainant believed the implication was that the crab probably was alive when placed in the water.

She noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board. "The direction of the BBC's editorial and creative output" was defined as a duty that was the responsibility of the Executive Board. In this instance, editorial decisions about how to show a crab being cooked were the responsibility of the *Countryfile* editors rather than the Trust.

The Adviser was sorry to hear that the complainant had experienced difficulties with the BBC online complaints systems. She acknowledged that systems could always be improved and the BBC welcomes feedback and suggestions. To this end, the Trust regularly reviews the complaints framework. In 2013 the Trust carried out a "mystery shopping" exercise to assess how Audience Services responded to complaints at Stage 1. This is the initial level of complaint to the BBC and accounts for the great majority of complaints received each year. The results have been published and are available through this link:

http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html

Overall, the Adviser considered Trustees would be likely to conclude that Audience Services had given a reasoned and reasonable response to the complaint and had acted

appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the Adviser had not “given any reasoned arguments for her view of the matter”.

He was unsure of the point of the complaints procedure, but a possible interpretation was that it was designed to deflect criticism. He felt this view was reinforced by the failure to investigate whether the crab was boiled alive.

Referring to the provisions under the BBC’s Complaints Framework which allow the BBC to decline to investigate a complaint if it is “trivial, misconceived, hypothetical, repetitious or otherwise vexatious”, the complainant said he hoped that the Adviser was not implying that causing an animal pain fitted into any of these categories.

The Committee’s decision

Trustees noted the points made by the complainant, the BBC and the Adviser.

Trustees considered that the decision for them in this case was whether Audience Services had been correct in closing down the correspondence. One way of assessing this was to decide whether or not the complaint engaged the BBC’s Editorial Guidelines.

Trustees noted that there was no shot of the crab being placed in boiling water while it was alive. Whether or not the crab was boiled alive previously was not material in assessing whether this particular piece of BBC content met the standards set out in the BBC’s Editorial Guidelines. It was not necessary to investigate how the crab was killed. In the view of the Committee the Editorial Guidelines were not engaged by this complaint. It was therefore entirely appropriate for Audience Services to have closed this correspondence. It was not proportionate, appropriate or cost effective to take this matter on appeal.

Trustees acknowledged the complainant’s views about the BBC Complaints Procedure, but they considered that the BBC had engaged with the complaint.

Trustees noted that the complainant considered that the Adviser had not “given any reasoned arguments for her view of the matter”. They disagreed. The Adviser had said that editorial decisions about how to show a crab being cooked were the responsibility of the *Countryfile* editors rather than the Trust. This was correct. Trustees agreed with the Adviser that Audience Services had responded in a reasoned and reasonable manner to the complaint at Stage 1 and it had been appropriate for them to close down the correspondence at Stage 1b in accordance with the published BBC Complaints Procedure.

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

Admissibility decisions

The BBC's editorial complaints system has three stages. During the first two stages complaints are considered and replied to by the BBC. At the third stage the Editorial Standards Committee (ESC) of the BBC Trust may consider an appeal against a decision by the BBC.

Complaints are answered at Stage 1 by BBC Audience Services. Where complainants remain dissatisfied after a Stage 1 response, they can request a further response at Stage 1. If they are still dissatisfied they may escalate their complaint to Stage 2. Complaints at Stage 2 are answered either by the BBC's Editorial Complaints Unit, or by a senior manager within the BBC.

However, under the Complaints Framework, it is open to the BBC to close down correspondence at any stage – this means the BBC notifies the complainant that it does not wish to respond further. The complainant can appeal to the Trust if they consider the BBC was wrong to close down the correspondence. Where a complainant appeals to the Trust in these circumstances, and Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The Editorial Complaints and Appeals Procedure¹³ explains that:

At all stages of this Procedure, your complaint may not be investigated if it:

- o fails to raise an issue of breach of the Editorial Guidelines; or
- o is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In the cases where BBC Audience Services had ceased handling the complaints at Stage 1, the complainants appealed to the Trustees on the substance of their complaints. However, the point put to the Trustees was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

In the cases which progressed to Stage 2 the decision for the Trustees was whether to take the complaint as an appeal or whether it had no reasonable prospect of success and was not admissible.

In each of the following cases the Committee was provided with the complainant's correspondence with the BBC and the complainant's appeal/s to the Trust. The Committee was also provided with the relevant broadcast or published content.

¹³ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

“What price Scottish independence?” BBC News Online, 12 September 2014

The complainant asked the Editorial Standards Committee to review the decision of the BBC Editorial Complaints Unit (ECU) not to uphold the complaint at Stage 2.

The complaint

The complainant contacted the BBC regarding a blog by the BBC's Economics Editor, Robert Peston, entitled “What price Scottish independence?”
<http://www.bbc.co.uk/news/business-29161335>

(Note there is more than one blog by Robert Peston with this title.)

The complainant did not believe the article achieved due impartiality. The complaint was investigated by the ECU at Stage 2 and was not upheld.

The complainant made the following points:

- Robert Peston did not maintain due impartiality and promoted arguments in support of the Better Together campaign.
- Undue weight was given to the views of Justin King, former CEO of Sainsbury plc. His views were not balanced with alternative views from Tesco, Morrisons, Lidl and Aldi.
- Robert Peston's conclusion supported the kernel of the No economic case. The alternative of investment, growth and long-term prosperity promoted by Yes for Business, was missing.
- The long-term prosperity of an independent Scotland was at the heart of the referendum debate and the key factor in determining the voting intentions of the Scottish electorate.

The ECU Complaints Director made the following points:

- Robert Peston was clearly offering an analysis of the possible consequences for retail prices and business costs in the event that Scotland voted Yes in the referendum. It was a recognised role of specialist correspondents to use their knowledge and experience to provide professional judgements and assessments in order to enhance the audience's understanding of an issue.
- He believed it was reasonable for Mr Peston to offer some informed conclusions on whether prices would be higher in an independent Scotland, so long as those conclusions were rooted in evidence and acknowledged the range of views on what was undoubtedly a controversial subject.
- He did not believe the complainant's assertion that Mr Peston “promoted arguments in support of the Better Together campaign, without suitable balance” was supported by the content of the article. He thought Mr Peston offered a broad analysis of the factors involved; this included an informed explanation of why

some prices could rise (at least in the short term) but also acknowledged the arguments put forward by those in favour of a Yes vote.

- He believed Mr Peston's comments during his analysis were sufficient to ensure due impartiality was achieved because they reflected the views and perspectives of those who argued for the potential benefits of independence. He felt it was reasonable in the context of the article for Mr Peston to consider some of the potential benefits of retaining the union.
- He acknowledged the complainant's particular concern about the conclusion to the article but did not agree it supported "the kernel of the No economic case." He decided that the conclusion simply summarised a view which readers would already have gleaned from the body of the article – namely that independence would have a short-term impact on business costs while giving Scotland far greater control on the running of its own economy.
- He thought it might have been better if Mr Peston had made it explicit in his conclusion that the "bit of economic growth and future financial prosperity that would be lost" would be in the short term, but since he had previously stated that "the important point is that it would wash out over a period of years" and "Almost no one serious doubts that Scotland will be a relatively prosperous country in the long term, whichever road it chooses", he did not agree that readers would have been materially misled.
- He concluded that the article and the concluding paragraph achieved the necessary due impartiality.
- With regard to the comments of the former CEO of Sainsbury plc., the Complaints Director noted that the Editorial Guidelines do not require that every point of view has to be reflected on every occasion. He thought it was reasonable to assume that readers would have understood that Mr Peston cited comments by Justin King as evidence that some retailers were reacting to the uncertainties brought about by the referendum vote. He did not believe readers would have necessarily considered that Mr King's view was universally supported by his business peers or that he was undoubtedly correct. He acknowledged that Mr Peston could have quoted other retailers with different views but did not agree that the omission of other views led to a lack of due impartiality.

Appeal to the BBC Trust

The complainant contacted the BBC Trust on 19 April 2015. He made the following points:

- He thought it would be useful to place the article in the context of the Referendum Debate; it appeared six days before the vote and after the YouGov poll which forecast a Yes majority. There was extensive poll evidence that the economy and future prosperity were the key factors in helping the electorate decide how to vote.
- The need for balance and impartial commentary at the time of the article was therefore paramount.

- Robert Peston's article set out a robust and well-argued economic case against independence. The conclusion to the article was entirely consistent with the context of the article; i.e. Mr Peston's view that Scottish independence would be to the detriment of both the short and long-term prosperity of the Scottish people. The lack of reference to long-term prosperity in the conclusion was not an omission, in the complainant's view.
- The article was unbalanced (as opposed to misleading) in failing to set out the alternative view which was that in the long term independence would have positive effects for the Scottish economy.

The Committee's decision

Trustees noted the points made by the BBC and by the complainant including his view of the significance of the timing of the article and the importance of the economy and future prosperity to voters.

Trustees noted that the blog set out a series of economic consequences in the event of independence which included:

- different pricing due to different choices made by the Scottish Government
 - "This is surely to highlight one of the good things about independence for Scotland, which is that if Scottish people have different priorities from the rest of the UK when it comes to how they want to use the tax system to distribute wealth, as one instance, well they could for the first time put those priorities into practice."
 - "...there are a whole bunch of things an independent Scotland could choose to do, from encouraging investment to improving infrastructure, which could boost the efficiency of business and lead to reduced prices."
- short-term uncertainty about which currency an independent Scotland would use and about membership of the EU leading to lower investment
 - "...the important point is that it would wash out over a period of years, as the country's new governance arrangements bedded down."
- One permanent cost is that Scotland is a smaller market than the whole UK ... a fragmentation of the UK's single market would push up costs.
- The patriotic motivation for buying Scottish will vanish in the rest of the UK.
- If Scotland was forced to adopt its own currency, and did not peg it permanently and sustainably to the pound, there would be substantial costs which would be passed on to Scottish consumers, and would lessen the competitiveness of Scottish businesses when selling into the rest of the UK.

In conclusion the article said:

"It is however important to stress that none of these permanent and contingent costs [access to a smaller market, lack of patriotic buying by the rest of the UK and the impact of Scotland adopting its own currency if that came to pass] would turn Scotland from a rich country into a poor country.

"Almost no one serious doubts that Scotland will be a relatively prosperous country in the long term, whichever road it chooses.

"Equally independence is not a free lunch.

"What Scots people have to decide is whether the prize of self-determination, self-government and self-expression is more valuable to them than a bit of economic growth and future financial prosperity that would be lost (and sorry that neither I nor anyone can quantify precisely this income sacrifice)."

Trustees noted that taking the article as a whole in context it was clear that Mr Peston had outlined some of the advantages of independence in terms of determining Scotland's own policies including ones which could lead to prices falling, and some of the costs.

Trustees agreed with the complainant that the conclusion was clear that there would be long term and unavoidable costs which could not be quantified. It was the costs associated with short-term uncertainty that would "wash out" over time.

Trustees agreed with the ECU that it was the role of the Economics Editor to use his knowledge and experience to provide professional judgements and assessments in order to enhance the audience's understanding of an issue.

Trustees did not agree that in the article as a whole the arguments were partial and in favour of the Better Together campaign. Specifically they noted that Mr Peston stated that Scotland would be a relatively prosperous country in the long term, whichever road it chooses. It would not become a poor one. He also said that costs should not be seen as a strong reason to vote against independence :

"There are some unavoidable financial costs of becoming independent ... Scots ... should see these costs, perhaps, not as an overwhelming reason to vote against independence, but as simply the tariff or entry fee for autonomous statehood."

And he was clear that

"one of the good things about independence for Scotland, [was that the] Scottish people ... could for the first time put those [different] priorities into practice."

Overall the Committee decided that there was no reasonable prospect of success for an appeal that the blog did not meet the standard of due impartiality because it did not make the case that in the long term independence would have positive effects for the Scottish economy.

Trustees noted that the complainant had not mentioned his concern about the comments from the former CEO of Sainsburys plc, Justin King, in his appeal. However, for completeness Trustees considered whether in order to achieve due impartiality alternative business views should have been included. Trustees noted that Mr Peston had referred to the fact that Mr King had told him that:

“the UK’s supermarket groups have already disproportionately cut their investment in new stores in Scotland – because of the uncertainties brought about by the referendum vote.”

Trustees agreed that this was a factual news line. It was an example of the effects of short-term uncertainty. It was not an opinion that required an alternative view.

Mr Peston did include one view from Mr King which was very clearly labelled as a view and used the caveat “could”:

“Justin King ... fears this inability to badge their products as British could be particularly harmful for Scotland’s important food industry.”

Trustees agreed that audiences would not think Mr King was speaking for all retailers and noted that the BBC’s Editorial Guidelines did not require every point of view to be reflected on every occasion.

Trustees agreed it was not appropriate, cost effective or proportionate to take this complaint as an appeal as it had no reasonable prospect of success.

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

BBC News Online, 19 February 2015, 'Greek euro exit explained – with kebab'

The complainant asked the Editorial Standards Committee to review the decision of the BBC Editorial Complaints Unit (ECU) not to uphold the complaint at Stage 2.

The complaint

The complainant contacted the BBC to express his concern that the online article reported a serious issue in a highly offensive manner.

He said that by using the metaphor of a kebab, he believed the article was racially stereotyping and of considerably poor quality.

The ECU Complaints Director made the following points at Stage 2:

- He considered the complaint against the guidelines on Harm and Offence.
- He said that the use of a kebab to help explain the practicalities of Greece leaving the European single currency might be regarded as potentially offensive if it perpetuated a negative stereotype of Greece and its citizens, or if it presented Greece in a derogatory manner. However, he did not believe this was the case.
- He said it was true that the reporter took a somewhat light-hearted, possibly simplistic, approach to explaining what might happen if Greece left the Eurozone, but he did not believe there was anything in what the reporter said that might be regarded as negative or go beyond the bounds of what might be regarded as generally acceptable in the context of the report.
- He did not believe that using the image of a kebab could easily be regarded as perpetuating a negative stereotype or be considered racist. He felt it was justifiable to use this image to explain in simple terms how currency would be prevented from leaving Greece while it was being converted from Euros.
- He appreciated that the reporter's use of a kebab as part of his explanation may not have been to everyone's taste, but he considered that it met the requirements of the Editorial Guidelines. The editorial justification was that the kebab image was intended to explain what would happen if Greece left the Euro, and the references did not perpetuate any negative stereotype of Greece or its people.

Appeal to the BBC Trust

The complainant appealed to the Trust. He believed the article had fallen well short of usual BBC standards and breached Editorial Guidelines on Harm and Offence by using "lazy, stereotypical and racially offensive metaphors to explain a serious news story". He believed it had breached generally accepted standards and the portrayal guideline and had not been signposted, and he questioned its editorial purpose. He questioned how it could be within audience expectations as it was on the business section of the site.

The Committee's decision

Trustees noted the points made by the BBC and the complainant. They agreed that this was a serious subject. They noted that the BBC had explained at Stage 1 that the comparison was used to simplify the story and make it easier for readers to engage with a story they may otherwise have avoided. This was the editorial purpose the complainant had queried.

Trustees noted that the complainant had objected to the BBC justifying the story by quoting 3,000 likes on Facebook and a poll in a national newspaper which showed 63% of respondents liked the comparison. The Committee respected his view but noted that the BBC was trying to show him that the comparison had worked for some of the audience. Trustees also noted that the video was viewed over 209,000 times on the day of publication, making it the fourth most viewed video of the day. Trustees accepted the complainant's point that some might have watched it because they had been told about it, did not like the concept and watched it to see if it was as described. However, Trustees agreed that, taken as a whole, all these factors suggested it was within audience expectations. With regard to signposting - the title was in itself a signpost, as was the picture on the front of the video.

The Committee acknowledged that the complainant felt that simply considering a complaint based on whether or not it met the Editorial Guidelines provided a narrow and subjective view and missed the point he had made, which was that he questioned the appropriateness of such metaphors when describing a very serious issue. However, the Committee noted that the remit of the ECU and the Editorial Standards Committee (ESC) in considering complaints and appeals was whether content met the standards set out in the BBC's Editorial Guidelines.

Trustees decided that if they took this on appeal they would be likely to conclude that the article did meet Editorial Guideline requirements on Harm and Offence in that it met generally accepted standards. The comparison did not contribute to a negative stereotype of the Greek people.

Trustees understood that, setting aside the Guidelines, the key point the complainant was making was that this was an example of poor judgement: he thought the comparison was not tasteful and not appropriate for such a serious issue. Trustees were clear that the decision to illustrate the story in this way was a matter of editorial and creative direction which, under the terms of the Royal Charter, was defined as the responsibility of the BBC Executive Board rather than the BBC Trust. Trustees noted that as a result of the complainant's concerns there had been some discussion amongst senior managers at BBC News about the content of this report. This was a helpful consequence of this complaint.

Overall, Trustees agreed that there was no reasonable prospect of success for this appeal. Therefore it was not appropriate, cost effective or proportionate to take this complaint on appeal.

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

Woman's Hour, Radio 4, 31 December 2014

The complainant asked the Editorial Standards Committee to review the decision of BBC Audience Services to close down the complaint at Stage 1b.

Background

189 member states of the United Nations adopted the Millennium Declaration in 2000:

<http://www.un.org/millennium/declaration/ares552e.pdf>

This included a series of commitments for example:

- to have reduced under-five child mortality by two thirds, of their current rates by 2015
- to ensure that, by 2015, boys and girls will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.

In the following year, 2001, the UN published a Road Map to implement the declaration:

<http://www.un.org/documents/ga/docs/56/a56326.pdf>

It identified eight goals.

- Eradicate extreme poverty and hunger
- Achieve universal primary education
- Promote gender equality and empower women
- Reduce child mortality
- Improve maternal health
- Combat HIV/AIDS, malaria and other diseases
- Ensure environmental sustainability
- Develop a global partnership for development

These eight goals became known as the Millennium Development Goals (MDG).

The Road Map also set targets to measure progress. In terms of under-five child mortality the Road Map noted that:

"Worldwide, under-five mortality rates are declining: under-five mortality decreased from 94 to 81 per 1,000 live births between 1990 and 2000. However, approximately 11 million children under five still die annually in developing countries, mostly from preventable diseases."

The target that was set in the Road Map with regard to under-five mortality was to:

"Reduce by two thirds, between 1990 and 2015, the under-five mortality rate."

It can be seen therefore that by changing the base line for measuring the reduction of under-five child mortality deaths to the year 1990, the target set in 2001 was a less demanding commitment than that made in 2000.

In terms of education the targets set in the Road Map were to:

“Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling”

“Eliminate gender disparity in primary and secondary education, preferably by 2005, and to all levels of education no later than 2015”

The complaint

The complainant emailed three members of the *Woman's Hour* production team on 28 January 2015. He raised his concern that the programme on 31 December 2014, and the iPlayer page, gave an impression that world leaders at the Millennium Summit in 2000 had committed themselves only to MDG targets with baselines of 1990.

The complainant made the following points:

- He said the date 1990 did not appear in the Millennium Declaration. The mortality pledges were from “current rates”. The MDG targets with the easier 1990 baselines were proposed after the leaders had already made those pledges.
- The number of child deaths fell by several million between 1990 and 2000. So over the period 2000-2015, it was clear that the pledge was more ambitious than the MDG target by several million child deaths.
- He did not believe it was correct for BBC Audience Services to state that the programme correctly referred to the MDG targets. He said it was obvious that there was a genuine error in the programme, as a result of institutional failure.

Audience Services made the following points:

- They reminded the complainant of the correct procedures for making complaints. In particular, they explained that all complaints should be submitted to the centralised BBC Complaints department as correspondence sent elsewhere had the potential to result in duplication and confusion, thus leading to delay and wasted TV licence fee resources.
- With regard to the substantive complaint, they said they had reviewed the programme and discussed the complainant's points personally with the *Woman's Hour* producer responsible. They advised that neither the programme itself, nor the accompanying text information made any reference to anything to do with “1990”. The BBC believed it had correctly referred to the UN's Millennium Development Goals.

Appeal to the BBC Trust

The complainant contacted the BBC Trust on 20 April 2015 asking for a review of his complaints to date, including “the unanswered complaints sent to the Editorial Complaints Unit”. He said that his substantial complaint was of a “widespread, major error over many years to the same effect”.

He argued that it was wrong for *Woman's Hour* to say that the MDG targets were set, developed and adopted by the UN in 2000. He argued that this error was likely to have

given a significant proportion of the audience an impression, or reinforced an impression, that the easier targets were what the leaders promised.

The Committee's decision

Trustees noted the complainant's concern that the edition of *Woman's Hour* broadcast on 31 December 2014 gave a misleading impression of the UN Millennium Development Goals.

They also noted his concern that the BBC had made similar errors over many years and that these had been the subject of other complaints submitted to the BBC by the complainant. This, in his view, was a matter of institutional failure.

Trustees agreed that the point they should consider was whether the appeal against the decision by BBC Audience Services not to correspond further with the complainant regarding his complaint about *Woman's Hour* broadcast on 31 December 2014 was admissible. They noted that the complainant had other unresolved complaints outstanding with the Editorial Complaints Unit (ECU), but these would not be part of the Trustees' considerations as the BBC had not yet finished responding on these matters. Trustees understood that the ECU would be writing separately to the complainant regarding the matters that were still with them. Similarly, the Trust was unable to consider any appeal related to complaints handling until they had been raised with the Executive in the first instance.

Trustees acknowledged that the complainant believed *Woman's Hour* had broadcast a misleading inaccuracy with regard to MDG targets.

Trustees noted that the item had not mentioned child mortality but had covered a pledge to get primary school children into education and had reflected on the situation today with regard to girls' education. Trustees also observed that the item covered where a MDG target had not been set, in relation to violence against women, for example. Trustees noted that the programme made the point that the goals set by the UN with the aim of eradicating global poverty and human suffering within 15 years had not proved achievable, and had not addressed certain issues adequately; these goals were about to be replaced with Sustainable Development Goals (SDGs).

Trustees noted that the presenter introduced the item with the words:

"Next year, 2015, is the deadline for the millennium development goals – remember them? Eight targets set by the UN in 2000 with the aim of eradicating global poverty and human suffering within 15 years."

Trustees appreciated that the actual goals and targets were not finalised in 2000 although they sprang out of the Millennium Declaration made in 2000. However, Trustees considered that this was not a material error in the context of this item and that if they took this complaint on appeal they would be likely to conclude that the wording was duly accurate in context and that the complaint had not engaged the Editorial Guidelines.

Trustees noted that no information was given about the base line for the targets and that child mortality was not mentioned in the item. They also agreed that if this point were to be taken on appeal they would be likely to conclude that the omission of such information was a matter of editorial judgement and did not engage the Editorial Guidelines. Trustees

noted that one interviewee described the targets as “extremely ambitious”. They agreed this was her view and she was entitled to express it.

Trustees noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” is specifically defined in the Royal Charter (Article 38, (1) (b)) as the responsibility of the Executive Board, as is ensuring compliance with all legal and regulatory requirements placed upon the BBC (Article 38, (1) (d)). The Royal Charter also explains that the Trust must not exercise or seek to exercise the functions of the Executive Board (Article 9, (3)). Trustees agreed that the responsibility for editorial decisions about the content of *Woman’s Hour* rested with the BBC Executive rather than the Trust.

The Committee considered that Audience Services had provided a reasoned and reasonable response to the complainant’s concerns. He had not raised an issue concerning a possible breach of the Editorial Guidelines and there was nothing to suggest that Audience Services had been wrong to close the correspondence.

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

BBC News at Six, BBC One, 9 February 2015

The complainant asked the Editorial Standards Committee to review the decision of BBC Audience Services to close down the complaint at Stage 1b.

The complaint

The complaint concerned a news report about the singer Sam Smith who had won four Grammy awards. Prior to the main report later in the programme, the item was trailed with footage from the awards ceremony with the presenter saying:

“Thank you for breaking my heart’, says Sam Smith. You got me four Grammys”

In the main report, the presenter said:

“The singer/songwriter Sam Smith has credited the heartbreak of unrequited love to his success at the Grammys.”

The complainant made the following points:

- BBC News should have followed up on this contributing factor to the singer’s success by making it clear to viewers that he was gay.
- He alluded to comments made by Mr Smith, reported in other media, as follows:

“I want to thank the man to who this record is about. Thank you so much for breaking my heart because you got me four Grammys!”

- During the report BBC News did not expand on its statement about “unrequited love” being a major contributing factor to the singer’s success. Therefore the complainant believed the BBC had decided that it could not mention a gay man being in love, even though this fact was directly relevant to the BBC’s presentation of the news story about Mr Smith.
- He believed that by not following up the headline about Mr Smith’s “unrequited love”, the BBC had breached its editorial guidelines on “authentic portrayal” since it gave the impression that love between gay men could not be “decently mentioned in the six o’clock news”.

Audience Services replied to the complainant three times. They made the following points:

- Sam Smith’s sexual orientation was irrelevant to the news item, and there were no ulterior motives behind not mentioning his sexuality.
- The headline was not intended to indicate that this report was about Mr Smith’s unrequited love.
- The time given to each news issue was frequently a very difficult decision for news editors and no one universal news agenda fitted all. No matter how carefully

decisions were made, these were essentially judgement calls and news editors were aware that some people may disagree with them.

Audience Services also said they had nothing further to add to their previous response and did not believe the complaint raised a significant issue of general importance that might justify further investigation; they would not, therefore, correspond further on the issue.

Appeal to the BBC Trust

The complainant contacted the BBC Trust, requesting a review of his complaint. He believed the presentation of the news item in question appeared to contravene the BBC's standards as presented in the Editorial Guidelines Research Report about the Portrayal of Lesbian, Gay and Bisexual People, BBC Executive Summaries and Recommendations, September 2010.

The Committee's decision

Trustees noted the points made by the complainant and by the BBC.

Trustees noted that the complainant thought that mentioning the unrequited love in the headline but not following it up in the report was unusual and was because the singer was gay.

Trustees noted that BBC News had said that the BBC had not considered it relevant to report that the "unrequited love" in question was between two men. They noted that Audience Services had explained this in their response of 17 April 2015:

"We did not believe that this was relevant to the report, or more specifically to the 'unrequited love' statement. This would have been the case no matter what [Mr Smith's] sexuality."

Trustees noted that the complainant had referred to research undertaken by the BBC Executive and believed the BBC was in breach of standards set by that research. The research report had included a recommendation which committed the BBC to addressing the issues raised through the audience research and consultation "to achieve accurate and authentic portrayal of lesbian, gay and bisexual people across its services". It had also, with reference to BBC News and Current Affairs, discussed the need for "careful and consistent use of language, tone and context setting to ensure impartiality and avoid negative inference".

However, Trustees noted that the BBC's editorial standards were set in the BBC's Editorial Guidelines. In this case the relevant guideline relating to Portrayal was in Harm and Offence. This explained that the BBC aimed to:

"...reflect fully and fairly all of the United Kingdom's people and cultures in our services. Content may reflect the prejudice and disadvantage which exist in societies worldwide but we should not perpetuate it. In some instances, references to disability, age, sexual orientation, faith, race, etc. may be relevant to portrayal. However, we should avoid careless or offensive stereotypical assumptions and people should only be described in such terms when editorially justified."

The Committee noted that the report was about Sam Smith's music award success rather than the "unrequited love" which he believed had helped him creatively in achieving that success. Although Trustees expressed some surprise that the headlined reference to Sam Smith's unrequited love had not been referred to in the story, they considered that it was not necessary to have done so in order to meet the standard set in the portrayal guideline. Trustees agreed that judgements about how news stories should be covered were editorial decisions which rested with the BBC Executive rather than the Trust, (Royal Charter, Article 38 (1) (b)).

Trustees decided that the complainant had received reasonable replies from BBC Audience Services and that the decision to end the correspondence had been proportionate.

There was no reasonable prospect of success for an appeal against the decision to stop corresponding on this issue as the complaint did not raise a matter of substance which engaged the Editorial Guidelines.

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