

Editorial Standards Findings

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

March 2015, issued April 2015

Contents

Contents	1
Remit of the Editorial Standards Committee	2
Summary of findings	4
Appeal Findings	7
Complaints handling	7
Application of the Expedited Complaints Procedure by BBC News	10
Application of the Expedited Complaints Procedure by the BBC Trust	14
Application of the Expedited Complaints Procedure by the BBC Trust	18
Requests to review the Trust Unit’s decisions on appeals	23
Review of the Trust Unit’s decision not to extend deadline for appealing a decision by the Editorial Complaints Unit	23
BBC News Channel and News at Six, BBC One, 3 January 2014	28
BBC Breakfast, BBC One, 1 August 2014	33
Today, Radio 4, 3 July 2014	38
BBC Breakfast, BBC News Channel, 3 June 2014 and BBC News Online article: University complaints by students top 20,000	45
HARDtalk, BBC News Channel, 30 September 2014,	55
Today, BBC Radio 4, 22 July 2014	61
Panorama: The Farage Factor, BBC One, 13 October 2014	66
Top Gear: Patagonia Special, BBC Two, 27/28 December 2014	73
Countryfile, BBC One, 24 August 2014	79
News at Ten, BBC One, 12 August 2014	84
9.15pm News, BBC News Channel, 11 August 2014	91
Newsdrive, BBC Radio Scotland, 16 September 2014	96
Appeals against the decision of BBC Audience Services not to correspond further with the complainant	100
Decision of BBC Audience Services not to respond further to a complaint about an interview with Shimon Peres, BBC News website, 13 August 2014	101
Decision of BBC Audience Services not to respond further to a complaint about the BBC News Channel, 9.00pm, 12 March 2014	107
Decision of BBC Audience Services not to respond further to a complaint about Strictly Come Dancing, BBC One, 25 October 2014	114
Decision of BBC Audience Services not to respond further to a complaint about the style of interview in the Daily Politics Conference Special, Sunday Politics, 26 October 2014 and various Daily Politics programmes, BBC Two, Autumn 2014	117
Decision of BBC Audience Services not to respond further to a complaint about the description of Hamas as “militants” in BBC news bulletins	122
Decision of BBC Audience Services not to respond further to a complaint about BBC Breakfast, BBC One, 14 October 2014	128
Admissibility decisions	132
Decision of BBC Audience Services not to respond further to a complaint about Afghanistan: The Homecoming, Inside Out London, BBC One, 27 October 2014	133
Decision of BBC Audience Services not to respond further to a complaint about BBC bias in favour of England	135
Panorama: “Putin’s Gamble”, BBC One, 8 September 2014	138
BBC London News, BBC One, coverage of the People’s Climate March at 18.50 and 22.20 on 21 September 2014	141

Today, Radio 4, 28 July 2014

144

Decision of BBC Audience Services not to respond further to a complaint about "The woman who swapped home for a hut near Chechnya", BBC Online, 27 January 2015

146

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, Diane Coyle, 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/2012/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

Complaints handling

Summary of finding

The complainant said that at Stage 1 BBC Audience Services took too long to respond to his complaint and at Stage 2 the Editorial Complaints Unit took too long to send him a copy of the finalised finding.

The Committee concluded that:

- the apologies that Audience Services had made when responding to the complainant at Stage 1 were welcomed by the Trustees. An apology from the BBC Executive would normally resolve complaints handling delays.
- however, as it had taken over five months for the complainant to receive a reply to his complaint this was a particularly egregious delay.
- the BBC Executive at Stage 2 had accepted the fault as theirs and had apologised to the complainant.
- however, the failure to send a copy of the finalised finding to the complainant had compounded the earlier failures and caused significant further delay.

The Committee concluded that the handling of this complaint at Stage 1 and Stage 2 breached the BBC's Editorial Guidelines on accountability which require complaints to be responded to quickly. It also failed to meet the expectations set down in the Complaints Framework and the Editorial Complaints and Appeals Procedure.

The complaint was upheld.

Application of the Expedited Complaints Procedure by BBC News – Complainant 1

Summary of finding

The complainant appealed against the decision of the Head of Editorial Standards, BBC News, to apply the Expedited Complaints Procedure ('the Expedited Procedure') to complaints by him.

The Committee concluded that:

- with regard to process, the Committee was satisfied that – subject to the correction contained in his email of 16 December 2014 – the Head of Editorial Standard's letter of 21 November complied with the procedural requirements of Annex B to the BBC's Complaints Framework.
- both of the conditions relied upon by BBC News had been satisfied; the complainant had a history of persistently or repeatedly making complaints which

were shown on investigation to have no reasonable prospect of success and, after rejection at an earlier stage, were persistently and repeatedly appealed unsuccessfully to the next stage.

- it could not agree that the Head of Editorial Standards was attempting to gag public debate and scrutiny. Nor could it agree that the complainant's overwhelmingly unsuccessful complaints had had a helpful effect; rather, the Committee considered that they had made disproportionate use of licence fee resources.
- it was appropriate to apply the Expedited Procedure at Stage 1 and 2 for the maximum period of two years.

The Committee noted that future complaints made by the complainant would continue to be reviewed, and that any that appeared to have substantive merit would be handled under the applicable complaints procedure.

The appeal was not upheld.

Application of the Expedited Complaints Procedure by the BBC Trust – Complainant 1

Summary of finding

The complainant appealed against the decision of the Head of Editorial Standards, BBC Trust, to apply the Expedited Complaints Procedure to appeals by him at Stage 3 of the complaints process.

The Committee concluded that:

- the letter from the Head of Editorial Standards, BBC Trust complied with the procedural requirements of Annex B to the BBC's Complaints Framework.
- four of the preconditions set out of Annex B to the BBC's Complaints Framework had been satisfied.
- the Expedited Complaints Procedure had been correctly applied at Stage 3 and should be applied for a period of two years.

The appeal was not upheld.

Application of the Expedited Complaints Procedure by the BBC Trust - Complainant 2

Summary of finding

The complainant appealed against the decision of the Head of Editorial Standards, BBC Trust to apply the Expedited Complaints Procedure to appeals by him at Stage 3 of the complaints process.

The Committee concluded that:

- in accordance with Annex B of the BBC's Complaints Framework, the complainant's complaints were repetitious and vexatious
- the complaints failed to raise an issue of breach of any relevant guidelines or policies
- the complainant used gratuitously abusive and offensive language when referring to BBC staff
- the complaints had no reasonable prospect of success
- consequently, the expedited complaints procedure had been correctly applied at Stage 3.
- it was appropriate to apply the procedure for two years.
- the handling of the complaint by the Trust Unit had been appropriate.

The Committee noted that future appeals made by the complainant would continue to be reviewed, and that any that appeared to have substantive merit would be handled under the applicable complaints procedure.

The appeal was not upheld.

Appeal Findings

Complaints handling

One element of this appeal was considered at the March 2015 meeting and is reflected here. The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found under Rejected Appeals

The complaint

Stage 1

The initial complaint was made by the complainant on 3 January 2014. The complainant contacted Audience Services on numerous occasions between 3 January and 19 May having received no responses to the points he had made in his complaint. During this time he had received two standard replies both of which said the complaint had been forwarded to the BBC division responsible but Audience Services were still waiting for them to reply. The responses apologised for the delay.

On 12 June the complainant contacted the BBC Trust asking them to investigate the delay. On 19 June Audience Services sent a Stage 1(a) reply to the complainant on the substance of his original complaint and offered an unreserved apology for the long delay. Audience Services explained that they were entirely at fault as they had lost track of the complaint.

On 31 July Audience Services sent a Stage 1(b) response to the complainant on the substantive complaint. This reply apologised for the shortcomings in the handling of the complaint.

Stage 2

On 2 August 2014 the complainant escalated his complaint to Stage 2 by writing to the Editorial Complaints Unit (the ECU).

On 28 August the ECU sent a provisional finding to the complainant which addressed the complaint in part. Following a reply from the complainant the ECU wrote a further finding which dealt with the further issues raised by the complainant, finalised the finding and apologised for not addressing the complaint in full. This letter, however, was mistakenly not sent to the complainant either by letter or by email.

On 21 October the complainant contacted the BBC Trust saying he had not received any more communication from the ECU since the letter of 28 August. This was passed to the BBC Executive on 3 November. The ECU contacted the complainant on the same day saying that they had now sent a copy of the finding dated 8 September to him. They apologised and accepted the fault as theirs.

Stage 3 - Appeal to the Editorial Standards Committee (ESC)

On 6 November 2014 the complainant appealed to the BBC Trust regarding his complaint about a BBC News report. In his appeal the complainant said that the length of time taken for the BBC to respond to his complaint at Stage 1 and Stage 2 of the complaints process was unacceptable.

The Trust Unit decided that the complaint regarding the BBC News report did not qualify for consideration on appeal. However, the Trust Unit decided that the handling of the complaint at Stage 1 and Stage 2 was a matter that should be considered by the ESC.

The complainant raised the following points in relation to the BBC's handling of his complaint:

Point (A): that the length of time taken for the BBC to respond to his complaint at Stage 1 of the complaints process was unacceptable. The complainant said that his initial complaints were not properly registered and subsequent emails, telephone calls and letters were ignored.

Point (B): that at Stage 2 of the complaints process it had taken too long for the ECU to send him a copy of the finalised finding.

BBC Editorial Guidelines, Complaints Framework and Complaints Procedure

The BBC Editorial Guidelines can be found here:

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

The Complaints Framework can be found here:

http://www.bbc.co.uk/bbctrust/governance/complaints_framework/

The Editorial Complaints and Appeals Procedures can be found here:

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

The Committee's decision

The Committee considered the complaint against the Accountability Guideline and the expectations set out in the Complaints Framework and the Editorial Complaints and Appeals Procedure which were set by the Trust following public consultation and audience research. In reaching its decision the Committee took full account of all the available evidence including a paper from an Independent Adviser and further comments from the BBC Executive and from the complainant.

Point (A): regarding the length of time taken for the BBC to respond to the complainant at Stage 1.

The Committee noted that the Editorial Guidelines relating to Accountability state that "our commitment to our audiences is to ensure that complaints and enquiries are dealt with quickly, courteously and with respect". It noted also that the BBC Editorial Guidelines state that "complaints should be responded to in a timely manner". It was also noted that the Editorial Complaints and Appeals Procedure states that at Stage 1(a):

"The BBC aims to reply within 10 working days of receipt of your complaint though some complaints may take longer than others to investigate."

At Stage 1(b):

"The BBC will investigate your complaint and aims to reply within 20 working days of receipt of your complaint though some complaints take longer than others to investigate. A target of 35 working days applies to those complaints that require longer or more complex investigation."

At Stage 2:

“The Editorial Complaints Unit will investigate your complaint and aim to reply within 20 working days of receipt of your complaint though some complaints take longer than others to investigate. A target of 35 working days applies to those complaints that require longer or more complex investigation.”

The Committee noted that the initial complaint had been made by the complainant on 3 January 2014, but he had not received a Stage 1(a) response until 19 June. The Committee welcomed the two personal apologies sent to the complainant at Stage 1 and noted the deep regret expressed by the BBC Executive. The Committee agreed that an apology from the BBC Executive would normally resolve complaints handling delays. However, the Committee observed that as it had taken over five months for the complainant to receive a reply to his substantive complaint this was a particularly egregious delay.

Point (B): regarding the length of time taken for the ECU at Stage 2 of the complaints process to send the complainant a copy of the finalised finding.

The Committee noted that the ECU had failed to send the complainant a copy of the finalised finding on 8 September and that it had not been sent until The ECU had been alerted on 3 November. The Committee accepted that the BBC Executive had acknowledged the fault as theirs and had apologised to the complainant. However, the failure to send the finalised finding on 8 September had compounded the earlier failures and caused significant further delay.

The Committee concluded that the handling of this complaint at Stage 1 and Stage 2 breached the BBC's Editorial Guidelines on Accountability which require complaints to be responded to quickly. It also did not meet the expectations set down in the Editorial Complaints and Appeals Procedure.

Finding: Upheld

Application of the Expedited Complaints Procedure by BBC News

The complainant appealed against the decision of the Head of Editorial Standards, BBC News, to apply the Expedited Complaints Procedure ('the Expedited Procedure') to complaints by him.

Background

In a letter of 21 November 2014, the Head of Editorial Standards, BBC News, informed the complainant that the Expedited Procedure would be applied to complaints by him for a period of two years. This was on the basis that the complainant had a history of persistently or repeatedly making complaints which:

- were shown on investigation to have no reasonable prospect of success;⁴ and/or
- after rejection at an earlier stage (e.g. Stage 1), were persistently and repeatedly appealed unsuccessfully to the next stage (e.g. Stage 2).⁵

According to the Head of Editorial Standards, in the year from 12 November 2013:

- the complainant had complained 80 times at Stage 1 (57 at Stage 1a; 23 at Stage 1b); and
- of the seven complaints escalated to Stage 2, none had been upheld and one was pending investigation.

In a subsequent email, dated 16 December 2014, the Head of Editorial Standards corrected the number of Stage 1a complaints to 34 and the total number of Stage 1 complaints to 57. He apologised for the error. The Stage 1b and Stage 2 figures remained unchanged.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 10 December 2014. The complainant's arguments were as follows:

- He said that the Head of Editorial Standards, BBC News, had made an error in that two of his complaints had been upheld. Both complaints related to an error that had been made in positioning Jerusalem on a map and Jerusalem's location had been moved twice following his two complaints. He also argued that he was sure another complaint was likely to be upheld as it involved a basic factual error. In another case he considered that the Head of Editorial Standards, BBC News, had admitted his complaint had merit. He also argued that replies from the BBC frequently failed to deal with the substance of the complaint. He argued that the BBC can refuse to allow a complainant to go to Stage 3 if it has no merit but this had not been applied to him. Some complaints had been technical: for example the failure of the BBC to provide a consistent case number for a complaint, making it difficult to follow a complaint if there was more than one in the system.

⁴ BBC's Complaints Framework, Annex B, para 2(d). See:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/e3_complaints_framework.pdf

⁵ Ibid, para 2(e).

- He argued that the pro-Israeli lobby is extremely strong in Britain. The BBC's role is to serve the interests of the British public. He argued that there is a perception, which he believes, that the BBC has a pro-Israeli bias. This, he argued, made it imperative for the BBC to be open to criticism of its reporting such as his own and not to attempt to gag criticism because it finds it inconvenient or difficult to deal with.
- He referred to a petition alleging BBC bias in 2014 and protests outside BBC premises which he said reflected the view of the public "which is overwhelmingly opposed to Israel's relentless dispossession and degradation of the Palestinians and in favour of Palestinian rights".
- He argued that there was evidence of anti-Palestinian bias amongst key BBC personnel. He gave named examples of BBC staff and contributors who allegedly displayed such bias, as well as named examples of BBC staff and contributors who either publicly complained about the BBC's anti-Palestine bias or were allegedly removed from their position due to the influence of the Israeli lobby.
- He wished to illustrate BBC bias by referring to three [*sic*] facets of bias:
 - The BBC does not comply with international law by referring to Jerusalem as an Israeli city on the grounds that this is the 'de facto' situation.
 - The BBC does not comply with the decision of the British Parliament. In 2014 the British Parliament voted to recognise Palestine as a state with East Jerusalem as its capital but the BBC refuses to recognise East Jerusalem as Palestinian land.
 - The BBC is grossly at variance with British public opinion. The public is overwhelmingly supportive of Palestinian rights and has a hostile view of Israel. This is not reflected in BBC coverage.
 - The BBC does not define what it means by bias.

He argued that the BBC's failure to address its own bias over Israel-Palestine makes it imperative that the BBC allows for maximum public debate of the issue.

- He said that the BBC has a culture of secrecy. He gave examples. Therefore, he argued it is vital that the BBC allows open debate from other channels such as his own.
- He said that the BBC has a poor record in its Middle East and Afghanistan reporting and supported the Iraq and Afghan invasions. The BBC talked up the Kerry peace negotiations when there was zero chance of peace. He argued that given the failure in Middle East reporting it is vital the BBC is maximally open to public debate in this area.

He said that for these reasons he urged the Trustees to reject this attempt to "gag public debate and scrutiny of the BBC's coverage this most important and contentious of issues". In a following email he said that the Head of Editorial Standards, BBC News had written to him acknowledging "that he had vastly overstated the number of complaints" he had made. The appended letter explained that the number of complaints contacts made at Stage 1 was 57 not 80.

The Committee's decision

The Committee was provided with: the letter from the Head of Editorial Standards, BBC News, of 21 November 2014; the complainant's appeal to the Trust, by an email dated 10 December 2014; the complainant's email to the Trust dated 16 December 2014, attaching the Head of Editorial Standards' email to him of the same date.

In deciding whether the Expedited Procedure should be applied to the complainant's complaints, the Committee considered:

- (a) whether BBC News had followed the process set out in Annex B to the BBC's Complaints Framework;
- (b) whether either or both of the conditions relied upon by BBC News had been satisfied; and
- (c) whether, in all the circumstances, it was appropriate to apply the Expedited Procedure at Stage 2.

The Committee noted the arguments set out in the complainant's emails to the Trust. With particular regard to his argument concerning the BBC's reservation of the right not to allow complaints lacking merit to go forward, the Committee noted that the Executive could not prevent an appeal being made to the Trust. The Committee therefore considered this argument to be misconceived.

With regard to process, the Committee was satisfied that – subject to the correction contained in his email of 16 December 2014 – the Head of Editorial Standard's letter of 21 November complied with the procedural requirements of Annex B to the BBC's Complaints Framework.

The Committee then considered whether either or both of the conditions relied upon by BBC News had been satisfied. The Committee noted that: the preponderance of the complainant's complaints concerned the BBC's coverage of the Middle East, with particular reference to Israel–Palestine; the complainant frequently raised issues of accuracy and impartiality; and the complainant had also raised complaints about procedural matters.

The Committee noted that, up to November 2013, the complainant had made three appeals to the Trust. Of these, one had gone to full appeal, while the Trust Unit had decided not to proceed with the remaining two. The Committee noted that no appeal was upheld.

The Committee noted that, following one of the complainant's complaints, a map had been amended at Stage 1, and that some complaints were still in progress. The Committee also noted that the overwhelming majority of complaints had been rejected. These included eight rejections by the Trust at Stage 3 (with one appeal pending). The Committee was satisfied that the complainant had a history of persistently or repeatedly making complaints which: were shown on investigation to have no reasonable prospect of success; and, after rejection at an earlier stage, were persistently and repeatedly appealed unsuccessfully to the next stage. The Committee therefore concluded that both of the conditions relied upon by BBC News had been satisfied.

The Committee then considered whether, in all the circumstances, it was appropriate to apply the Expedited Procedure at Stage 1 and 2.

The Committee reminded itself of the complainant's complaint history. It noted that,

although not all complaints had been unsuccessful, the overwhelming majority of complaints had been rejected (including by the Trust).

The Committee noted the complainant's specific criticisms of the Head of Editorial Standards' decision (set out in the complainant's emails to the Trust of 10 and 16 December 2014), together with his additional points about the BBC's alleged anti-Palestinian bias, the BBC's alleged culture of secrecy over Israel–Palestine, and the BBC's allegedly poor record of reporting on the Middle East.

The Committee also noted that, according to the complainant, the Head of Editorial Standards was attempting:

“to gag public debate and scrutiny of the BBC's coverage of this most important and contentious of issues [Israel–Palestine]”.

The Committee considered that well-founded complaints about the BBC's coverage of the Middle East in general, and Israel–Palestine in particular, were extremely helpful in ensuring that the highest editorial standards were maintained. However, in this instance, the Committee could not agree that the Head of Editorial Standards was attempting to gag public debate and scrutiny. Nor could the Committee agree that the complainant's overwhelmingly unsuccessful complaints had had a helpful effect; rather, the Committee considered that they had made disproportionate use of licence fee resources.

The Committee decided that it was appropriate to apply the Expedited Procedure at Stage 1 and 2. The Committee noted that future complaints made by the complainant would continue to be reviewed, and that any that appeared to have substantive merit would be handled under the applicable complaints procedure.

The Committee then considered what would be the appropriate duration for the application of the Expedited Procedure, and could see no reason why the procedure should not be applied for the maximum period of two years from 21 November 2014.

Finding: Not upheld

Application of the Expedited Complaints Procedure by the BBC Trust

The complainant appealed against the decision of the Head of Editorial Standards, BBC Trust, to apply the Expedited Complaints Procedure ('the Expedited Procedure') to appeals by him at Stage 3 of the complaints process.

Background

In a letter dated 20 January 2015, the Head of Editorial Standards, BBC Trust, informed the complainant that the Expedited Procedure would be applied to appeals by him for a period of two years. The Head of Editorial Standards took the view that the complainant had a history of persistently or repeatedly making complaints which:

- were trivial, misconceived, hypothetical, repetitious or otherwise vexatious;⁶
- failed to raise an issue of breach of any relevant Guidelines or Policies;⁷
- were shown on investigation to have no reasonable prospect of success;⁸ and/or
- after rejection at an earlier stage (e.g. Stage 1), were persistently and repeatedly appealed unsuccessfully to the next stage (e.g. Stage 2).⁹

The Head of Editorial Standards had reached this conclusion on the basis that, between 13 September 2013 and 15 September 2014, the complainant had made 10 unsuccessful appeals to the BBC Trust, all of which concerned allegations of inaccuracy and/or pro-Israeli/anti-Palestinian bias in the BBC's coverage of Israel–Palestine.

Appeal to the BBC Trust

The complainant responded on 13 February 2015, stating that he was appealing against the attempted imposition of the Expedited Procedure by BBC News and by the Trust Unit. He considered it particularly invidious and bizarre of the BBC [Trust Unit] to try to impose the Expedited Procedure at Stage 3 before the adjudication of his appeal against the decision by the Head of Editorial Standards, BBC News. He stated that, in his appeal against the decision by the Head of Editorial Standards, BBC News, he had made a number of points, almost all of which applied to his appeal against the Stage 3 decision. In the complainant's view, the attempt to impose the Expedited Procedure at Stage 3 further underlined the points he made: i.e., that the BBC was trying to gag free speech on Israel–Palestine by the misuse of bureaucratic procedures. The complainant therefore resubmitted his appeal against the decision by the Head of Editorial Standards, BBC News, in support of his appeal against the Trust Unit's decision.

The complainant's arguments were as follows:

- He said that the Head of Editorial Standards, BBC News, had made an error in that two of his complaints had been upheld. Both complaints related to an error that had been made in positioning Jerusalem on a map and Jerusalem's location had been moved twice following his two complaints. He also argued that he was sure

⁶ BBC's Complaints Framework, Annex B, para 2(a). See:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/e3_complaints_framework.pdf

⁷ *Ibid*, para 2(b).

⁸ *Ibid*, para 2(d).

⁹ *Ibid*, para 2(e).

another complaint was likely to be upheld as it involved a basic factual error. In another case he considered that the Head of Editorial Standards, BBC News, had admitted his complaint had merit. He also argued that replies from the BBC frequently failed to deal with the substance of the complaint. He argued that the BBC can refuse to allow a complainant to go to Stage 3 if it has no merit but this had not been applied to him. Some complaints had been technical: for example the failure of the BBC to provide a consistent case number for a complaint, making it difficult to follow a complaint if there was more than one in the system.

- He argued that the pro-Israeli lobby is extremely strong in Britain. The BBC's role is to serve the interests of the British public. He argued that there is a perception, which he believes, that the BBC has a pro-Israeli bias. This, he argued, made it imperative for the BBC to be open to criticism of its reporting such as his own and not to attempt to gag criticism because it finds it inconvenient or difficult to deal with.
- He referred to a petition alleging BBC bias in 2014 and protests outside BBC premises which he said reflected the view of the public "which is overwhelmingly opposed to Israel's relentless dispossession and degradation of the Palestinians and in favour of Palestinian rights".
- He argued that there was evidence of anti-Palestinian bias amongst key BBC personnel. He gave named examples of BBC staff and contributors who allegedly displayed such bias, as well as named examples of BBC staff and contributors who either publicly complained about the BBC's anti-Palestine bias or were allegedly removed from their position due to the influence of the Israeli lobby.
- He wished to illustrate BBC bias by referring to three [sic] facets of bias:
 - The BBC does not comply with international law by referring to Jerusalem as an Israeli city on the grounds that this is the 'de facto' situation.
 - The BBC does not comply with the decision of the British Parliament. In 2014 the British Parliament voted to recognise Palestine as a state with East Jerusalem as its capital but the BBC refuses to recognise East Jerusalem as Palestinian land.
 - The BBC is grossly at variance with British public opinion. The public is overwhelmingly supportive of Palestinian rights and has a hostile view of Israel. This is not reflected in BBC coverage.
 - The BBC does not define what it means by bias.

He argued that the BBC's failure to address its own bias over Israel-Palestine makes it imperative that the BBC allows for maximum public debate of the issue.

- He said that the BBC has a culture of secrecy. He gave examples. Therefore, he argued it is vital that the BBC allows open debate from other channels such as his own.
- He said that the BBC has a poor record in its Middle East and Afghanistan reporting and supported the Iraq and Afghan invasions. The BBC talked up the Kerry peace negotiations when there was zero chance of peace. He argued that given the failure in Middle East reporting it is vital the BBC is maximally open to

public debate in this area.

He said that for these reasons he urged the Trustees to reject this attempt to “gag public debate and scrutiny of the BBC’s coverage this most important and contentious of issues”.

In a following email he said that the Head of Editorial Standards, BBC News had written to him acknowledging “that he had vastly overstated the number of complaints” he had made. The appended letter explained that the number of complaints contacts made at Stage 1 was 57 not 80.

Committee’s decision

The Committee was provided with the letter from the Head of Editorial Standards, BBC Trust applying the Expedited Procedure to the complainant, and the complainant’s appeal against the application of the Expedited Procedure, dated 13 February 2015. The Committee was also provided with the documents in the complainant’s appeal against the decision of the Head of Editorial Standards, BBC News (including the complainant’s email of 10 December 2014 which was his appeal against the decision of BBC News to apply the Expedited Procedure).

The Committee noted the arguments raised by the complainant. Trustees also noted that between 13 September 2013 and 15 September 2014 the complainant had made 10 unsuccessful appeals to the BBC Trust. Of these:

- the Trust Unit had decided not to proceed with two appeals, and the complainant had not asked the Committee to review those decisions; and
- the Trust Unit had also decided not to proceed with the remaining eight appeals, and the Committee had agreed with those decisions.

The Committee noted that all the complainant’s appeals had concerned allegations of inaccuracy and/or pro-Israeli/anti-Palestinian bias in the BBC’s coverage of Israel–Palestine. These allegations included the following:

- the BBC accepts the Israeli/Zionist position uncritically;
- the BBC allows the Israeli/Zionist position to be expressed without allowing Palestinian advocates a right of reply;
- the BBC over-reports violence against Israelis and under-reports violence against Palestinians;
- the BBC under-reports, or fails to report, significant issues such as the Praver Plan and US Secretary of State’s statement;
- the BBC does not treat Palestinian and Israeli deaths equally;
- the BBC has allowed its broadcasting policy to be dictated by the state of Israel; and
- the BBC failed to achieve balance in its coverage of an allegedly illegal military operation by Israel.

The Committee noted that none of the complainant’s 10 appeals to the Trust had been accepted as raising a matter of substance and so none of these had been upheld.

The Committee considered the letter from the Head of Editorial Standards, BBC Trust, and decided that it complied with the procedural requirements of Annex B to the BBC’s Complaints Framework.

Having regard to the 10 complaints appealed to the Trust by the complainant, the

Committee noted the preconditions for the application of the Expedited Procedure set out in paragraph 2 of Annex B of the BBC's Complaints Framework:

- 2 The BBC Executive and the Trust may use this Procedure only where a complainant has a history of persistently or repeatedly making complaints which:
 - (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
 - (b) fail to raise an issue of breach of any relevant Guidelines or Policies (e.g. in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework);
 - (c) use gratuitously abusive or offensive language;
 - (d) are shown on investigation to have no reasonable prospect of success; or
 - (e) after rejection of the complaint at an earlier stage (e.g. Stage 1), are persistently and repeatedly appealed unsuccessfully to the next stage (e.g. Stage 2).

The Committee agreed with the Head of Editorial Standards, BBC Trust that the preconditions set out in paragraph 2(a), (b), (d) and (e) of Annex B to the BBC's Complaints Framework, had been satisfied. The Committee therefore decided that the Expedited Procedure had been correctly applied at Stage 3.

The Committee then considered what would be the appropriate duration for the application of the Expedited Procedure, and could see no reason why the procedure should not be applied for the maximum period of two years.

The Committee noted that the complainant explained that he is concerned that the BBC does not report the Middle East impartially and is out of step with public opinion, international law and Parliament.

The importance of the BBC's coverage of Middle East affairs was noted by Trustees who considered that well-founded complaints about the BBC's coverage of the Middle East in general, and Israel–Palestine in particular, were extremely helpful in ensuring that the highest editorial standards were maintained. Trustees were aware that, whilst they had confirmed the decision of the Head of Editorial Standards, BBC Trust, any future appeals made by this complainant would be read and, where a matter of substance was raised they would be considered by the Committee.

The Committee decided not to uphold the complainant's appeal against the decision of the Trust Unit to apply the Expedited Procedure to him as from 20 January 2015.

Finding: Not upheld

Application of the Expedited Complaints Procedure by the BBC Trust

The complainant appealed against the decision of the Head of Editorial Standards, BBC Trust, to apply the Expedited Complaints Procedure ('the Expedited Procedure') to appeals by him at Stage 3 of the complaints process.

Background

The complainant had previously been made subject to the Expedited Procedure at Stage 3 for a period of two years. After that period had expired, the complainant wrote to the Chairman, BBC Trust, on 14 November 2014. He explained that he had previously written to the Secretary of State for Culture, Media and Sport, outlining his numerous complaints about BBC output concerning Lady Thatcher. In writing to the Secretary of State, he had wished to inform candidate Chairmen of the difficulties they might have with BBC staff. He believed this information would help the incoming Chairman to deal with "the deceitful and despicable conduct" of certain people in high positions, whose main aim was to protect the BBC from criticism "in order to main [*sic*] its strong left-wing philosophy and undeniable anti-Thatcher bias". The complainant cited two (unspecified) Trust employees and a BBC Director as having the capacity to influence the BBC's "political course". The complainant asked the Chairman whether she had been made aware of his letter to the Secretary of State. He also stated that he would be writing again, to ask her to review the position in which he found himself "as a result of standing up to these committed people ... who are in my view unfit to hold their present positions".

The Head of Editorial Standards, BBC Trust, responded on 3 December 2014. She stated that the Chairman had seen the complainant's letter, had been briefed about his complaint history and was aware of the content of the Head of Editorial Standards' response. The Head of Editorial Standards confirmed that the Chairman had not previously been made aware of the complainant's letter to the Secretary of State. She stated that the complainant had exhausted all methods of complaint relating to past matters, which had been repeatedly appealed against, were closed and would not be reopened. She explained that, if the complainant continued to write about those matters, the expedited procedure would be re-applied for two years. This was because, in her view, the complainant's complaints were repetitious, had no reasonable prospect of success, were vexatious, and were offensive in the way in which they referred to individual BBC employees.

The complainant responded on 15 December 2014. He complained that he had been banned from contacting the Chairman about his "harsh and unfair treatment" by the Head of Editorial Standards and others. He required:

- the Chairman's written confirmation that she had read, and fully agreed with, the Head of Editorial Standards' response;
- confirmation of the date on which the Chairman and Head of Editorial Standards had discussed him;
- confirmation of whether anyone else was present;
- a complete record of the meeting;
- copies of any documents (apart from the complainant's letter) that were produced or requested in connection with the meeting; and
- confirmation of what steps the Chairman had taken to ensure that the process was conducted fairly, and that her current view of the complainant was accurate.

On 16 January 2015, the Head of Editorial Standards sent the complainant a copy of her briefing note to the Chairman. This note asked the Chairman to confirm that the Secretary of State had not made her aware of the content of the complainant's letter of 6 July. It also noted the complainant's appeal history, noted a previous error by the Trust Unit, summarised the content of his letter of 14 November, and proposed a response. Attached to the briefing note was a copy of the complainant's letter of 14 November and a draft reply. In the Head of Editorial Standards' view, these documents demonstrated that the Chairman had read and agreed with the Head of Editorial Standards' response of 3 December.

The complainant responded on 4 February. In his view, the briefing note provided no evidence and the Head of Editorial Standards' "privileged position" meant that she was never questioned. He felt the summary of his appeal history was misleading. He:

- requested a copy of the Chairman's written consent to the proposed course of action;
- required the Head of Editorial Standards to send him a list of allegedly vexatious complaints and an explanation of why they were vexatious;
- required each offended employee to send him a signed letter, quoting the relevant sections of his complaints and explaining why they considered them offensive;
- argued that, having failed to present a full case against him to the Chairman, the Head of Editorial Standards had now forfeited the chance to do so;
- asked what powers the Head of Editorial Standards had to prevent him from writing to the Chairman and why she believed they applied.

The complainant attached copies of letters from him to a BBC Division and the Secretary of State which he asked to be brought to the Chairman's attention.

The Head of Editorial Standards responded on 12 February. She attached an email from the Chairman's PA, recording the Chairman's agreement to the recommended course of action. With regard to the complainant's request that she substantiate her decision, the Head of Editorial Standards stated that the complainant's correspondence of 14 November and 4 February self-evidently:

- repeated previous complaints and allegations, and attempted to re-open issues that had already been adjudicated;
- were vexatious;
- were offensive in the way they referred to the Head of Editorial Standards and other individuals at the BBC; and
- did not contain material on which Trustees could reasonably uphold the complainant's complaint or appeal, and so did not raise matters of substance within the terms of the BBC's complaints procedures.

The Head of Editorial Standards noted that the deadline for appealing her decision of 3 December had passed, and that the complainant had not done so. She regarded this as part of a pattern of vexatious behaviour whereby the complainant attempted to prolong complaints by asking additional questions and did not keep to time-frames. The Trust Unit would nevertheless allow the complainant five working days to request a review of her decision, in default of which he would be placed on the Expedited Procedure for two years. The Head of Editorial Standards explained that she had no power to prevent the complainant writing to the Chairman. However, his letters would not be submitted to her unless they concerned a matter of substance of which she should be aware (for which reason, she had not been shown the complainant's letter of 4 February).

Appeal to the BBC Trust

The complainant responded on 20 February. He disagreed that the case against him was self-evident, and asked for clarification. He made a number of serious allegations about the Head of Editorial Standards' conduct in his previous complaints, and about the Trust's Editorial Standards Committee and Chairmen. He argued that his allegedly offensive past conduct was time-expired and should not be taken into consideration. He asked to be provided with the "legislation" under which the Head of Editorial Standards was acting. He stated that he wanted to appeal the "action and allegation" against him, and that he would submit a "full and accurate submission" when his queries were answered. Because, in his view, the Head of Editorial Standards had "personally maligned" his reputation, he wished to be present at the hearing of his appeal. He described the email from the Chairman's PA (which the Head of Editorial Standards had sent him on 12 February) as "not good enough", and requested a copy of any record of the Chairman's agreement to the Head of Editorial Standards' decision, which he regarded as "a very important requirement" to his defence. He asked for confirmation of whether the Chairman had been shown his previous letter, and requested that she be shown this one.

On 23 February, the Head of Editorial Standards informed the complainant that his request for a review of her decision would be put to Trustees. She confirmed that there was no written agreement by the Chairman other than the correspondence from her PA, which the complainant had already received.

The complainant responded on 24 February, alleging that the Head of Editorial Standards had taken action against him because of personal animosity. He requested that this allegation be examined before the Committee considered his appeal, and requested details of the Trust contact to whom he could make a handling complaint. Until his procedural complaint was completed, he did not believe his appeal could proceed further.

The Committee's decision

The Committee was provided with the following:

- the complainant's letter to the Chairman, BBC Trust, dated 14 November 2014;
- the Head of Editorial Standards' letter applying the Expedited Procedure, dated 3 December 2014;
- the complainant's letter requesting a copy of the briefing to the Chairman, dated 15 December 2014;
- the response from the Head of Editorial Standards, dated 16 January 2015;
- the complainant's letter, dated 4 February 2015 attaching letters to BBC Wales and the Secretary of State for Culture, Media and Sport;
- the Head of Editorial Standards' letter, giving the complainant five working days to appeal her decision, dated 12 February 2015;
- the complainant's letter, dated 20 February 2015;
- the Head of Editorial Standards' response, dated 23 February 2015;
- the complainant's letter, dated 24 February 2015; and
- Letter to Chairman of Committee of 10 March (appended to the paperwork for the next complaint on the agenda but applicable to this matter).

The Committee noted that the complainant had previously been made subject to the Expedited Procedure at Stage 3 for a period of two years.

The Committee noted that, in correspondence with the Chairman and the Head of

Editorial Standards, the complainant had repeated his numerous, long-standing allegations of pro-left-wing/anti-Lady Thatcher bias by the BBC, and serious wrongdoing by BBC staff. The Committee noted that these repeatedly unsuccessful allegations had formed the basis for the Trust's previous application of the Expedited Procedure to appeals by the complainant at Stage 3.

The Committee noted that, in her response of 3 December 2014, the Head of Editorial Standards, BBC Trust, had told the complainant that he had exhausted all methods of complaint relating to those matters, and that they would not be reopened. (Trustees noted that one complaint which had been upheld and sent back to the BBC Executive to review was still in progress.) The Committee noted that she had warned him that, if he continued to write about those matters, the Expedited Procedure would be re-applied for two years, on the basis that the complainant's complaints were repetitious, had no reasonable prospect of success, were vexatious, and were offensive in the way in which they referred to individual BBC employees.

The Committee noted that paragraph 1.3.2 of the BBC's Complaints Framework¹⁰ states:

"Annex B sets out the BBC's Expedited Complaints Procedure which may be used by the BBC when dealing with complainants who complain repeatedly and persistently"

The Committee noted that Annex B to the BBC's Complaints Framework states:

- "1 The Expedited Complaints Procedure may be used at any stage of the BBC's Complaints Procedures, whether by BBC Audience Services or the relevant BBC department responding to a complaint; the Editorial Complaints Unit (ECU) or the relevant BBC Division; or the BBC Trust.
- 2 The BBC Executive and the Trust may use this Procedure only where a complainant has a history of persistently or repeatedly making complaints which:
 - (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
 - (b) fail to raise an issue of breach of any relevant Guidelines or Policies (e.g. in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework);
 - (c) use gratuitously abusive or offensive language;
 - (d) are shown on investigation to have no reasonable prospect of success; or
 - (e) after rejection of the complaint at an earlier stage (e.g. Stage 1), are persistently and repeatedly appealed unsuccessfully to the next stage (e.g. Stage 2)."

Having considered all the correspondence before it, the Committee concluded that the complainant's complaints:

- were repetitious (Annex B, para 2(a));
- were vexatious (Annex B, para 2(a)), in that:
 - they contained un-evidenced allegations of serious wrongdoing by members of BBC staff;

¹⁰ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/e3_complaints_framework.pdf

- the complainant repeatedly and unnecessarily prolonged his substantive complaints by asking additional questions and raising irrelevant side-issues and unwarranted procedural complaints;
- the complainant ignored the time-frames specified in the applicable complaints procedure(s);
- failed to raise an issue of breach of any relevant Guidelines or Policies (Annex B, para 2(b));
- used gratuitously abusive or offensive language when referring to BBC staff (Annex B, para 2(c)); and
- had no reasonable prospect of success (Annex B, para 2(d)).

The Committee agreed with the Head of Editorial Standards that the preconditions for the application of the Expedited Procedure had been satisfied. The Committee therefore decided that the Expedited Procedure had been correctly applied at Stage 3.

The Committee noted that future appeals made by the complainant would continue to be reviewed, and that any that appeared to have substantive merit would be handled under the applicable complaints procedure.

The Committee then considered what would be the appropriate duration for the application of the Expedited Procedure, and could see no reason why the procedure should not be applied for the maximum period of two years.

Finally, the Committee confirmed that the handling of this matter by the Trust Unit had been appropriate.

Finding: Not upheld

Requests to review the Trust Unit's decisions on appeals

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

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.

Review of the Trust Unit's decision not to extend deadline for appealing a decision by the Editorial Complaints Unit

The complainant asked the Committee to review the Trust Unit's decision not to extend the deadline for appealing the Editorial Complaints Unit's decision in his complaint about *Red Letter Day*¹¹ (his 'Substantive Complaint').

Background

The complainant wrote to the Head of Editorial Standards, BBC Trust, on 24 February 2015. He explained that he could not comply with the deadline for appealing the decision of the Editorial Complaints Unit ('ECU') in his Substantive Complaint. This was because he had been busy corresponding with the Head of Editorial Standards about her decision to re-apply the BBC's Expedited Complaints Procedure ('the Expedited Procedure'). He made the following points:

1. His complaint was over three years old, which was not his fault. There was no rush to bring it before the Committee in incomplete form.
2. As the ECU had taken six months to respond, he should be allowed some flexibility in submitting his rebuttal. He believed he would need at least another month.
3. He had now raised a handling complaint against the ECU. This should be dealt with before his Substantive Complaint.
4. The ECU had refused to consider a letter from the programme makers to BBC Wales, which he believed would help his case and harm the BBC's. He had requested a copy under the Freedom of Information ('FOI') Act 2000, and the Substantive Complaint should not proceed until that request was dealt with.

The Head of Editorial Standards responded on 25 February. Although she was not "across" (i.e., familiar with) the paperwork in the Substantive Complaint, she could not see the relevance of the programme makers' letter. She stated that she would, however,

¹¹ BBC One Wales. See: <http://www.bbc.co.uk/programmes/b010gqrm>

obtain the paperwork and contact the complainant again, pending which he should work to the given deadline. In her view, the handling complaint should not affect the complainant's ability to say why he wanted to appeal the ECU's decision. Nor did she consider the amount of time that had been taken, either at Stage 2 or overall, to be a relevant consideration. She would not therefore extend the deadline for either of those reasons.

The complainant responded on 3 March, stating that he would "commence a legal process" to obtain a copy of the programme makers' letter, pending which his appeal should be suspended. In his view, the Head of Editorial Standards' assertion – that she could not see the relevance of the letter – suggested that her mind was already made up. With regard to past delays, the complainant argued that the Trust had made a commitment to treat complainants on the same footing as the BBC. As there had been a cumulative 12-month delay by the BBC at Stages 1 and 2, the complainant should be allowed a corresponding extension. He was, however, merely asking for a "gesture" of one month, rather than an equal amount of time. The complainant believed that the result of his handling complaint could affect the outcome of his appeal. In his view, the way in which a complaint was handled at any stage must have some implication for the way it was to be dealt with by the Trust. He believed the ECU had not acted independently, and that the Head of Editorial Standards should not prevent him from questioning the ECU's motives before the Committee heard his appeal. According to the complainant, the time he had spent in dealing with the Head of Editorial Standards' decision to re-apply the Expedited Procedure had not left him enough time to deal with his complaints handling or substantive complaints. He argued that, as he was over 70, he needed additional time to formulate and type his letters.

The Head of Editorial Standards responded on 4 March. She had now read the paperwork in the Substantive Complaint. She took the view that, as the ECU had not relied on the programme makers' letter in reaching its decision, the complainant did not need to see the letter in order to challenge the decision. She did not consider it appropriate or proportionate to give the complainant time to try and acquire the letter, or for her to acquire it and pass it to him. Nor did she regard the complainant's FOI request as a "legal procedure" that would require the Trust to suspend its normal appeals process. The Head of Editorial Standards asked the complainant to continue to work to the given deadline. With regard to the complainant's age, the Head of Editorial Standards sympathised with his position. However, she noted that, whereas the BBC's Editorial Complaints and Appeals procedure asks complainants to give reasons for an appeal in 1,000 words or fewer – or a 1,000-word summary, along with a fuller appeal – the complainant's letter of 3 March extended to 2,795 words in total. She considered that, if the complainant could write a letter of such length in three working days, he could summarise in fewer words the key issues he wanted to appeal and why. In her view, this was particularly the case as the complainant was aware that the ECU had not upheld on any point and knew which points were at issue, and he had already explained to the ECU where he disagreed and why.

Appeal to the BBC Trust

The complainant responded on 9 March. He accused both the Committee and the Head of Editorial Standards of bias. He reiterated his arguments with regard to past delays. He regarded the refusal of the ECU and the Head of Editorial Standards to acknowledge the importance of the programme makers' letter as proof of a deliberate cover-up. He regarded the letter as proof that the programme about which he had complained was inaccurate and biased, and he queried why the Head of Editorial Standards had not kept

her promise to obtain a copy. He asserted that it had taken him seven days, not three, to write his previous letter. He argued that he had never claimed that he could not respond sooner, but had instead asked for parity with BBC complaint handlers. He claimed that, as the ECU had admitted that it found his Substantive Complaint difficult to understand, and had questioned its accuracy, he would have to review both the complaint correspondence and the programme, which would take time. The complainant would ask the ECU to cite legal authority for its opinion that the Information Commissioner's Office ('ICO') would decline his FOI request, and would also consult the ICO on this point. The complainant requested copies of the documents that would go before the Committee, and confirmation of whether the Head of Editorial Standards would be making an oral representation at the hearing. The complainant also asked for the Committee's view on the importance of the programme makers' letter, and on whether the complainant was entitled to see it.

The Committee's decision

The Committee was provided with:

- the complainant's request for an extension of time in which to appeal, dated 24 February 2015;
- the letter from the Head of Editorial Standards, Trust Unit, dated 25 February 2015;
- the complainant's reply to the Trust Unit, dated 3 March 2015;
- the response from the Head of Editorial Standards Trust Unit, dated 4 March 2015; and
- the complainant's letter concerning an appeal against the Head of Editorial Standards' decision, dated 9 March 2015.

The Committee noted the content of the correspondence that had been placed before it, and the arguments the complainant had raised.

The Committee noted that paragraph 5.1 of the BBC's Editorial Complaints and Appeals procedure¹² states:

"If you are dissatisfied with the reply at Stage 2, you can request an appeal to the BBC Trust within 20 working days of the date on which you received the response at Stage 2. If you write after that time, please explain in your letter why your complaint is late. Exceptionally, the Trust may still decide to consider your complaint, if it decides there was a good reason for the delay."

In the Committee's view, the question to be decided was whether – exceptionally – it should agree to consider the Substantive Complaint after the expiry of the 20-working-day deadline, on the basis that there was a good reason for the delay. The Committee considered the reasons the complainant had given, but did not regard any of these as a "good reason".

With regard to the amount of time that the complainant had spent in correspondence about the Head of Editorial Standards' decision to re-apply the Expedited Procedure, the Committee noted that it had not upheld the complainant's appeal against her decision. The Committee did not consider it appropriate to take into consideration the time the complainant had spent in corresponding on a matter that was ultimately attributable to his own vexatious conduct.

¹²http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

With regard to the delays that had previously arisen in the Substantive Complaint, the Committee noted that paragraph 3.1 of the BBC's Complaints Framework¹³ states:

“so far as practicable, a complainant should be on an equal footing with the BBC ...”

The Committee did not consider that putting the complainant on an equal footing with the BBC required a 'tit-for-tat' approach to adhering to the deadlines prescribed by the Editorial Complaints and Appeals procedure. The Committee agreed with the Head of Editorial Standards that the amount of time that had been taken, both at Stage 2 and overall, was not a relevant consideration.

With regard to the complainant's handling complaint against the ECU, the Committee could see no reason why this should prevent him from submitting an appeal in his Substantive Complaint, especially as the complainant had already set out the basis of his substantive appeal in correspondence with the ECU.

With regard to the complainant's FOI request, the Committee noted that paragraph 5.9 of the BBC's Editorial Complaints and Appeals procedure contains a table setting out some of the factors considered by the Trust in deciding whether or not to give substantive consideration to an appeal, and the actions the Trust will normally take. The relevant entry is as follows:

Consideration	Trust actions
Appeal raises legal issues or matters within the remit of external authorities.	The Trust will not normally consider an appeal that is or has been the subject of legal correspondence with the BBC, or if legal proceedings have been issued, or if the appeal is appropriate for consideration by an external authority (such as the Office of Fair Trading).

In the Committee's view, making an FOI request did not amount to issuing "legal proceedings" within the meaning of paragraph 5.9. The Committee noted that the content of the programme makers' letter had formed no part of the ECU's considerations. Although the letter's content might, hypothetically speaking, have a bearing on those considerations, the Committee did not consider that its potential evidential value was such that it would be appropriate or proportionate to delay the complainant's appeal pending the letter's possible disclosure (which the Committee noted might, in any event, not occur). The Committee could therefore see no reason why the normal appeals process should be suspended. The Committee noted that the determination of FOI requests is not within its remit.

With regard to the complainant's age-related needs, the Committee endorsed the Head of Editorial Standards' expression of sympathy. It noted the complainant disputed the number of days it had taken to write a letter containing 2,795 words and had said it was seven days not three days. However, having regard to the considerable volume of correspondence generated by the complainant and the typical length of his letters (such as that dated 3 March), the Committee agreed that it was well within the complainant's

¹³ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/e3_complaints_framework.pdf

capacity to meet the prescribed deadline.

The Committee agreed with the Trust Unit's decision not to extend the deadline for appealing the Editorial Complaints Unit's decision.

The Committee therefore decided to confirm the decision by the Trust Unit

BBC News Channel and News at Six, BBC One, 3 January 2014

One element of this appeal was considered at the March 2015 meeting and is reflected under Appeal Findings. The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found here.

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

The complaint

The complaint related to reports broadcast on the BBC News Channel and on the *News at Six* on BBC One, 3 January 2014. The reports concerned Cabinet papers from 1984 released by the National Archive under the 30 year rule. These papers demonstrated the real extent of pit closures planned by the Government of the time and the National Coal Board.

The complainant stated that archive footage from 1984 shown during the reports on 3 January had been discredited and therefore should not have been used. He said the footage inaccurately showed demonstrating mine workers at Orgreave throwing missiles at the police first, with police then responding by charging on horseback. In fact, he said, the events happened the other way round.

The complainant said that the BBC had acknowledged in July 1991 that the footage was inaccurate and had apologised at the time for this inaccuracy.

After a lengthy delay Audience Services responded at Stage 1a and 1b that their investigations had uncovered no evidence of any deliberate attempt to mislead viewers in the coverage of the clashes at Orgreave at the time. They added that it was clear that the BBC had failed to record some of the violence due to a camera error, but the report was edited as the day progressed as more pictures became available from other sources. However, minutes from an editorial meeting on the day after the clashes had recorded concerns being raised about impartiality in some of the coverage but appeared to conclude that any problem amounted to a "marginal imbalance" and had not justified the NUM's claims of BBC bias.

The complainant escalated his complaint to the Editorial Complaints Unit (ECU) at Stage 2 on 2 August 2014. The complaint was not upheld.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 6 November 2014. He appealed on the substance of his complaint, in particular that:

- footage from 1984 used to illustrate the story about the release of Cabinet papers under the 30 year rule on 3 January had been misleading.
- the footage used of events at Orgreave had been shown out of sequence and was therefore inaccurate. This gave the impression that miners had initiated the

violence and the police were responding, when in fact it was the other way round. This perpetuated a false impression of the sequence of events.

- the footage as broadcast in 1984 had been discredited and therefore should not have been used.

The complainant had also appealed to the BBC Trust about the handling of his complaint. The Trust Unit decided that the handling of the complaint at Stage 1 and Stage 2 was a matter that should proceed to the Editorial Standards Committee for consideration.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser (the Adviser) watched the relevant coverage on the BBC News Channel and the report on the *News at Six*, BBC One. The Adviser considered the appeal did not have a reasonable prospect of success.

The Adviser considered that the relevant guidelines were those which required that the BBC observed "due accuracy":

The Adviser noted that the complainant was concerned that the footage from 1984 was misleading and that "wrongly sequenced footage ... was still being shown to illustrate Orgreave".

The Adviser looked at the pieces in question which had been shown on the BBC News Channel and the *News at Six*. She noted that the Editorial Guidelines on Accuracy stated 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.

She noted that the complaint referred to reports broadcast on 3 January 2014 which concerned the release of archived Cabinet papers relating in the main to the miners' strike and to events surrounding the shooting of WPC Yvonne Fletcher outside the Libyan Embassy.

The Adviser noted the response at Stage 2 from the Editorial Complaints Unit (ECU) which explained to the complainant that their finding was limited to a consideration of the footage as it appeared in the news bulletins on 3 January and not to the original footage.

As this report was about the release of Cabinet papers from the National Archive which examined the then Government's attitude towards the miners' strike and not about events at Orgreave, the Adviser considered that viewers would be likely to consider the footage as illustrating "the brutal clashes on the picket lines" rather than a chronological account of what had happened at Orgreave.

The Adviser then considered how the footage had appeared in relation to the complainant's concern that events at Orgreave had been shown out of sequence and was therefore inaccurate and misleading.

The Adviser noted that the footage from 1984 had been used in different ways throughout the day. On the BBC News Channel at 10.00 and again at 11.00 during the headlines there was brief footage of a protest march and a separate shot of marching policemen. At 11.45 the News Channel carried an interview with Nick Jones, a former BBC industrial correspondent who had covered the miners' strike at the time. A short piece of

footage was shown during the interview which consisted of a compilation of different shots. This included a miners' demonstration, scuffles between demonstrators and police, a striker being manhandled, and pictures of policemen on foot and on horseback charging.

The Adviser noted that in their response the ECU had said:

"I think the fact that this was clearly an assemblage of different images of the strike would have made it very unlikely that viewers would have looked to it for an account of Orgreave."

The Adviser agreed and considered that Trustees would also conclude that viewers would have considered these images to be illustrative of the tensions which existed during the miners' strike as a whole and not as an account of what had happened at Orgreave.

She noted that reports on the News Channel and the reports shown on the *News at One* and *News at Six* began by showing shots of policemen charging on foot with shields. This was followed by footage of striking miners pushing against the shields, then a shot of missiles being thrown and footage of the police charging on horseback. In addition, the headlines at the beginning of the *News at Six* and again at the beginning of the *News at Ten* used just one shot - that of policemen charging on horseback at mine workers.

The Adviser noted that the complainant had said that the footage shown had given the impression that miners had initiated the violence and the police were responding, when in fact it was the other way round. The Adviser further noted that the ECU had referred to this footage in their responses of 28 August and 8 September and had pointed out to the complainant that the footage as it had appeared in the later pieces did not begin with pictures of miners attacking police, but the reverse. The Adviser noted the conclusion of the ECU's Complaints Director:

"I did not get the sense that this was an attempt to illustrate what had happened that day, but in the unlikely event that it had been understood by audiences as a narrative account the fact that it began with the actions of the police would not support a claim that it sought to unfairly apportion blame for ensuing violence to the striking miners."

The Adviser agreed with this. She also noted that much of the footage had not been identified: the piece broadcast on the BBC *News at Six* had not referred to Orgreave but had stated:

"Throughout the year long miners' strike there were pitched battles between police and picketing mine workers outside pits and power stations."

The Adviser noted that Arthur Scargill's arrest at Orgreave had been referred to on the BBC *News at One* and later on the News Channel:

"The miners' leader Arthur Scargill – himself arrested during the infamous battle of Orgreave - claimed Margaret Thatcher's administration had a secret hit list of pits earmarked for closure."

The Adviser agreed with the ECU's conclusion that this reference would not have led viewers to understand that the footage shown was intended to give an account of events at Orgreave on that day.

The Adviser did not consider that viewers would have believed from the footage shown that the violence had been instigated by the mine workers and that the footage represented a chronological account of what had happened at Orgreave. She considered that they would not therefore have been materially misled.

The Adviser then considered the complainant's view that the footage had been discredited and therefore should not have been used. The complainant said that the BBC had acknowledged in July 1991 that the footage was inaccurate and had apologised at the time for this inaccuracy.

However, the Adviser noted that Audience Services had taken steps to investigate what had happened when the original footage had been broadcast in June 1984, and their replies at Stage 1a and stage 1b had explained to the complainant that thirty years on, it was difficult to reach definitive conclusions.

Referring to the original footage, ECU had explained:

"I understand that the concern with the material at the time was not with the veracity of the raw footage but the way in which it had been edited, and the claim the sequence of those events was misrepresented. I don't believe it was claimed that there was anything inherently wrong with the footage itself – only with the way in which it was sequenced in news bulletins that day. I don't therefore agree with the argument that the footage has been so discredited or is so inherently biased that it is not possible to use it to illustrate what happened that day (or the miners' strike more generally)."

Finally the Adviser noted that in his appeal the complainant had referred to the footage in question being withdrawn after the *News at Six*. The Adviser noted that contrary to the complainant's belief, the story had indeed been covered on the BBC *News at Ten*, with the same report that had featured on the BBC *News at Six*.

Overall the Adviser considered that the BBC had therefore given a reasonable response to the complainant on the issues raised and the appeal did not stand a realistic prospect of success. She considered that Trustees would be likely to conclude that the report had met the requirements for due accuracy and she did not intend to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant said the footage used was "wrongly sequenced and should never [have] been used by the BBC to illustrate the strike". The footage showed miners throwing objects and the police charging which was the reverse of what happened whether or not Orgreave was named in the montage. The complainant said that the BBC had a duty to use footage that was "truthful".

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review her decision. The Committee was provided with the *News at Six* version of the item.

The Committee noted that the complainant considered the sequence had been edited in the wrong order to show miners throwing missiles and the police responding by charging, which was not what had taken place.

Trustees noted that the relevant guidelines on accuracy and impartiality included the following:

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

The Committee noted that the footage had been used to illustrate a topical story relating to the miners’ strike. While Orgreave had been referenced in the output, Trustees agreed with the Adviser’s view that this would not have led the audience to think the footage was used to document events at the plant.

The Committee agreed that, in context, the use of the footage did not purport to be a representation of the specific events at Orgreave and therefore concluded that there was no reasonable prospect of it finding there had been a breach of the Editorial Guidelines.

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

BBC Breakfast, BBC One, 1 August 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 a report broadcast on *BBC Breakfast* during last summer's war in Gaza.

The complainant said that the report about a new ceasefire gave the audience the false impression that it was Israel, rather than Hamas, who had broken previous ceasefires. He quoted the presenter's introduction to a report from Bethany Bell:

"We are going over to Bethany Bell in Jerusalem where of course the question is: Will the ceasefire be broken by Israel?"

In response, the BBC said that Bethany Bell's report from Jerusalem giving the Israeli perspective was balanced by a report from Martin Patience in Gaza giving the Palestinian perspective. The BBC did not agree that viewers were given the impression that Israel was to blame for previous ceasefires breaking down.

The complaint was investigated at Stage 2 by the Editorial Complaints Unit (ECU). The ECU found that the report was duly accurate and the complaint was not upheld.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 7 December 2014 expanding on his concerns. He said that a package from Jon Brain in the programme concluded with the words:

"Previous ceasefires have broken down within hours...the international community is desperate for this one to endure."

The presenter then introduced a contribution from Bethany Bell:

"Bethany Bell is in Jerusalem...the ceasefire came into force around 6 o'clock. Of course, the question is, 'Is Israel going to stick to it?'"

The complainant made the following points in support of his complaint:

- All ceasefires during that period broke down because of Hamas or one of their militant allies. In no case did Israel resume firing before Palestinian militants.
- It would have been more reasonable to ask "Are the two sides going to stick to it?" or, "Are the Palestinians going to stick to it?" It was misleading for the BBC to state "Of course, the question is 'Is Israel going to stick to it?'" because it gave the impression that it was Israel who had broken the previous ceasefires and would be more likely to break this one.
- This misleading impression was continued the next day (2 August 2014) when a BBC reporter tweeted "Israel says soldier 'captured' in Gaza by Hamas is dead. Militants denied it from the start. The IDF claim led to collapse of ceasefire". The

complainant noted that this tweet was the subject of a separate appeal to the BBC Trust.

- It was the attack on Israeli soldiers that occurred about 90 minutes after the ceasefire had started which broke the ceasefire.
- The presenter's introduction to Bethany Bell's report gave a misleading impression to viewers which was reinforced in other BBC output including the tweet. It was clearly lacking in impartiality.

The Trust Unit's decision

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

The Adviser noted that the complainant had raised concerns that the output was misleading and was not impartial. She noted that at Stage 2 the ECU considered the complaint against the Guidelines on Accuracy. The BBC's Editorial Guidelines can be found in full at:

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

The Adviser noted that all output was required to meet the standards of due impartiality and due accuracy. The term "due" meant that impartiality and 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 Adviser noted that judgements about what was duly accurate and duly impartial would vary depending on the nature of the output and the context of the comments. She considered this was generally understood by the audience.

The Adviser considered the context of comments made about the ceasefire overall in two reports from Gaza and Jerusalem during the programme.

Report 1 - 07:31-07:34

Presenter: In a moment we're going to talk to Bethany Bell in Jerusalem. But first let's go to our correspondent Martin Patience who's in Gaza for us. Martin: the question is, is Hamas likely to stick to this ceasefire?

Martin Patience: [Reports on how streets in Gaza returning to life]
In terms of Hamas signing up to this ceasefire, well it has done that, but we have seen shorter ceasefires or truces in the past which have very quickly broken down and both sides have accused each other, and significantly, just a few minutes ago there was a loud explosion off in the distance close to the border, so it does appear there has been some violation, although for now it simply isn't clear who carried out that attack, or in fact exactly what it was.
[End of report]

Presenter then links to Bethany Bell in Jerusalem.

Presenter: Bethany, a similar question: will Israel stick to the ceasefire?

Bethany Bell: Well Israel said it accepted the terms of the ceasefire which include one of Israel's main demands which was to be able to keep its troops on the ground in Gaza and carry out continuing to destroy the network of cross-border tunnels through which Palestinian militants have been trying to get into Israel. Yesterday, the Israeli Prime Minister Benjamin Netanyahu said that was a key demand of Israel and that he wouldn't accept any type of ceasefire deal unless that was allowed, but the American Secretary of State John Kerry said that was part of this temporary humanitarian lull, but previous lulls have proved very, very fragile, some of them breaking down within just a matter of hours so people here will be watching very carefully to see whether this one can hold the full 72 hours. Last night there was another blow for Israeli soldiers – 5 Israeli soldiers killed in a mortar attack from Gaza.
[End of report]

Report 2 - 08:30

Presenter: In a moment we're going to talk to Bethany Bell in Jerusalem. Our World Affairs correspondent Martin Patience has been describing the calm that's descended on Gaza.

MP: [Reports on life in Gaza following 72 hour ceasefire announcement] ...But as we have heard before, some of these previous ceasefires have broken down so whilst there is at the moment bustle in the streets people will still be very wary that something could still go wrong here.

Presenter: Martin Patience in Gaza there. Let's talk to Bethany Bell who's in Jerusalem. Bethany, of course the concern is, not only will Hamas stick to the ceasefire, but also will Israel?

BB: Yes, and in fact we've just had some reports in from the Israeli media suggesting that a rocket was fired from Gaza into Israel just a short time ago. We don't have confirmation of that report at the moment but we know that a siren was heard around the border area so yes, a sense really of just how fragile this break in the fighting is...

The Adviser noted that the question about whether the ceasefire would hold was asked in relation to both sides in the conflict. She also noted that it was clear from Bethany Bell's report that Israeli sources were reporting rockets had been fired into Israel from Hamas. She therefore did not consider that Trustees would be likely to conclude that there was evidence of a breach of the Editorial Guidelines on either Accuracy or Impartiality.

The Adviser acknowledged the complainant's comments about a reporter's tweet and noted that this was the subject of a separate appeal by the complainant.

For the reasons given above, the Adviser therefore decided 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. He said that the two reports cited in the Trust Unit's decision were broadcast after the one that he was complaining about. He noted that in his submissions at Stage 1 he had given the time of the report about which he was complaining as approximately 7am and that he had submitted his complaint by email at 08:21. He said that whilst the later reports quoted by the Adviser might have referred to both parties, in asking whether the ceasefire would hold, it was not true of the report at 07:00.

The Committee's decision

Trustees noted that in addition to the content cited by the Adviser in her decision there was also a segment just after 07:00, and that it was this content which the complainant contended would have misled the audience. The Trustees had listened to the output in question and agreed to consider the admissibility of the appeal.

The coverage in question comprised a report by Jon Brain, followed by interviews with Bethany Bell in Jerusalem and Martin Patience in Gaza. Trustees noted the complainant's appeal:

"[The presenter] saying 'Of course, the question is, "Is Israel going to stick to it?"' would have given the audience the misleading impression that Israel was the party that hadn't stuck to previous cease-fires and/or that it was the more likely party to break any future cease-fire and that was simply not the case."

The Committee noted that the reporter was speaking from Jerusalem and agreed that it was appropriate and editorially justified for the presenter to pose a question about the likelihood of Israel observing the ceasefire. The Committee did not consider that its assessment relied on a similar question being posed to the correspondent in Gaza (although it noted this did in fact happen 30 minutes later). The Committee noted the content of Bethany Bell's response to the question, where she stated that Israel had accepted the 72 hour ceasefire, and that despite air strikes overnight from Gaza and Hamas rocket fire into Israel, it all stopped before the ceasefire came into force. Trustees took the same view as had the ECU when it rejected the complaint at Stage 2:

"You have complained that you believe this [the question] conveys the meaning that Israel has broken ceasefires in the past and that this is inaccurate. I have to say I do not agree. The question, as put, does not seem to me to carry any suggestion, implicit or explicit, about the previous history of cease fires other than that they have not endured. It is simply silent on the point. The question would have had relevance whatever the reasons for the breakdown of previous ceasefires."

Trustees concluded that for all these reasons and taking into account also the coverage elsewhere in the programme, as reflected in the Adviser's decision, were the complaint to reach them on appeal they would be likely to conclude that the content was duly accurate.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

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

Today, Radio 4, 3 July 2014

The complaint

The complaint concerned an interview on the *Today* programme with the BBC's Middle East Editor on 3 July 2014 shortly before increased fighting between Israel and Hamas escalated into full scale war. The interview took place in the week that the bodies of the three Israeli teenagers had been found and a Palestinian teenager had been killed in revenge.

The complainant said the Middle East Editor made four statements that were "totally misleading"; the issues raised by his complaint related primarily to the correspondent's interpretation of Palestinian views and actions.

The complainant received responses at Stage 1 from BBC Complaints and at Stage 2 from the Editorial Complaints Unit. None of the points of complaint were upheld.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust on 16 December 2014. He said the following statements were totally misleading:

1. "The vast majority of Palestinians are absolutely reconciled to the existence of Israel."
2. "The Palestinians have not been swept up in the Jihadist current in the way that other Arabs have."
3. "The mainstream Palestinians have been involved in various kinds of attempts at a peace process."
4. "The fact is that there are hotheads on both sides and there are people who aren't reconciled to the others on both sides."

The Trust Unit's decision

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

The Adviser considered that the points raised potentially engaged the guidelines on Accuracy and Impartiality, and in particular the clause which explains the overarching requirement for both "due" accuracy and "due impartiality":

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

The Adviser noted also the clause from the Impartiality guideline (4.4.13) which notes that reporters and correspondents may provide professional judgements "rooted in evidence".

The Adviser considered how the BBC's Middle East Editor framed his comments, signposting to the audience that he was offering his perspective, drawing authority from his understanding of the region and his direct contact with its peoples and giving his take

on events. Throughout, she noted that he used the term “I think” rather than making statements of fact; when he was asked to speculate about what could happen he made it clear when he felt his answer was conjecture rather than a prediction; he referred on more than one occasion to the people he had spoken to.

With regard to the first issue, that it was inaccurate to state that “the vast majority of Palestinians are absolutely reconciled to the existence of Israel”, the Adviser noted the fuller context.

Presenter: The Jerusalem Post is writing this morning about the murder of the teenagers obviously. And it says this, “it’s another reminder that swathes of Palestinian society continue to be irreconcilably committed to Israel’s destruction”. Is it the case that it’s not just terrorist organisations such as Hamas that are bent on Israel’s destruction, but the Palestinian people generally are irreconcilably opposed to the existence of Israel?

Middle East Editor: No I don’t think that’s the case. I think the vast majority of Palestinians are absolutely reconciled to the existence of Israel. What they’re not reconciled to is the continuing occupation of land taken in 1967, the growth of the settlements. You know you’ve heard all this many times before and it was interesting as well and telling I think to see the mother of the Palestinian teenager who was killed saying Palestinians have no rights.

And I think that they feel there’s one law for Israelis and one for themselves and that they’re never going to be in a better place until they get independence, get their own state. And of course there are some who would like to eliminate the Israeli state. I’ve spoken to them, but the vast majority I think are prepared to live alongside it.

The Adviser noted the complainant’s citation of a number of opinion polls to support his contention that the overwhelming majority of Palestinians were not reconciled to Israel’s existence. His submission included the poll which was the basis of the comments in the Jerusalem Post article referred to by the *Today* programme presenter¹⁴. The Adviser reviewed that poll in detail, as well as another also cited by the complainant. She noted that none asked a question which was capable of direct comparison with the view expressed by the correspondent. The Adviser agreed that it could be taken from the poll findings that Palestinians did not support the existence of the state of Israel, but she considered that it did not necessarily flow from that that they were not “reconciled” to Israel’s existence. Hence the Adviser noted that, those same respondents who supported a return to all of historic Palestine as a long term goal also supported greater jobs opportunities for Palestinians within Israel, with well over half saying they would definitely or probably like to see Israeli companies offer more jobs inside the West Bank and Gaza and an overwhelming majority who would definitely or probably like to see Israel allow more Palestinians to work inside Israel. This in the Adviser’s view accorded with the correspondent’s view that “the vast majority are prepared to live alongside” [*sic*] Israel.

She considered this indicated a degree of pragmatism and would tend to support the correspondent’s view that most Palestinians are reconciled to Israel’s existence and that their priorities are not its immediate destruction but they lie in what they perhaps see as more achievable goals, such as an end to the occupation and an end also to the building

¹⁴ <http://www.jpost.com/Diplomacy-and-Politics/Majority-of-Palestinians-now-oppose-two-state-solution-new-poll-finds-360489>

of Jewish settlements. The Adviser noted that the correspondent allowed also for the more extreme position in his answer.

With regard to the second issue, that it was inaccurate to state that “the Palestinians have not been swept up in the Jihadist current in the way that other Arabs have”, the Adviser noted the fuller context:

Presenter: Are there any other forces beyond Hamas who would weigh into this now, who are likely to take advantage of this situation and spread the terror threat wider? Because it's not that long ago is it that we in this country were terrified of Palestinian terrorism because it was beginning to affect us directly?

Middle East Editor: Yes certainly back in the 70s people were very concerned about that....One thing that is interesting is that in recent years the Palestinians have not been swept up in the Jihadist current in the way that other Arabs have. Perhaps that will change. Who knows.

The Adviser noted that the complainant cited opinion polls showing strong support for al Qaida amongst Palestinians, the flying of an ISIS flag at a Palestinian funeral and public demonstrations of support for events like 9/11, as well as quoting from the Hamas charter.

The Adviser considered what the audience would have taken from the exchange. She noted that the question was asking whether in the correspondent's view parties other than Hamas might take advantage of the events of recent days in the region and use them as a trigger to wage a wider war of terror in the name, perhaps, of the Palestinians. The correspondent's response was that Palestinians have not been swept up in the Jihadist current but perhaps that will change. The Adviser considered most listeners would take this comment to mean that Palestinians continued to focus on their situation and their regional conflict with Israel. She noted the complainant's analysis pointed to sympathy for the causes of groups such as ISIS rather than any indication that joint action either locally or overseas might result from that sympathy or that the internal civil strife seen elsewhere in the Arab world had taken hold in the Palestinian territories.

The Adviser noted also the clear indication from the most recent Washington Institute opinion poll cited by the complainant in which 61% of respondents said that Hamas should maintain the ceasefire with Israel. She noted also in the second opinion poll cited by the complainant¹⁵ that Palestinians as a whole did not support violence as a means to achieve their goals (65% opposed a third intifada) and only 13% supported the statement that Arab countries should be governed by Sharia Law alone.

Regarding the third issue, that it was inaccurate to state that “the mainstream Palestinians have been involved in various kinds of attempts at a peace process. The Adviser noted the fuller context:

Middle East Editor: The mainstream Palestinians have been engaged in various kinds of attempts at peace processes for more than 20 years now. Hamas themselves have talked about a long term truce whilst not recognising Israel's existence and also saying that it should go.

¹⁵ http://web.archive.org/web/20120309133428/http://www.theisraelproject.org/atf/cf/%7B84dc5887-741e-4056-8d91-a389164bc94e%7D/2011-07_PALESTINIAN_SURVEY_FQ.PDF

The Adviser noted the complainant's statement in his letter of appeal that Hamas was absolutely opposed to any attempt at a peace process with Israel. She noted that the correspondent explicitly noted Hamas' refusal to recognise Israel. She noted too that the correspondent drew a distinction between "mainstream Palestinians" and Hamas. It was a matter of record that successive representatives of the Palestinian Authority have engaged in the peace process over the years.

The Adviser noted the complainant's final issue, that the following statement was inaccurate:

"The fact is that there are hotheads on both sides and there are people who aren't reconciled to the others on both sides."

The Adviser noted the detail of the complaint on this point, that whilst the overwhelming majority of Israelis are "totally sickened by sectarian murders and abhor the murder of a Palestinian teen by Israelis", the reverse was not the case and there was celebration amongst the Palestinians of the murder of the Israeli teens. She noted the complainant's contention that the correspondent's comment "made it seem like there was equivalent lack of tolerance in the two communities and that is very far from being the case".

She noted that, for example, the Secretary General of Bnei Akiva, a prominent Zionist youth movement with tens of thousands of members worldwide had published inflammatory material on his Facebook page. This had referred to the three dead Israeli teenagers and had stated:

"The government of Israel is convening for a vengeance hearing which is not about mourning. The Master of the house has gone crazy at the sight of the corpses of his sons. A government should turn the army that was searching into vengeful soldiers; soldiers who will not stop at 300 Philistine foreskins."

The Adviser noted that this example illustrated the correspondent's suggestion that there were hotheads on both sides. The Adviser noted also the fuller context of the correspondent's response in which he stated that calls such as this for revenge had been "criticised by Israelis" and that "Senior Israelis, rabbis and so on, have called to tone it down because it is heating people up".

The Adviser noted that no comment was made on the extent to which calls for revenge would enjoy popular support and concluded that the audience would not be likely to draw any conclusion in that regard.

The Adviser therefore decided none of the points of the complaint raised by the complainant would 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.

On the first issue, as to whether "the vast majority of Palestinians are absolutely reconciled to the existence of Israel" the complainant cited alternative data from a different opinion poll to the one already cited. He noted the Israel Project poll from 2011 found:

"7% believed that Israel has a permanent right to exist as a homeland for the Jewish people and 84% agreed with the statement '*Over time Palestinians must work to get back all the land for a Palestinian state*'. Both those polls show that it is and was completely untrue to say that the vast majority of Palestinians are absolutely reconciled to the existence of Israel."

He noted also that the Washington Institute poll in 2014 had found some 60% wanted to work towards reclaiming "all of historic Palestine" contrasted to some 37 % who supported either a two state solution of one state in which "Arabs and Jews" will have equal rights.

He said these polls showed it was completely untrue to say that the vast majority of Palestinians are absolutely reconciled to the existence of Israel. He took issue with the Adviser's suggestion that the polls showed that Palestinians who wanted a return to historic Palestine were also prepared to live alongside Israel. The complainant said she had misquoted the Middle East Editor's statement. The Middle East Editor did not say "the vast majority are prepared to live alongside" Israel. He had said "the vast majority of Palestinians are absolutely reconciled to the existence of Israel". The complainant said that the Palestinians acknowledge Israel exists but are not reconciled to it and both Hamas and the Palestinian Authority say so.

He added that the Adviser had not referred to the fact that Fatah included a map of Palestine including all of Israel on its logo in 2012.

On the second statement that "The Palestinians have not been swept up in the Jihadist current in the way that other Arabs have", the complainant said Article 7 of the Hamas Charter made it clear that Hamas is a Jihadist movement. He gave several examples of the way he believed it was demonstrated that Palestinians had been swept up in the Jihadist current including: a poster on a Gaza wall of Bin Laden; the 2007 coup against Fatah; praise of the Paris killings on a Hamas Facebook page; and a demonstration in Gaza in praise of the Paris killings. The complainant noted that the last two examples happened after the interview with the Middle East Editor but felt that it demonstrated an attitude that existed before the report.

The complainant rejected the Adviser's reasoning and her citing of opinion poll data which showed support for the maintenance of the ceasefire and reflected very low support for Sharia Law amongst Palestinians. He said that the same Washington Institute poll showed that 66% wanted popular resistance to the occupation. He said that Hamas considered suicide bombings to be "popular resistance". He argued with examples that support for Jihadism and Sharia Law are not closely correlated. He argued there had been a Jihadist coup in 2007 and Gaza is ruled by "a brutal Jihadist regime with strong links to the Islamic State."

On the third statement, that it was inaccurate to state that "the mainstream Palestinians have been involved in various kinds of attempts at a peace process", the complainant said that the Fatah leadership's engagement in a peace process was a sham. They only participated to ensure continued financial and political support from overseas. They had not changed the PLO Charter so that it no longer includes a commitment to eliminate the State of Israel by any military means.

On the final issue regarding the statement that there were "hotheads on both sides", the complainant said the head of Bnei Akiva had apologised and deleted his statement from

Facebook after he had calmed down. He was not speaking for the youth movement and did not expect anyone to act on his words and no-one did. He noted that there had been Palestinian celebrations at the death of the Israeli teenagers. A Palestinian boy had been murdered but not by youth group members. There was, said the complainant, all the difference in the world between the attitude of Israelis who, apart from a miniscule minority, do not wish harm to befall ordinary Palestinians, and that of Palestinians most of whom support suicide bombing against Israelis.

The Committee's decision

The Committee noted the points made by the complainant.

With regard to the first issue, the Committee noted the grounds on which the complainant had challenged the decision not to proceed. Trustees noted that the Adviser had acknowledged the support amongst Palestinians for a return to all of historic Palestine, but that she had nevertheless concluded that the comments in the interview by the Middle East Editor had allowed for that being the case. Trustees agreed that the polls showed how people polled could hold more than one view. In this case the Adviser's decision that the issue did not qualify to proceed to appeal had relied on her view that the impression the audience would have been likely to take is that the majority of Palestinians had taken a pragmatic approach and were focussing instead on more immediate concerns: i.e. settlements, the return of land occupied in 1967, and their rights in law. Trustees accepted that the Middle East Editor's professional judgment was supported by polling evidence and they would not be likely to uphold this point on appeal.

Regarding the second issue, the Committee noted the fuller context of the comment that "the Palestinians have not been swept up in the Jihadist current in the way that other Arabs have". The comment was in response to a question about whether parties other than Hamas might take advantage of the current tensions and "spread the terror threat wider". Trustees noted that Hamas had taken control in Gaza following a battle with Fatah. Trustees agreed that the advance of the so-called Islamic State was different in kind to what had occurred in Gaza under Hamas. There was nothing in the question or answer which could be read as a commentary on how far Palestinians sympathised with the cause or tactics of groups such as IS and al Qaida. Trustees accepted that this was again the Middle East Editor's professional judgment and they would not be likely to uphold this point on appeal.

Regarding the third issue, the Committee noted the complainant's assertion in his challenge that the Palestinians were effectively insincere in their participation in the peace process. Whilst Trustees accepted that the complainant was entitled to hold that view, they did not believe that the comment by the Middle East Editor that "mainstream Palestinians have been engaged in various kinds of attempts at a peace process for more than 20 years" could be interpreted as anything other than a brief reference to what was established fact. Trustees considered that, in an interview discussing the immediate crisis and what was likely to happen next, there was no requirement on the BBC to address the history of the peace process at greater length, nor to examine whether Palestinians had been participating in good faith or not. Trustees agreed that they would not be likely to uphold this point on appeal.

Regarding the final matter raised by the complainant, the Committee noted the fuller context:

“I think as well you’ve got to look at calls for vengeance coming from the other side. Senior Israelis, rabbis and so on, have called to tone it down because it is heating people up after the huge anger of course following the death of those three teenagers. The head for example of Bnei Akiva which is the largest religious Zionist youth movement, called for vengeance. And that in turn’s been criticised by Israelis. So the fact is there are hotheads on both sides and there are people who aren’t reconciled to the other side, on both sides.”

Trustees agreed with the Adviser that the comments did not indicate what level of popular support the “hotheads” might enjoy. The comments about Israeli hotheads were made solely in the context of the mood in Israel following the murders of the three teenagers, and offered no view on the attitudes amongst Israelis in general. The response also reflected the call of prominent Israelis for calm, and Israeli criticism of the comments by the head of Bnei Akiva. This would suggest to the audience that support for such “hothead” views within Israeli society was limited. That the head of the youth movement subsequently apologised and deleted his comments did not detract from the fact that they were made in the first place. Trustees accepted that this was again the Middle East Editor’s professional judgment and his assessment of the mood amongst Israelis and of how volatile the situation was at that time. Trustees considered they would not be likely to uphold this point on appeal.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

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

BBC Breakfast, BBC News Channel, 3 June 2014 and BBC News Online article: University complaints by students top 20,000

Complaint 1:

The complainant raised his concerns about a news report on BBC Breakfast on 3 June 2014 which he believed was misleading. The report focused on a steep rise in the number of student complaints following the introduction of higher fees. The report related to data obtained by the BBC under a Freedom of Information (FOI) request and reported that, of the institutions that responded, students had lodged more than 20,000 complaints and appeals in the previous year.

The complainant considered that two interviewees who took part in a live discussion were inappropriate guests. The two contributors were the outgoing president of the University and College Union and the founder of Student Hut – an online site which carries reviews of university modules as well as other information including student offers, information about jobs and jokes.

In addition he said:

“...Serious matters of maladministration and retribution for complaining were excluded, and therefore misleading.

“Such a controversial subject should have included a wide range of significant views and perspectives and given due weight and prominence.”

The complaint went to Stage 2 and was investigated by the Editorial Complaints Unit (ECU). The ECU did not uphold the complaint.

The ECU found that in terms of the limited scope of the report, the discussion was duly accurate and appropriately balanced. The ECU acknowledged that the debate could have been widened to cover other aspects, such as those mentioned by the complainant, but explained that the programme-makers were entitled to limit the scope of the discussion as long as it was duly accurate and appropriately balanced.

The ECU considered that the debate reflected an appropriate range of views and would have met the reasonable expectations of the audience.

Complaint 2:

The complainant made a separate Stage 1 complaint on 2 September 2014 regarding a BBC News Online article about the same story. It had originally been published on 3 June 2014 – the same day as the BBC News Channel report – and also looked at the large rise in the number of student complaints. It stated: “More than 20,000 students complained to their universities last year, a Freedom of Information request by the BBC has shown.” The complainant was not happy with the figure of 20,000 being headlined; he said the true number of complaints was higher because the figure of 20,000 did not cover all student complaints, but only related to “issues such as changes to courses, changes to lecturers, standards of teaching etc”.

He therefore felt the online report was misleading, just as the BBC News Channel report

of 3 June 2014 was misleading, because it gave the impression that it covered all complaints which was factually incorrect.

BBC Audience Services declined to investigate the complaint concerning the article: <http://www.bbc.co.uk/news/education-27640303> and its headline because it was submitted beyond the BBC Complaints Framework time limit of 30 working days from publication. The article was published online on 3 June 2014 and the complaint was submitted on 2 September.

Appeals to the BBC Trust

The complainant submitted two appeals on 16 September 2014 to the BBC Trust, both concerning the BBC's reporting on the issue of the increased number of student complaints since tuition fees were raised:

The first appeal concerned the Stage 2 complaint which had been investigated by the ECU about the BBC News Channel broadcast of 3 June 2014. The complainant did not feel that the ECU had properly addressed his complaint.

He made the following points:

- The BBC failed to give "due weight" to an "appropriate" range of views and opinions and it followed that the contributors chosen to take part in the debate were unsuitable and unqualified to comment.
- The broadcast put an emphasis on the number of 20,000 student complaints, but since making his Stage 2 complaint, the complainant said he had learned that the term "academic complaints", which viewers would have perceived as being all complaints, only related to issues "such as changes to courses, changes to lecturers, standards of teaching etc". These were a small part of the list of issues that students could complain about as specified by the independent adjudicator for higher education.
- It was not made clear during the report that more serious issues were omitted and that the total number of complaints was much higher than presented in the report.
- The BBC trivialised the seriousness of students as consumers.
- He felt the BBC did not understand the role of the University and College Union.
- The Student Hut website had no relevance to the rise in student complaints; and their representative was not a suitable contributor.
- He felt that if the BBC had presented an objective overview of complaints to the former Universities Minister he might have acknowledged the need for reform instead of welcoming the finding and depriving students of a chance to be heard.
- It was not enough for the ECU to express sympathy; if it was not possible to give "due weight" to an "appropriate" range of views and opinions in one broadcast then it should have been done with a series of reports.

The second appeal concerned the BBC News Online report: <http://www.bbc.co.uk/news/education-27640303> published on 3 June 2014.

He stated in his appeal letter of 16 September 2014:

- “I could not have known the full facts until 1st September 2014” and he considered that the 30 day deadline should not have been applied as he had presented a good reason for the delay. He said it was not a “normal” situation and there was no fault for the delay on his part, so he was requesting the Trust to review the decision of Audience Services not to investigate his Stage 1 complaint further.
- He said that the way the “full facts” came to light which prompted his second complaint was through the provisional Stage 2 finding by the ECU Complaints Director who had stated in his letter of 26 August 2014:
- “The [studio] discussion was prompted by figures obtained by the BBC which showed that the number of complaints and appeals made by university students about academic issues (such as changes to courses, changes to lecturers, standards of teaching etc.)”
- It being the case that the figure of 20,000 only applied to complaints about “academic issues” meant that the BBC’s reporting on the issue was even more misleading. Other issues besides the academic ones should have been included in the report because they were an integral part of the story.

The Trust Unit’s decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and she viewed the broadcast in question; she also read the online report which was the subject of the complainant’s second complaint at Stage 1. She acknowledged the strength of the complainant’s feelings about this matter but decided that neither of the appeals had a reasonable prospect of success.

Complaint regarding BBC News Channel Breakfast programme:

The Adviser noted that the complainant had raised concerns that the output was misleading and did not meet the BBC’s editorial requirements for Accuracy and Impartiality. The Editorial Guidelines can be found in full at:
<http://www.bbc.co.uk/guidelines/editorialguidelines>.

The Adviser noted that the requirement for due accuracy and impartiality was that both: 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 noted that the story had originated from BBC Radio 4’s File on Four programme. The television report included information from the documentary. She noted that BBC Breakfast was an accessible news format for a general audience.

She noted that that day’s coverage of the story had included a pre-recorded report which included the following introduction:

“Figures obtained by the BBC show students lodged more than 20,000 complaints

and appeals last year.”

The report stated that the complaints figures had been found through a series of Freedom of Information requests made by the BBC. The report referred to four universities who had received the highest number of complaints. It included a comment from a spokesman from the Office of the Independent Adjudicator who noted that, as it was more difficult for students to find employment, they were more determined to get everything they could from universities and would appeal in particular against the grades they had been awarded.

In terms of the live studio debate, the Adviser noted that both guests, the founder of Student Hut, and the University and College Union outgoing president, were clearly identified and she considered audiences would have understood they were speaking from their own perspectives. She considered the report and debate focused on students as “consumers” and questioned whether they were receiving value for money following steep increases in tuition fees.

The Adviser noted the comments of the ECU’s Complaints Director:

“The central point of your complaint, if I have understood you correctly, was that the discussion did not address or consider aspects of complaints about universities which you believe are important. For example, you said ‘issues of gross misconduct and maladministration concerning student complaints should have been included as well as the failure of the Office of the Independent Adjudicator for Higher Education (OIA) to address these matters’. I have some sympathy with your point of view and I agree that it would have given viewers a more complete understanding of the range of complaints which are made about universities and their staff if these issues had been discussed.

“However, the programme did not set out to offer a comprehensive review of all complaints made about universities. The discussion was prompted by figures obtained by the BBC which showed that the number of complaints and appeals made by university students about academic issues (such as changes to courses, changes to lecturers, standards of teaching etc.) has risen significantly since the introduction of tuition fees in 2012. The programme therefore chose to debate the following question ‘So, a drop in standards in our universities or are students increasingly seeing themselves as consumers, making them more quick to complain?’”

The Adviser considered the scope of the report would have been clear to the audience – she noted that the complainant had referred to a previous survey dating from 2009 which related to complaints about universities – however, she considered it was clear that the prompt for this story was the information about the most recent level of complaints that had been made as a result of the FOI requests and which had been made by students paying the higher course fees.

She noted that both in the BBC Breakfast broadcast and the BBC News Online report, the figure of 20,000 was cited as being a steep increase in the number of student complaints and that it was the large increase in complaints which was the significant starting point for both reports. Given the focus of the reporting, she did not agree with the complainant’s view that the Complaints Director’s comments that these complaints only covered “academic issues” lent weight to the complainant’s argument that the reports lacked due accuracy and due impartiality.

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

She considered that decisions such as what to focus on in a news report and which studio guests to invite to comment on a story were matters of "editorial and creative" judgement which rested with the BBC. She therefore did not consider this element of the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Decision of BBC Audience Services not to respond further to the complaint about BBC News Online article: University complaints by students top 20,000

With regard to the decision by BBC Audience Services not to investigate the second complaint concerning the BBC News Online article published on 3 June 2014, the Adviser noted the complainant's comments that it was not a "normal" situation and his view that the 30 day time limit should be waived.

She noted that the Complaints Framework stated:

Stage 1a: What happens first when I make a complaint?

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

She noted that the complainant regarded comments by the ECU Complaints Director in his Stage 2 finding about the BBC News Channel Breakfast complaint as supporting evidence for his second complaint about the BBC News Online article.

The complainant had stated:

"The headline 'University complaints by students top 20,000 - More than 20,000 students complained to their universities last year, a Freedom of Information request by the BBC has shown' gives the clear impression that it covers all complaints which is factually incorrect."

However, she noted the next paragraph of the article stated:

"Responses from 120 universities across the UK revealed that **total academic appeals and complaints** were 10% higher in 2012-13 than in 2010-11."

She noted that Audience Services had acknowledged that the out of time complaint had "in part arisen from a clarification you had from the ECU in respect of another complaint on the same story", but she agreed with Audience Services that it remained the case that it fell outside the scope of the complaints process which required that "you should normally complain within 30 working days of the transmission or publication".

She did not consider that Trustees would be of the view that evidence had been presented to suggest that an exception to the time limit stipulated in the Complaints Framework should be made. She thought Trustees would therefore consider it reasonable for the BBC to say that it could not comment further on the points raised.

For these reasons the Adviser did not believe that either of the appeals had a reasonable prospect of success and she did not propose to put them before Trustees.

Request for review by Trustees

The complainant said that he did not have a copy of the BBC News Channel Breakfast broadcast (Complaint 1) or the FOI questionnaire concerning student complaints which he considered put him at a serious disadvantage as he had had to answer selective extracts. It had caused confusion about the facts and resulted in the dismissal of his complaints based on misinformation. He considered the one thousand word limit (set out in the editorial complaints procedure) also hindered his ability to respond to the Adviser's decision.

The complainant had been in contact with the programme as it was being made. He said that the programme had changed focus but that had not been acknowledged. The ECU said: "The scope of the discussion was limited to considering why more complaints were being lodged and so I think the content has to be judged on that basis."

The complainant said that "conspicuous by its absence from the story is evidence of the conduct of universities which would not be acceptable in other aspects of modern consumerism".

The complainant said that it was not made clear that the BBC's FOI request on the numbers of student complaints was about academic issues and did not reflect the total number of complaints made to universities or the Office of the Independent Adjudicator (OIA), nor was it made clear that the OIA cannot deal with academic appeals.

He considered that complaints which were not academic complaints but raised issues of serious public interest and concern should have been included.

The complainant referred to the BBC News Online article (Complaint 2) which stated:

"Responses from 120 universities across the UK revealed that total academic appeals and complaints were 10% higher in 2012-13 than in 2010-11."

The complainant asked what this total was – was it within the remit of the OIA or the "selective" BBC questionnaire? He said that the 10% increase in 2012-13 from 2010-11 was in the context of selective and misleading reporting.

He said that academic appeals although outside the remit of the OIA and irrelevant to the issue of consumerism were included in the story giving the impression that students are claiming poor value for money in buying exam results. No distinction was made between the numbers of academic appeals and complaints or as a percentage of students which would put a different emphasis on the story.

The complainant noted that the BBC's website referred to the independent adjudicator for higher education, who deals with university complaints which cannot be resolved

internally. He said: "In the last five years, we've seen a continual year-on-year increase in the numbers of complaints, often to the tune of between 20% and 25%. Very recently that has tailed off, which is encouraging."

The complainant said it was not made clear that he was referring to the OIA's remit and not the BBC's filtered questionnaire. He added it was not made clear that students feel that complaining is a waste of time, that there is a perception of OIA bias, that serious issues are being ignored, and that students are too traumatised to do anything, or fear retribution with large debts lasting a life time and nothing to show for it. He said wider issues of fit for purpose regulation and complaints regulator were also ignored.

The complainant concluded by arguing that the Trust's adviser refused to accept the fact that the BBC has confused the remit of the OIA with its questionnaire, ignored research and trivialised student complaints in general at the expense of its remit to educate and inform the public on matters of substance and concern. Contributors were chosen in this context making sure that no mention would be made of the appalling conduct of universities towards students as consumers especially those who complain. Both appeals should be investigated in the public interest.

The Committee's decision in January

The Committee noted that the complainant was not content with the complaints process and that he felt disadvantaged in making his complaint because he no longer had access to a copy of the BBC News Channel Breakfast broadcast (Complaint 1). The Committee agreed that the complainant should be provided with the BBC News Channel Breakfast broadcast.

Further request for review by Trustees

The complainant reiterated issues he had raised. He argued that his complaint had not been properly investigated by Audience Services, the ECU or the Trust's Advisers.

He said he had decided not to comment on the Breakfast material as he felt this should have been supplied to him previously. If the ESC considered the process had been flawed the complaint should be referred back for investigation and consideration.

The Committee's decision in March

The Committee was provided with: the ECU's decision; the complainant's appeal to the Trust; the decision by the Adviser; the requests to review her decision; and the content which was the subject of the complaints.

Preliminary decision

The Committee noted that the complainant was not content with the complaints process and that he felt disadvantaged in making his complaint because he had not had earlier access to a copy of the BBC News Channel Breakfast broadcast (Complaint 1) and he did not have access to the FOI questionnaire concerning student complaints (Complaint 2). He also considered that the one thousand word limit hindered his ability to respond to the Adviser's decision.

The Committee did not consider the complainant had been hindered in his appeal by not having had earlier access to a recording of the BBC Breakfast programme he had

complained about. The Committee considered that operation of the editorial complaints system had to be proportionate in the interest of all licence fee payers. Its chief purpose was to enable licence fee payers to make timely complaints about what they had seen, heard or read based on their views as members of the audience. The process had not been flawed.

Trustees agreed that they had seen no evidence that the investigation by the ECU had not been conducted properly. The Complaints Director had reviewed the output and the data that prompted the research and had carried out some additional research. He had considered the complaint against the relevant sections of the BBC's Editorial Guidelines and had addressed the scope of the discussion and the reasonable expectation of the audience.

The Committee did not review the Stage 1 correspondence with BBC Audience Services, noting that it would be disproportionate to do so, given that the complainant had already had the chance to appeal that decision to the ECU at Stage 2, and his appeal to the Trust was against the decision of the ECU at Stage 2.

The Committee then considered the allegation that the Trust's Adviser had also not properly conducted an investigation. Trustees noted that the Senior Editorial Complaints Adviser had reviewed the paperwork and the content and set the points of appeal against the Editorial Guidelines. At that stage the Trust Unit was looking at whether the appeal was admissible; the Adviser was not conducting an investigation. The Trustees agreed that her work had been proportionate and thorough.

Trustees noted that the Executive had responded to the complainant's FOI request in the following way:

"The information you have requested is excluded from the Act because it is held for the purposes of 'journalism, art or literature'. The BBC is therefore not obliged to provide this information to you and will not be doing so on this occasion."

The Committee noted that the complainant had recourse to the Information Commissioner's Office if he wished to challenge that decision. In any event, the Committee noted that the complainant had been given the gist of the FOI information and had been able to make use of those points to make a second complaint. Trustees therefore considered that the absence of the FOI information had not hindered him in bringing his second complaint to the Trust.

The Committee considered that word limits were a proportionate, appropriate and cost effective part of a complaints procedure that sought to balance the interests of the licence fee payers in general with the interests of the BBC and individual complainants. The Committee also saw no evidence that the thousand word limit had hindered him in indicating what parts of the Adviser's decision he disagreed with and why. Further, the Trustees noted that in addition to the complainant's challenge to the Adviser's decision, they would also have access to the complainant's argument as set out in his appeal request.

They therefore took the view that the complainant had not been hindered in bringing his points to the Trust.

Complaint 1 - BBC Breakfast

The Committee acknowledged the complainant's view that the output was misleading because the report did not include a number of additional issues related to student complaints. It was observed that the complainant had said the following in his appeal:

"I have attempted to point out that the report should have been an overview of complaints to inform and educate with the use of research instead of misleading the public with a sanitised story to avoid controversy."

In his request to Trustees to review the Adviser's decision the complainant also questioned the editorial focus of the Breakfast report. He noted that the story did not cover the following issues, amongst others:

- evidence of the conduct of universities which would not be acceptable in other aspects of modern consumerism
- bullying and retribution for making a complaint
- the role and issues covered by the office of the independent adjudicator for higher education
- his view that students feel that complaining is a waste of time.

The Committee agreed that the selection of content and the angle to take on a story fell under the "editorial and creative" direction of the BBC and was therefore a matter for the BBC Executive unless, for example, the BBC's Editorial Guidelines had been breached (Royal Charter, Article 38 (1)(b)). Trustees took the view that it had been within the editorial discretion of the BBC Executive to produce the report under consideration.

Further, Trustees agreed that the choice of contributors also fell within the editorial discretion of the BBC Executive. They noted that both guests were clearly identified and audiences would have been able to make their minds up as to their impartiality and how much authority to attribute to their comments.

Trustees were aware that the complainant considered that the coverage had been misleading as it had not set out that the complaints included in the figure of 20,000 were limited to academic complaints. However, Trustees considered that if they were to take this matter on appeal they would find the programme's coverage had been duly accurate because the content and subject of the discussion had clearly been about students as consumers, as was the case history used in the filmed package. Audiences would therefore not have expected the report to cover all types of complaints. Trustees agreed that there was no reasonable prospect of success for an appeal based on the suggestion that the Breakfast programme had not been duly accurate.

Turning to impartiality, Trustees noted that the complainant considered this was a controversial subject and that he believed a wide range of significant views and perspectives should have been included in the programme or in a series (BBC Editorial Guidelines 4.4.7.) Trustees were of the view that if they took this matter on appeal they would not consider that the editorial topic – the rise in the number of complaints – was in itself controversial. Trustees noted that the BBC must achieve due impartiality that is adequate and appropriate to the output, taking into account the subject and nature of the content. They noted there had been two interviewees representing different perspectives and that there had been contributions in filmed interviews from others. Trustees agreed that there was no reasonable prospect of success for an appeal based on the suggestion that the Breakfast programme had not been duly impartial.

Trustees therefore took the view that this matter should not proceed to a full appeal as it

had no reasonable prospect of success.

Complaint 2

Trustees noted that Audience Services had decided not to investigate the second complaint concerning the BBC News Online article published on 3 June 2014 on the basis it was out of time.

The Committee noted that the complainant said:

“The headline ‘University complaints by students top 20,000 - More than 20,000 students complained to their universities last year, a Freedom of Information request by the BBC has shown’ gives the clear impression that it covers all complaints which is factually incorrect.

“On a separate issue hence the delay in complaining the BBC Editorial Complaints Unit confirmed on 1/9/ 2014 that the figure of 20,000 student complaints only relates to issues ‘such as changes to courses, changes to lecturers, standards of teaching etc’ from the list of issues that students are able to complain about as specified by the independent adjudicator for higher education...”

The Committee considered that there was no reason why this complaint could not have been made within the 30 day time limit. The body of the article informed readers that the BBC had limited its FOI request to academic appeals and complaints:

“More than 20,000 students complained to their universities last year, a Freedom of Information request by the BBC has shown.

“Responses from 120 universities across the UK revealed that **total academic appeals and complaints** were 10% higher in 2012-13 than in 2010-11.”

Whilst the ECU may have clarified to the complainant the broad nature of the FOI request made by the BBC, this clarification was not essential or necessary for the complainant to bring this complaint. Therefore, Trustees took the view that there was no sufficient reason to depart from the time limits set out in the Complaints Framework. It was agreed that Audience Services had responded appropriately and reasonably in refusing to take this complaint further. Moreover, Trustees considered, in fairness to the interests of all licence fee payers, that it was not proportionate, appropriate or cost effective to waive the time limits unless there were exceptional circumstances.

Therefore the Committee concluded that there was no reasonable prospect of success for an appeal against the decision by Audience Services to close down this complaint on the basis it was out of time.

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

HARDtalk, BBC News Channel, 30 September 2014,

The complaint

This is a first party fairness complaint by a Professor of Economics.

On 30 September 2014, *HARDtalk* featured an interview with the British climate economist Lord Nicholas Stern. Lord Stern was introduced by presenter Zeinab Badawi as having “just co-chaired a new report on the climate and economy. He says it’s not an either/or situation but what evidence is there that we can have it both ways?”

In the interview Lord Stern was challenged on his conclusions. The presenter cited the complainant as saying “it is implausible that growth and climate objectives are mutually reinforcing – renewable energy is more expensive than fossil fuels”.

In reply Lord Stern stated:

“Well, [the Professor of Economics] is entitled to his opinion but the kinds of models he builds are pretty mechanical in assuming essentially the results which he’s arguing for.”

The complainant contacted the BBC to allege that Lord Stern had accused him of academic misconduct. The complainant stated that the presenter’s quotation related not just to his own work but to the joint work of nine further authors, whose conclusions were quality controlled by three editors. The complainant stated that the authors had been accused of steering their estimates in a particular direction, and the editors had been accused of tolerating academic misconduct.

The BBC did not uphold the complaint. At Stage 1, the programme’s Editor stated that *HARDtalk* was by nature challenging and provocative and she was satisfied that in this case the discussion of differing points of view was a “routine part of intellectual debate”. She also stated:

“I do not believe that the response from ... that you refer to would have been understood by *HARDtalk*’s viewers in general or indeed by those more familiar with the issues concerned in particular in the manner that you contend.”

The BBC’s Editorial Complaints Unit (ECU) explained at Stage 2 that the BBC’s complaints process only allowed “first party” fairness complaints. In other words, they could not consider the complainant’s additional point that the comments made were also unfair to nine other authors and the editors of the relevant academic papers.

At Stage 2, the ECU stated that it understood that the presenter’s reference to the complainant related to an article which he authored and which was published on a website [hosting news and views sourced from the academic and research community], rather than to any estimates made in his previous work. The ECU considered that the BBC had accurately paraphrased the complainant’s comments in this article and that Lord Stern’s comments in turn “have to be judged as an example of the exchanges which are typical between experts in a particular field who hold contrasting views and challenge the methodology used by their peers”.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 19 December 2014. The complainant appealed on the substance of his complaint, that he, and his fellow authors and their editors, had been accused of academic misconduct and that Lord Stern had provided no evidence to support his accusations that the complainant “worked backwards from the conclusions to the assumptions”. The complainant requested an apology.

The Trust Unit’s decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser watched the relevant programme. An independent editorial adviser also reviewed the relevant output and carried out further research. The Senior Editorial Complaints Adviser (the Adviser) considered the appeal did not have a reasonable prospect of success.

The Adviser noted that the BBC’s complaints framework stated¹⁶ that allegations of unfair treatment could only be brought by a “first party” or by someone who had the authority to represent them. She was therefore unable to consider a complaint on behalf of the nine authors and three editors of the papers summarised in an article which was itself summarised in a [further] article since there had been no indication that the complainant was authorised to bring a complaint on their behalf. Instead, she was able only to consider the complaint that the content had been unfair to the complainant.

The Adviser noted the relevant section of the programme:

Presenter: So your report, one of its key outcomes was as global populations become increasingly urbanised, you’re going to need the right kind of infrastructure to shape development, land use and energy systems. But the fact of the matter is, how can you use renewable energy to achieve those goals of better cities for people to live in, when as [the complainant], Professor of Economics at [Name] University has been involved in several reports on climate change for the United Nations says, it is implausible that growth and climate objectives are mutually reinforcing - renewable energy is more expensive than fossil fuels? So which country is going to say we’re going to go for more expensive renewable energy?

Lord Stern: Well, [the complainant] is entitled to his opinion but the kinds of models he builds are pretty mechanical in assuming essentially the results which he’s arguing for. What we’ve seen in the last five or six years is a dramatic fall, indeed over a longer period, dramatic falls in the costs of renewables. They’re now competitive with fossil fuels in many countries of the world - Al Gore recently has done a count of 79. What a lot of economists have missed or haven’t built yet into their models, to put it a bit more fair, fairly, is that dramatic cost reduction in renewables. And that is going to continue.

But there’s another factor here, too. Remember, our report is called “Better Growth, Better Climate”, and “better” is very important. It’s not just the rate of growth – which could be faster, it could be slower – it’s “better” and a fundamental sense of “better” is air pollution. Because another thing that’s become much more clear in the last few years... is the immense costs of air pollution.

¹⁶ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

The Adviser noted that the introduction to the BBC's Editorial Guidelines on Fairness states that:

"The BBC strives to be fair to all - fair to those our output is about, fair to contributors, and fair to our audiences."

...

"Material inaccuracies in the way people are referred to, or featured, may risk causing unfairness."

She observed that guideline 6.4.3 states that:

"There may be occasions when people are discussed, referred to or appear in material without their knowledge or consent. They may be public figures or private individuals and the material may include photographs, video and correspondence in which they feature. We should be fair and accurate in our portrayal of these people and, where appropriate, respect their legitimate expectations of privacy."

In considering whether a material inaccuracy had occurred, the Adviser noted the introduction to the BBC's guideline on "due accuracy" which states:

"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 Adviser noted that *HARDtalk* is described on the BBC website as "in-depth interviews with hard-hitting questions and sensitive topics being covered". She noted that the BBC Trust has previously determined that the policy issues arising from climate change are "controversial" under the BBC's guidelines and therefore that "relevant opinions as well as facts may need to be considered". She therefore considered that viewers would be likely to understand that the programme would involve a challenging debate on this controversial subject.

The Adviser noted that Lord Stern, rather than the presenter, had made the comment which the complainant found to be unfair. She noted that the presenter had referred to the complainant before this comment and she noted that the complainant believed the reference to be to a specific piece of academic research.

She noted that the independent editorial adviser had read the two articles quoted by the complainant and a third quoted by the ECU, and the independent editorial adviser had confirmed that the reference to the complainant appeared to relate to the article he had written [which was critical of Lord Stern's work and had named him]. She noted that the *HARDtalk* interview referred on several occasions to the complainant's comments in this article and that the relevant section relating to the cost of renewables (as opposed to fossil fuels) stated:

"Well-designed policies ... can make growth and climate objectives mutually reinforcing,' the report claims.

"The original Stern Review argued that it would cost about 1% of global GDP to stabilise the atmospheric concentrations of greenhouse gases around 525ppm CO₂e. In its report last year the Intergovernmental Panel on Climate Change (IPCC) put the costs twice as high. The latest Stern report advocates a more

stringent target of 450 ppm and finds that achieving this target would accelerate economic growth.

"This is implausible. Renewable energy is more expensive than fossil fuels, and their rapid expansion is because they are heavily subsidised rather than because they are commercially attractive. The renewables industry collapsed in countries where subsidies were withdrawn, as in Spain and Portugal. Raising the price of energy does not make people better off and higher taxes, to pay for subsidies, are a drag on the economy."

The Adviser considered that Trustees would be likely to conclude that the presenter had accurately and fairly summarised this section of the complainant's article when she asked Lord Stern whether it was "implausible that growth and climate objectives are mutually reinforcing - renewable energy is more expensive than fossil fuels?".

She noted that in his reply, Lord Stern had said that the complainant was entitled to his opinion, before going on to criticise the models used by the complainant in his work. The Adviser noted that Lord Stern also made the following comments:

"What a lot of economists have missed or haven't built yet into their models, to put it a bit more fair, fairly, is that dramatic cost reduction in renewables."

She further noted that the interview went on to quote the complainant's comments about EU targets for the use of renewable energy and their negative impacts on lost economic growth compared to "almost immeasurable" reduction of global temperatures. The Adviser noted that when Lord Stern dismissed these claims, the presenter challenged him on the models he himself used, by stating:

"I have to just pick you up though on models, because you have your own models too that support your findings and [name of professor] of the Massachusetts Institute of Technology, MIT, says these models, the kind that you use, the kind that [the complainant] uses, can be used to obtain any result, models are close to useless as tools for policy analysis. Their use suggests level of knowledge and precision that is simply illusory."

The Adviser considered that Trustees would be likely to conclude that the presenter challenged Lord Stern appropriately about his own models, and the use of models in general. She considered that Trustees would be likely to conclude that the audience to *HARDtalk* was a general one and viewers' likely understanding would be that scientific models involved competing claims, with strong opinions on all sides about how models were constituted, and how policy decisions were derived from their conclusions. The Adviser also took the view that the audiences would have understood Lord Stern's comments to be a defence of his work rather than an accusation of academic misconduct on the part of the complainant.

In the context of the *HARDTalk* discussion, the Adviser concluded that Trustees would be likely to consider that the comments made by Lord Stern were within the realm of academic debate between experts who disagree with each other's views.

The Adviser noted in particular that the discussion regarding models during the latter part of the programme further signalled to audiences that there was a legitimate debate to be had about research methodology and the models used by experts without any implication of academic misconduct.

She therefore considered that Trustees would be likely to conclude that there was no breach of the BBC's guidelines on Accuracy or Fairness and she therefore did not propose to put the appeal in front of Trustees as the complaint did not have a reasonable prospect of success.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He felt the Senior Editorial Complaints Adviser's response did not address the heart of his complaint, namely that Lord Stern accused him (and others) of academic misconduct.

The complainant rejected the analysis of his complaint which rested on what the Adviser believed the audience of the programme might have thought. The complainant stated:

"If it is so obvious to you that this is not an accusation of academic misconduct, why don't you just publish a clarifying statement that Stern's comments should not be interpreted that way?"

The complainant highlighted the fact that the Adviser did not refer to the ECU's ruling that the complained about output did not amount to academic misconduct because the author did not refer to a specific paper. He considered the ECU must have seen merit in his complaint as this was a ridiculous counterargument.

The Committee's decision

The Committee noted the programme on which this complaint centred. Trustees understood that the complainant felt he had been accused of academic misconduct. Trustees noted the points the complainant had made.

The Committee noted that the Adviser had considered the complaint against the Editorial Guidelines on Fairness and Accuracy.

Trustees noted that references had been made in the programme to an article, provided to Trustees, which had been published by the complainant, challenging Lord Stern's view on climate policy.

The Committee noted that, in the programme, Lord Stern acknowledged the complainant's standpoint before proceeding to challenge his arguments. Trustees noted that the presenter tested the author on the use of models in policy analysis, suggesting they could be manipulated to provide a particular outcome. Consequently, it was to be expected that challenging these models would shape the heart of a debate.

The Committee felt that references made in the programme by Lord Stern about the complainant's views were no more than might be expected in normal academic discourse and would have been recognised as such by the *HARDtalk* audience. Moreover, Lord Stern qualified his original remarks and accepted that a lot of economists have not yet built into their models the "dramatic cost reduction in renewables".

The Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of the guidelines on Fairness and neither a clarification nor a published apology was required in this instance.

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

Today, BBC Radio 4, 22 July 2014

The complaint

The complaint concerned a six-minute discussion on the *Today* programme at the height of the conflict in summer 2014 between Israel and Hamas. As casualties amongst Palestinian civilians were mounting, the programme interviewed two British Jews who live in the UK but were also Israeli citizens. They were asked what they and other British Jews felt about the conduct of the war: one is a non-practising Jew and the other is a Rabbi and a leader of the Jewish Reform congregation in the UK.

The complainant alleged that the trails for the item earlier in the programme misled viewers into assuming that they were going to hear a representative sample of the views of British Jews. The complainant alleged also that one of the participants made unsubstantiated accusations designed to incite racial hatred against Jews who support Israel.

The complainant received a response at Stage 1 from a producer on *Today* and at Stage 2 from the Editorial Complaints Unit. His complaint was not upheld.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust on 26 December 2014. He said listeners would have been misled by “the piece, its titling and advance billing, and its content”.

He noted the wording of a trail for the discussion: “Later in the programme we are going to hear about how British Jews feel about the conflict in Gaza.” The complainant said:

“One might have expected from the pre and post broadcast publicity that the piece would contain a range, even a reasonably representative sample, of the views of British Jews, presumably delivered by British Jews. Certainly that was what I was expecting to hear based on the title and advance trailing.

“In fact neither of the participants were, strictly speaking, British Jews and one of the two participants explained on air that she did not even associate with the British Jewish Community and instead used the opportunity to launch unsubstantiated hearsay accusations against the British Jewish community.”

The complainant noted the information provided to the complainant by the ECU at Stage 2, that both participants held joint citizenship and that the item was introduced by the presenter as “So how do British Israeli Jews here view what is happening?” The complainant said he had missed the “subtle” difference between the introduction and the earlier trails (which had not included the word “Israeli”).

The complainant said the participants represented minority and polarised/extreme views and that listeners would not have been aware this was the case; they would have drawn the conclusion that they were listening to a debate involving at least some mainstream, majority or even representative views.

The complainant's second point concerned assertions made by one of the contributors who stated that British Jews who criticised Israel's actions in Gaza faced being ostracised and ex-communicated from the community, and their children being bullied at school. The

complainant said these slurs were “unsubstantiated hearsay accusations against a religious/ethnic minority” and the BBC should take action to find out the truth behind the accusations.

The Trust Unit’s decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser listened to the relevant item and an independent editorial adviser also reviewed the relevant output and carried out further research. The Senior Editorial Complaints Adviser (the Adviser) considered the appeal did not have a reasonable prospect of success.

The Adviser considered first the complaint that the trails broadcast on the *Today* programme ahead of the discussion misled the listener as to what they would hear; that is, they suggested the programme would be hearing directly from British Jews and they would be representative of mainstream British Jewish opinion.

The Adviser considered that a brief trail is not intended to provide a comprehensive summary of an upcoming item, particularly when the item itself is likely to be broadcast very shortly afterwards. Its purpose rather is to promote the item and to encourage the listener to stay tuned in. The Adviser noted the overarching requirement for due accuracy which underpins all output, and which is defined in the BBC Editorial Guidelines thus:

“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 Adviser noted the complainant’s assertion that the guests were not strictly speaking British Jews. She did not agree: both contributors live in Britain and have done so for some time. The Rabbi was born and brought up in Britain, had spent 15 years in Israel and had returned to the UK 15 years ago. The other contributor has been based in London since at least the early 1980s (the Second Contributor). The Adviser considered they were both correctly described in the presenter’s introduction as British-Israeli Jews, and that given the longevity of their residence in the UK it was reasonable to also describe them as British. The Adviser observed that any further distinction between their views as British Jews or Israeli Jews did not appear vital in the context of the discussion, which covered not just their views but also how from their perspective the British Jewish community felt about the conflict. The Adviser therefore concluded that the item would be likely to have fulfilled the requirement for due accuracy both in the way it was trailed and also how it was introduced.

The Adviser considered next the complainant’s assertion that the participants were not from one of the mainstream British Jewish groupings and that they represented minority rather than mainstream views on Israel. Omitting to include a participant in support of Israel’s actions, he maintained, would have misled the audience. The Adviser noted that as a rule how programme makers choose to report an issue, or whether to report it at all, is an editorial decision, which rests with the BBC Executive as set out in the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC. “The direction of the BBC’s editorial and creative output” is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raises broader issues of breach of the Guidelines.

The issue for the Adviser to consider was whether audiences would have assumed the women's positions represented the totality of the views of the British Jewish community, or were likely to be taken as representative of the "mainstream views" of the community. The Adviser noted the difficulty of even trying to establish whether a mainstream view on the Gaza conflict could be said to exist within British Jewry; she noted how the Rabbi reflected on this in the discussion:

PRESENTER: Rabbi [Name]. First of all, when you're watching what's going on in Gaza, how do you feel about it?

RABBI: I feel like lots of people feel, completely heartbroken by what's happening. And empathy with both sides. ... In our communities people feel absolutely frightened by what's happening and empathy with people on both sides. The thing that is being repeated constantly to me by people across the political spectrum is how much they are weeping and are sad and I see people weeping in front of me for civilians on both sides.

PRESENTER: What, supportive of what Israel is doing in Gaza?

RABBI: They understand how complicated it is for Israel, how complicated it is for Hamas, how complicated it is for people. So they can see the complicated nature...

PRESENTER: Okay. So the fact that people aren't speaking out is because there isn't anything they want to say rather than because they're frightened.

RABBI: It's not that they're not speaking out. There've been demonstrations with Jews in. I asked today, last night on Facebook. And I had an absolute cacophony of responses and people are speaking out: against what's happening, for what's happening...

The Adviser noted the Rabbi referred to the views of people from "across the political spectrum", commenting that there were those in support and against Israel's actions in Gaza. The Adviser noted the complainant's statement regarding the even-handedness of the Rabbi's response – that is, in his original complaint he noted that the Rabbi represented a "minority left of centre movement within Judaism", yet she "nevertheless did remarkably well under the circumstances". The Adviser noted also where the complainant had said at Stage 1 that a position in support of Israel was only "possibly" the majority view of British Jews.

The Adviser noted and agreed with the ECU's conclusion, that over the course of the debate, as well as hearing the thoughts of the two contributors, listeners were made aware a range of views existed. She did not therefore agree that the audience would have been misled on the issue as a result of the programme makers' choice not to include a specific British Jewish voice in support of Israel's actions.

The Adviser considered the assertion that a contributor had been allowed to make "unsubstantiated hearsay accusations" about what might happen to a British Jew who spoke up against what was happening in Gaza. The Adviser noted how the contributor spoke about what she saw as the reluctance of Jews to speak out against the actions of the Israeli government:

SECOND CONTRIBUTOR: I ... have the feeling that those who do think that are afraid of retribution from the Jewish community if they dare voice their views. I have a lot of evidence for that.

PRESENTER: Explain what you mean. What sort of evidence? Evidence because of what you know of people who would speak out but who are not for fear of retribution?

SECOND CONTRIBUTOR: Yes. If you speak out against Israel loudly as I can afford to do because I don't have children at school here and I don't have any real ties to the community because I'm not a practising Jew. They tell me that if they spoke out against Israel they would be excommunicated from their community. Their children would be bullied at school. They would not be allowed to attend synagogue services and they would be denied Jewish burial...

The Adviser noted the occasions in the discussion when the Rabbi responded on this issue:

RABBI: I think what [the Second Contributor] said is not true and as she said she hasn't got real ties to the community...

RABBI: It's not that they're not speaking out. There've been demonstrations with Jews in. I asked today, last night on Facebook. And I had an absolute cacophony of responses and people are speaking out: against what's happening, for what's happening - and this idea of excommunication is completely from another century.

PRESENTER: [Second Contributor]...

SECOND CONTRIBUTOR: I've been told by people - of course I can't name them - I can't produce them as evidence because they are frightened. I don't want to emphasise that too much...

PRESENTER: Rabbi...

RABBI: So our communities are talking about being pro Israel and pro Palestinian. And it's interesting at Ramadan there were people last week, literally hundreds of Jews who you can see, who can be named, who are in public, fasting for peace alongside their Muslim friends and brothers and sisters. So people are out there fasting for peace, people are saying this is very difficult and they understand how complicated it is politically.

The Adviser concluded that whilst the allegations were serious, there had been clear and appropriate challenges, and the Rabbi took the opportunity to offer an alternative view. The Adviser noted this would be likely to fulfil the requirement of clause 4.4.18 of the Impartiality guideline:

"Contributors expressing contentious views, either through an interview or other means, must be rigorously tested while being given a fair chance to set out their full response to questions. Minority views should be given appropriate space in our output; it is not for the BBC to suppress discussion."

The Adviser therefore decided none of the points of complaint raised by the complaint would have a reasonable prospect of success and should not proceed to appeal.

Request for review by Trustees

Over the course of several emails the complainant stated that it would be helpful if staff could be reminded to make viewers aware of the standpoint of an interviewee, where it was relevant and where it was not immediately clear. He said listeners should have been pre-warned that the Second Contributor had a rather unique and arguably extreme standpoint which was not immediately clear from her description as a “journalist”.

The complainant pointed to a previous decision where the ESC had referred to “...the importance of clearly summarising the standpoint of nay [*sic*] interviewee where it is not immediately clear from their position or title of their organisation”.

He said his complaint was:

- entirely consistent with the previous complaint
- logically consistent
- morally correct as it campaigns for listeners to have the correct context and
- was valid and not refuted

The Committee’s decision

The Committee noted the complainant’s view, that viewers should have been informed of the Second Contributor’s standpoint as it was an extreme position. Trustees noted that the point had not been raised in the complainant’s letter of appeal, but they acknowledged it had arisen out of the complainant’s wider assertion that the Second Contributor’s view was not representative of British Jews.

The Committee considered it was clear from the outset of her contribution that the Second Contributor was expressing the view of someone who vehemently disagreed with Israel’s actions in Gaza and, as noted in the Adviser’s decision, she had stated she was not part of the mainstream British community and was not a practising Jew. In the Committee’s view there was nothing more the audience could or should have been made aware of and therefore there would not have been anything the interviewer could have usefully added. The Committee considered there was sufficient information in the contribution itself such that the audience would have been able to reach an informed understanding of the Second Contributor’s views and what weight it might place on them.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

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

Panorama: The Farage Factor, BBC One, 13 October 2014

The complaint

The complainant appealed to the BBC Trust on 5 January 2015 following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about an edition of *Panorama* called "The Farage Factor".

The complainant alleged that the programme had been biased against UKIP. He also disagreed with the ECU when it said, in its finding, that the BBC's editorial guidelines on impartiality were not relevant in this case, because the programme had taken the form of an investigation into allegations that had been made about Nigel Farage. The ECU believed that the relevant guidelines were those relating to fairness and in particular the "right of reply" that must be given to someone against whom allegations have been made. The ECU said that requirement had been met by attempts made by the programme's producers to secure an interview with Nigel Farage. However, the complainant believed that the impartiality guidelines were relevant.

The Trust Unit's decision

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

The Adviser acknowledged that the complainant felt strongly that the programme had "exhibited unacceptable bias", and had therefore engaged the BBC's guidelines on Impartiality. She noted his view that feedback he had received following the programme indicated that "nobody thought the Panorama programme was a serious attempt to investigate Nigel Farage; all thought it was a blatant attack on UKIP".

She noted the Editorial Guidelines required that all BBC output had to meet the standard of "due impartiality". This 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."

She considered the likely audience expectation and what signposting might have influenced it. She noted that *Panorama* was a very well established investigative series. She noted that *Panorama's* webpage for this programme, "The Farage Factor", included the following information:

"Ukip and its people's army have shaken the political establishment by attracting voters and defecting Tory MPs. It has been an extraordinary year for the once-fringe party. Reporter Darragh MacIntyre has been on the trail of the charismatic and controversial leader who claims he's revolutionising British politics, but is Nigel Farage really any different from the politicians he criticises?"

The Adviser also noted the introduction to the programme:

"UKIP have shaken the Westminster establishment - winning their first elected MP. Their growing popularity is the biggest challenge to the established parties in a

generation. UKIP preaches accountability so why are they so careful about what questions they will answer? Nigel Farage says he's a straight talker so why have so many colleagues quit in disgust? I'm on the trail of the leader who says he's not like other politicians."

The Adviser considered that audiences would be clear the focus of the programme was not UKIP generally and its policies, but its leader, Nigel Farage. She noted that the ECU response had informed the complainant that the Guidelines related to Impartiality were not the ones relevant to this complaint:

"The impartiality guidelines are designed to ensure that an appropriate range of views are presented when specific issues are being discussed. This programme took the form of an investigation into a number of allegations which had been made against Mr Farage and did not actually set out to be 'a review of UKIP' which might be concerned with UKIP policies or controversies surrounding those policies. Had it been so concerned the impartiality guidelines [could] well have been engaged but, taking the form it did, the key requirement upon the programme-makers was not to represent an appropriate range of views but to ensure that the person against whom the allegations were being made, Mr Farage, was afforded an appropriate opportunity to respond to those allegations and that any response was fairly and accurately represented."

The Adviser considered that this edition of *Panorama* had not set out to specifically scrutinise UKIP's policies but had clearly set out its purpose in its introduction. She was therefore of the view that the guidelines engaged in this case were those relating to Fairness, Contributors and Consent:

"We will be open, honest, straightforward and fair in our dealings with contributors and audiences unless there is a clear public interest in doing otherwise, or we need to consider important issues such as legal matters, safety, or confidentiality.

"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."

Considering the programme against these guidelines, she noted the response from Audience Services at Stage 1 which had set out in detail why the programme had felt it editorially justified to investigate aspects of UKIP:

"The success of the party means it will inevitably attract a degree of scrutiny which it didn't previously warrant. Mr Farage himself accepts this and has personally called for greater transparency and accountability. Indeed he recently stated: 'The bastion of a 21st century democracy has to be transparency and accountability.'

"Mr Farage is fiercely critical of the EU but has drawn wages and expenses from that institution since he was first elected in 1999. We felt it was editorially justified to point out that he has never published fully audited accounts, as he has himself said that EU finances should be better audited and had previously offered to have his income audited.

"It is in the same context that we examined his voting record. Our results were a

fair and accurate reflection of his record compared with other MEPs. However, the programme also explained that Mr Farage and UKIP are dedicated to subverting the EU project.

“Over the course of our research we spoke to dozens of people associated with UKIP. Many of them remain members, while others have left the party.

“Twenty five former senior members of the party, the vast majority of whom had been MEPs or members of UKIP’s National Executive Council, told us that they had left or been forced out of the party after falling out with Nigel Farage.

“This seemed a very high number and we felt it was editorially justified to look at why there was this level of discontent, particularly as Mr Farage and UKIP could yet be the ‘kingmakers’ at Westminster after next year’s election.”

The Adviser noted the requirements of the guidelines to offer the right of reply. She noted the response from the *Panorama* programme team at Stage 1 which had outlined the measures they had taken in this respect:

“In accordance with our commitment to impartiality and fairness we sought to get Mr Farage’s perspective about all of these matters and others, including the disquiet among once loyal party members about fundraising at the Ashford Call Centre. We spoke to him directly and had hoped he would give an interview for the programme. In the end Mr Farage chose to respond to us not by letter, but through a statement posted on his party’s website.

“The contents of this statement were accurately reflected in our programme.”

The Adviser also noted that some of the programme’s attempts to obtain an interview with Mr Farage and with the party’s MEPs were recorded in the programme itself. In this section of the programme Mr Farage accepted the need for scrutiny and was able to put forward his reasons for not, at times, co-operating with the media.

The Adviser then noted the complainant’s view that the programme had been “sneering in tone”.

She considered the beginning of the programme which had set out the views of a series of UKIP voters, illustrating that the party had loyal supporters. It also highlighted UKIP’s election successes. The programme acknowledged that UKIP had “growing popularity” and that Nigel Farage “had moulded a fringe protest group into a political force”. She also noted the response from the programme team at Stage 1 which explained:

“UKIP’s perspective was reflected from the start of the programme. A UKIP candidate and fundraiser Mr Alby Tebbutt was interviewed and spoke about how he has been attracted to the UKIP cause. Two former Labour voters, Tony and Fay Tsiappouli, explained why they were switching allegiance to UKIP.

“The significance of the party’s achievements and the party’s positive prospects were referred to throughout the programme, which concluded with the observation that UKIP could be ‘storming Westminster at the next general election’.”

Taking these points into account, the Adviser considered that Trustees would be likely to conclude that the programme had met the requirements of the Editorial Guidelines. She therefore decided the complainant's appeal did not have a reasonable prospect of success and did not intend to put it before the Trustees.

Request for review by Trustees

On 19 February 2015 the complainant requested that the Trustees review the decision not to proceed with his appeal. He said that:

- The programme should stand on its own merits. The references to a web page are misleading and the content of the page is immaterial.
- The opening statement of the programme reveals that the basic target of the programme is UKIP, the party, on the intimation it is other than open and straightforward. The programme was not only an investigation of Nigel Farage but also cast doubt upon the integrity of the party, as was apparent in the reporter's script: "UKIP preaches accountability so why are they so careful about what questions they will answer? Nigel Farage says he's a straight talker so why have so many colleagues quit in disgust? I'm on the trail of the leader who says he's not like other politicians."
- The tone of the programme, being the tone of delivery by the reporter, was at all times sneering: this cannot have been accidental. The chosen style of delivery was a major contributor to the view that this programme was no more than a blatant attack on UKIP.

The complainant said the programme was an attack on UKIP through the device of an investigation into Mr Farage. The programme was unacceptable whichever party it had been aimed at. He asked that the complaint be looked at as a whole based on a first viewing. He said that this was about the way the BBC is perceived and governed.

The Committee's decision

The Committee considered that the programme had set out its agenda from the start and that viewers would have been likely to understand from the introduction that the focus of the programme was UKIP's leader, Nigel Farage. However, it accepted that a programme about Mr Farage as party leader reflected aspects of the party itself.

The Committee therefore agreed with the complainant that the BBC's Editorial Guidelines relating to impartiality were relevant to the complaint. The Committee noted that the Editorial Guidelines call for the BBC's output to apply due impartiality to all subjects and that:

"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."

Trustees noted that this was a BBC One programme for a general and not a specialist audience. Trustees agreed that audiences expected *Panorama* to be investigative and robust but fair in its approach. In terms of impartiality this meant that, whilst not every individual point would need a counter argument, overall the programme should approach any examination of the party with the impartiality applicable to a controversial subject,

especially in the run-up to a General Election. Trustees particularly noted Editorial Guideline 4.4.8:

“Due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue... When dealing with ‘controversial subjects’ this should be clearly signposted, should acknowledge that a range of views exists and the weight of those views and should not misrepresent them.”

Trustees also noted that the approach and tone of news stories must reflect the BBC’s commitment to impartiality. (Editorial Guideline 4.4.12)

Trustees turned to the specific programme content.

They considered that the purpose of the programme had been clearly signposted through its introduction, which stated:

“UKIP have shaken the Westminster establishment - winning their first elected MP. Their growing popularity is the biggest challenge to the established parties in a generation. UKIP preaches accountability so why are they so careful about what questions they will answer? Nigel Farage says he’s a straight talker so why have so many colleagues quit in disgust? I’m on the trail of the leader who says he’s not like other politicians.”

The Committee considered the programme had advanced a position – that UKIP had become increasingly popular and, therefore, increasingly important and that its leader had questions to answer. This position had been set out in the pre-title sequence.

Trustees noted that the significance of the party’s achievements and its positive prospects were referred to throughout the programme. For example, the reporter introduced Nigel Farage by stating:

“He’s moulded a fringe protest group into a political force. UKIP swept to victory in the European elections.”

Trustees considered that a wide range of views had been presented in the programme, with views provided from UKIP candidates and supporters of Mr Farage and UKIP as well as views provided from opponent MEPs and former senior UKIP figures.

As part of the wide range of views highlighted in the programme, Trustees noted that the programme included a series of criticisms of Mr Farage and the way UKIP operated, from opponent party MEPs and former senior figures of UKIP:

- The programme set out how Mr Farage had set up a call centre to raise funds for UKIP; however, it was claimed by former senior UKIP figures that funds flowed disproportionately into Mr Farage’s own European constituency.
- A former senior UKIP figure stated that there was a lack of transparency from Mr Farage about how the money was spent.
- The programme cited Mr Farage’s voting and attendance record in the European Parliament as poor (supported by opponent party MEPs).

- The reporter stated: "We've spoken to 25 former senior party members who told us they left or were forced out of UKIP after falling out with Nigel Farage." The programme included an interview with a former senior UKIP figure claiming this.

In terms of supportive coverage, Trustees noted that the programme included an interview with a UKIP candidate and fundraiser, Mr Alby Tebbutt. He was introduced as having been attracted to UKIP after previously supporting the Conservative Party and he stated:

"I'm doing it for the kids of this country, my children and my grandchildren and for the ordinary people of this country. This country's still in my opinion one of the best countries in the world, right, without any doubt."

The Committee noted too that the programme also included the views of two former Labour supporters who had switched their support to UKIP. Mr Tony Tsiappouli stated:

"... my father and my mother come over here from Cyprus in fifty-seven. They – they didn't come over here, let's say, getting any hand-outs. They come over here and they worked for their living. You know, they never got hand-outs from no one. But like now it's a different ball-game?"

Mr Tsiappouli went on to state that he considered UKIP was "probably talking more common sense than everyone else".

The programme reported Fay Tsiappouli's concerns about the benefits she felt were given to immigrants:

"The minute they come over they get somewhere to – somewhere to stay, I don't understand."

It was noted that the programme referred to the election of UKIP's first MP, Douglas Carswell and stated:

"It's a huge coup for Nigel Farage – and a sign of the public's disillusionment with traditional politicians."

Mr Farage's statement after Mr Carswell's election was also included:

"We have a career political class of college kids who have never had jobs in their lives, who have absolutely no connection with ordinary people and how they are struggling. We need new people. We need change. Real change."

Trustees noted that the Tsiappoulis were seen again at the end of the programme. Mr Tsiappouli stated:

"...he's just a normal fellow really, just trying to talk a bit of common sense and been taken the wrong way. At the end of the day, he's only trying to do what's best for people in Great Britain – where his home is..."

They noted that the final commentary to the programme included the statement:

"If voters continue believing in plain-speaking Nigel, then his people's army really could be storming Westminster at the General Election."

While the programme-makers did not secure a formal interview with Mr Farage, there was an impromptu interview with him in the European Parliament building, lasting a little over two minutes. The main line of questioning was about whether Mr Farage would give an interview to *Panorama*. Mr Farage initially agreed to do so, but subsequently did not. Mr Farage described some of the people *Panorama* had been talking to as the “dregs of our rejects, many of whom we don’t regard to be particularly reliable witnesses”.

Trustees considered the programme had properly reflected a range of views and had given sufficient information to enable audiences to understand what weight to attach to those views. The programme made clear the difference between opinion and fact.

Trustees noted the complaint about the tone and approach of the programme. The Committee agreed this was an important investigation, in the public interest, about the leader of a political party which had achieved a significant level of public support. Trustees concluded that the investigative approach and the challenging tone were appropriate given the nature of the subject matter.

Trustees noted the BBC’s Impartiality principle 4.2.5 which stated:

“We exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.”

Trustees considered there were good editorial reasons to make the *Panorama* programme.

The Committee did not consider that this complaint had a reasonable prospect of success, nor that it was appropriate, proportionate or cost-effective to consider on appeal.

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

Top Gear: Patagonia Special, BBC Two, 27/28 December 2014

The complaint

The complainant contacted the BBC on 4 October 2014 to express his concern about the *Top Gear: Patagonia Special*, which at that time had been filmed but had not yet been broadcast. He did not believe that the car number plate 'H982 FKL' shown in the programme was a randomly allocated number; he believed it was a deliberately chosen reference to the Falklands War fought in 1982. He said it was a racist and inflammatory act by the programme makers which mocked their Argentinian hosts.

He asked to meet with the Director-General and the Chairman of the BBC Trust to ask them what the BBC stood for in 2014.

BBC Audience Services responded on 6 October 2014 stating that they had consulted the programme makers who would like to assure viewers that it was an unfortunate coincidence and the cars were neither chosen for their registration plates, nor were new registration plates substituted for the originals.

The complainant did not believe this explanation and sent a follow-up complaint on 9 October 2014.

Audience Services sent a second response on 30 October 2014 explaining that the BBC had received a great deal of feedback in response to the publicity surrounding the filming of the programme before it was broadcast and a consolidated response was sent to complainants by the BBC Complaints Management & Editorial Standards Adviser. The response included the blog written by the Executive Producer of *Top Gear* which denied allegations that the number plate had been deliberately chosen by the production team and sought to impress upon complainants that the BBC had treated the matter with the utmost seriousness.

The response also acknowledged that the complainant might have been hoping for a more personalised response, but explained that in the interests of efficient complaints handling and the need to ensure appropriate use of licence fee funded resources, the BBC's Complaints Procedure permitted the same response to be sent to each complainant.

The complainant escalated his complaint to Stage 2 on 31 October 2014. The ECU acknowledged receipt on 17 November 2014 and explained that it could take up to 35 working days to issue a response.

In the meantime, on 23 November 2014, the complainant then submitted a complaint to the BBC Trust in which he complained about the handling of his complaint and said he had not received any communication from the Director-General or the Chairman of the BBC Trust as he had requested. He said his complaint had not been handled appropriately and his freedom of information requests had been denied.

The Trust Unit responded to the complainant on 8 December 2014 explaining that the Chairman of the BBC Trust was not able to respond to all correspondence individually due to the volume she received. The Trust Unit explained that it could not speak for the BBC Director-General as the Trust operated independently from the BBC Executive but thought a similar situation would apply. The Trust explained that the complaint would need to be

dealt with according to the BBC's Complaints Procedure which meant that Audience Services had to be given a further opportunity to respond to the complaint.

The complainant sent a further email to the Trust Unit on 18 December 2014 reiterating the concerns he expressed to the ECU on 31 October 2014 as part of his Stage 2 complaint and stated that his complaint had been very poorly handled in terms of accuracy, the length of time he had had to wait for a response, and that his requests for a meeting with the Chairman of the Trust and BBC Director-General had been ignored.

The Trust Unit sent a further response on 22 December 2014 apologising for the fact that the Chairman of the BBC Trust was not available to meet the complainant as he had requested. The Trust Unit checked the complaints history and was under the impression that the complaint was still at Stage 1b. The Trust Unit therefore informed the complainant that if he remained dissatisfied, the next stage of the complaints process would be for him to request a Stage 2 response from BBC Senior Management. The complainant submitted this request but was unhappy at being told his complaint was still at Stage 1b and he needed to submit a request for a Stage 2 escalation as he had already submitted a Stage 2 request to the ECU on 31 October 2014.

The ECU wrote to the complainant on 23 December 2014 enclosing the Stage 2 response from the Controller, Entertainment Commissioning, which had been previously issued.

The complainant responded to the ECU and the Trust Unit on 23 December 2014. He said that he had received the Stage 2 response but was unhappy that he had been told by the BBC Trust, following receipt of that Stage 2 response, that his complaint was still at Stage 1b which appeared to be wrong. He asked why this misleading information had been issued by the Trust Unit and did the Trust not check its facts?

With regard to his Freedom of Information (FOI) request, he was unhappy that the response he had received on that point from the FOI Unit referred to the "Chinese Top Gear" when his request concerned the "Argentine Top Gear" episode. He asked for confirmation that the FOI response was related to the correct programme.

He said the complaint handling had been "tardy and uncooperative" and he wanted to escalate his concern about this.

He also wanted the BBC Trust to investigate his substantive concerns about the Argentine *Top Gear* programme properly.

Appeal to the BBC Trust

The complainant's email to the ECU of 23 December 2014, copied to the Trust Unit, was considered as his request for an appeal; this appeal was submitted before the programme was first broadcast in two parts on 27 and 28 December.

The substantive complaint concerned the car number plate used in the *Top Gear Patagonia Special* which the complainant considered an inflammatory racist act on the part of the programme makers.

He also appealed about the handling of his complaint as previously outlined.

The Trust Unit's decision

The Head of Editorial Standards, BBC Trust, carefully read the correspondence that had passed between the complainant and the BBC.

The Head of Editorial Standards, BBC Trust, noted that the Executive had issued, prior to broadcast of the programme, a detailed response explaining that the number plate controversy which occurred during filming in Argentina was the result of an unfortunate coincidence, and the cars were neither chosen for their registration plates, nor were new registration plates substituted for the originals.

At Stage 2, the Controller of Entertainment Commissioning stated in his consolidated response:

“Maintaining the reputation and integrity of the BBC is paramount to us. The BBC would never seek to deliberately offend any Argentinian citizen, and I assure you that BBC Management has treated the issues you have raised by the Top Gear filming very seriously. As with all incidents of this nature, BBC Television conducted a full internal operational assessment. To date, there is nothing that we have seen or read since the team returned which supports the view that the number plates in question were deliberately employed, which is in-keeping with what production staff and the presenters have said.”

The Head of Editorial Standards, BBC Trust noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” and “the operational management of the BBC” are specifically defined in the Charter (Article 38, (1) (b and c)) as the responsibility of the Executive Board.

The Head of Editorial Standards, BBC Trust, was of the view that Trustees would consider that decisions relating to the broadcast and scheduling of programmes were day to day operational matters for which responsibility rested with the BBC Executive rather than the Trust. Similarly the investigation of events during filming of this nature which had given rise to press speculation was also an operational matter. No evidence had been presented which demonstrated that the use of the number plate was a deliberate reference to the Falklands War and that therefore the Executive’s investigation had been flawed. In the view of the Head of Editorial Standards this appeal did not raise a significant issue of general importance which was the threshold at which the Trust would become involved in considering an operational complaint.

The Head of Editorial Standards noted that the programme had not yet been broadcast at the time of either the original complaint or the submission of the appeal. If the complainant wished to pursue his complaint following the broadcast of the programme, it was open to him to make a further Stage 1 complaint under the terms of the BBC’s complaints procedure within thirty working days of the broadcast of the programme he considered to be offensive.

The Head of Editorial Standards then looked at the handling of the complaint. She was sorry to learn that the complainant had been so dissatisfied with the length of time it took for responses to be issued and that he considered his requests for information to have been ignored. She also regretted that he had experienced conflicting information regarding the progress of his complaint at Stages 1b and 2.

With regard to the Stage 2 escalation, she noted that the ECU had informed the complainant on 17 November 2014 that it could take up to 35 working days to investigate the complaint. When the complainant then submitted his concerns to the BBC Trust on 23 November, she noted that he was not following the process outlined in the BBC's Complaints Process. The Trust Unit operates independently from the BBC Executive and was not involved in the complaint investigation at that point. The Trust was not aware that the complainant had already submitted a Stage 2 escalation request. Therefore the Trust's response at that time was based on the understanding that the complaint was still at Stage 1.

The Head of Editorial Standards noted that the Trust Unit explained in their emails of 8 December 2014 and 22 December 2014 that the Chairman of the BBC Trust was not able to respond to correspondence or arrange to meet with complainants.

With regard to the complainant's FOI request, she regretted that he had received information which referred to the "Chinese" episode but she noted that the ECU had copied in the FOI Unit's enquiry email address in their response of 23 December 2014 as a point of contact in order for the complainant's point to be clarified directly with the FOI Unit who would be able to locate relevant information not available to the ECU.

Overall, the Head of Editorial Standards believed that Trustees would be of the view that the complaint had been handled courteously, in a reasoned and reasonable manner, and that responses had been issued within appropriate time frames.

The Head of Editorial Standards, BBC Trust, believed that the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He observed that the process had been full of administrative errors which

"could be seen as having been intentional, in order to deliberately obstruct the proper investigation of my serious concerns".

He said the BBC Trust's failure to meet the 40 day requirement for a response without supplying a reason was a breach of its own procedure. In light of this error, the complainant questioned the Trust's ability to adequately assess his complaint. He asked whether Trustees should be informed when the Trust Unit fails to meet its requirements.

The complainant said his complaint has been "fundamentally misunderstood" which he saw as a "breach of the good faith that should exist between the licence fee payer and the BBC". He said the specifics of his case had been ignored. He asked why the Belgrano's home port was selected for the finale of the programme. He also asked why the number plate found in Jeremy Clarkson's car was not referred to in the Head of Editorial Standard's response.

In a second submission, the complainant noted the time taken for his complaint to be considered. He asked if he could present his case to the BBC Trust in person.

The Committee's decision

Preliminary decision

Trustees noted the complainant's request to present his case in person. However, as outlined in the Editorial Complaints and Appeals Procedure, the Trust invites parties to put their case in person only in exceptional circumstances. On this occasion, Trustees did not feel it was necessary to hear from the complainant in person as there were no exceptional circumstances. The correspondence covered the issues to be considered in adequate detail for Trustees to deliberate.

Finding

The Committee noted that this complaint centred on the *Top Gear Patagonia Special*, prior to broadcast. Trustees were aware that complaints relating to this broadcast had been received by the BBC and that, in accordance with its Complaints Procedure, the BBC had issued a consolidated response. The Committee noted that the complainant felt the specifics of his complaint had never been addressed. The Committee appreciated that receiving a consolidated response could be frustrating but it saw no evidence of a deliberate attempt to avoid serious consideration of this complaint.

Noting the points specifically raised in his request to review the Trust Unit's decision, the Committee agreed that the choice of location in a programme, such as the town which was also the Belgrano's home port, was a matter of the direction of the "editorial and creative output" of the BBC which the Royal Charter explained was a matter for the BBC Executive and not the Trust.¹⁷

The Committee noted the complainant's dissatisfaction with the handling of his complaint. Trustees considered that his request to meet the Director-General or Chairman was disproportionate and his complaint that this had not occurred was without merit. Trustees noted that the BBC received in the region of a quarter of a million complaints contacts a year and agreed that it is not appropriate to give individual complainants access to the Director-General or Chairman.

The Committee also noted the complainant's dissatisfaction with the handling of his complaint by the Trust Unit. Trustees regretted that at one stage the Unit had informed the complainant he was at Stage 1b of the complaints system when he was actually at Stage 2, but they accepted that the Trust Unit had not been aware that the complainant had escalated his complaint. Trustees were aware that the Trust Unit had missed a deadline, as noted by the complainant. Trustees regretted the three-day delay but understood an apology had been given for the error and so considered the matter to be resolved. The Committee noted that it received a list of all appeals and whether they had met the timeframe set by the Trust at the date at which an appeal was considered by the ESC. Annual key performance indicator (KPI) figures were published in the BBC's Annual Report and Accounts.

Turning to the filming of the edition of *Top Gear*, Trustees noted that the BBC had explained they had seen no evidence that number plates had been used as a deliberate reference to the Falklands War:

¹⁷ Trustees asked the Trust Unit to conduct further research into the issue raised by the complainant relating to the number plate found in Jeremy Clarkson's car. The Chairman was later informed that the complainant received a response from the ECU on 30 October 2014, which incorporated the blog written by the Executive Producer of *Top Gear* and responded to this point.

“To date, there is nothing that we have seen or read since the team returned which supports the view that the number plates in question were deliberately employed, which is in-keeping with what production staff and the presenters have said.”

Trustees agreed that the investigation of the issues raised about the filming of this programme was an operational matter for the Executive and that no evidence had been presented that had undermined the Executive’s position.

Consequently, Trustees did not consider that this complaint had a reasonable prospect of success.

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

Countryfile, BBC One, 24 August 2014

The complaint

The complainant said that the programme had been both inaccurate and misleading by saying that there was a cull of badgers in the 1960s.

The complainant said that one of the strongest arguments that bovine TB can be controlled without culling badgers was the fact that it was brought down to an extremely low level in the 1960s using nothing but a strict cattle testing regime.

The complainant said *Countryfile* had referred to how this testing regime had reduced bovine TB but had then immediately countered the argument by stating the reduction in TB went in parallel with gassing badgers. The complainant said the programme failed to substantiate its claim that gassing of badgers took place in the 1960s and the comment had only been supported by a piece of film being used showing gas equipment being unloaded from a Land Rover registered in 1974 when the complainant said official culling did take place with no associated sharp decline in bovine TB. The complainant said only guesswork could determine whether farmers were gassing badgers on a significant scale in the 1960s.

The complainant said that viewers would have inferred wrongly from the programme that an official government-backed badger cull took place in the 1960s, rather than unproven activities of an unknown number of farmers, and were also invited to make a link between a supposed cull of badgers and the significant reduction in bovine TB during that period.

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold his complaint about *Countryfile*.

The Trust Unit's decision

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

The Adviser began by reviewing the content of the programme. She noted that in its introduction, *Countryfile* had said that it would be looking at whether gassing would be a better way to cull badgers or whether it would be better to leave badgers and concentrate on more regular TB testing of cattle.

She noted that the first section of the film contained interviews with a farmer who said that gassing badgers would be more efficient than shooting them and an ecologist who had witnessed badger gassing in the 1970s and 80s and said that it was not humane.

The Adviser noted that the second section of the film began with an interview with the Chief Vet for Wales who said that the annual testing of cattle had significantly reduced cases of TB in the country.

She noted that the *Countryfile* presenter then said:

"This is not the first time that regular testing has been linked with a decrease in the number of infected cattle. Turn back the clock fifty or sixty years and the UK pretty much had bovine TB under control. Back in the early 1960s high intensity

testing, it helped reduce the number of infected cattle by over three quarters in just four years, from over 25,000 to 6,000 cattle slaughtered. But you have to bear in mind that at the same time, the culling of badgers was widespread, making it almost impossible to prove the effectiveness of regular testing. So how can we be sure that it really does make a difference?"

The Adviser noted that part of this commentary was illustrated with a clip of a Land Rover driving into a field and men unloading gassing equipment before being seen digging with spades.

The Adviser noted that the programme then interviewed two scientists from Warwick University who had developed a mathematical model which simulated the spread of TB. She noted that they told the programme that one of their key findings was how efficient it would be to do additional cattle testing.

Having examined the programme, the Adviser then looked at the evidence for suggesting that the culling of badgers was widespread in the 1960s. She noted there were no official statistics at this time as there was no government legislation protecting badgers.

However, she noted that the Badger Trust, which promotes the study, conservation and protection of badgers, had said of that period:

"Up until the 1960s numbers continued to increase, however between 1960 and 1972 numbers once again began to decline. This was due to the increasing number of badgers killed on the roads and railways, combined with a possible reduction in fertility resulting from the over use of pesticides and the increase of illegal gassing and shooting on farms and estates."

The Adviser further noted that the RSPCA web site pointed to badgers being targeted in the 1960s. She noted that the government introduced some legal protection for badgers in 1973 and that the RSPCA site states of the Badgers Act:

"Badgers were given some limited protection in 1973 but weaknesses in the law meant that badger setts were still being dug, bulldozed, blocked or the animals cruelly killed."

Given that both these organisations suggested that there had been considerable effort to kill badgers in the 1960s, the Adviser considered that it had been appropriate for *Countryfile* to raise this when considering whether the fall in cases of bovine TB during that period was entirely a direct result of regular testing of cattle.

The Adviser noted that the presenter had mentioned the culling of badgers only in the context of asking whether one could be sure that regular testing of cattle did make a difference. She noted that the two scientists interviewed after this question was posed said such testing did make a difference and supported the idea of increasing cattle testing nationally. She also noted that the Chief Vet of Wales had also spoken of the benefits of regular cattle testing in reducing TB.

The Adviser concluded that the programme had not sought to mislead the audience by making an unsubstantiated link between badger culling and a reduction in bovine TB and had, in fact, made clear to viewers that there was evidence to support regular testing.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the investigation into his complaint had sought to look at the overall balance of the programme while he was concerned about just one statement.

The complainant said that the reporter had referred to a dramatic and significant reduction in bovine TB in the 1960s brought about by a strict cattle testing regime. He said that this was extremely important evidence in showing why cattle-based measures for controlling TB are more effective than culling badgers.

The complainant said that the reporter had then said that these cattle-based measures in the 1960s went in parallel with gassing badgers. He said that this was at the heart of his complaint as he believed that any culling was happening before, during and after the cattle testing regime of the 1960s making it irrelevant. (That is, because it did not start at the same time as the cattle-based measures, it had no bearing on the reduction in numbers of cattle infected with TB during that period.)

The complainant said that viewers would have inferred that an official gassing procedure had existed in the 1960s and this false impression was supported by film of gassing equipment being unloaded from a Land Rover. He said that the Land Rover in the clip was not registered until 1974 so the programme had misled viewers by using it. No-one had sought to justify this.

The complainant said the Adviser had stated that there were no statistics to back up the statement that culling became widespread in the 1960s.

The complainant said that the Adviser had quoted the Badger Trust as saying badger numbers began to decline during the 1960s but noted that this did not mirror the dramatic reduction in bovine TB during the same period. He added that shooting and gassing was only one of several reasons given by the Badger Trust for the decline in badgers and that it offered no evidence to substantiate this suggested increase in shooting and gassing. He went through the various reasons advanced by the Badger Trust and advanced arguments in each case. He said that there was nothing to support the Adviser's statement that both the Badger Trust and the RSPCA had suggested there had been a considerable effort to kill badgers during this period. He argued that the RSPCA statement was not supported by evidence and that it did not imply a sudden change coinciding in the improvement in bovine TB. He also noted that much unofficial killing took place after the first badger was found with TB in 1971.

He noted the reply had looked at whether the BBC "sought to mislead" but said this was not his argument; he argued the BBC had misled inadvertently or otherwise.

He concluded by saying that the 1960s showed that bovine TB can be controlled by cattle-based measures alone without culling badgers and so was of immense importance. He said the impact of this fact was significantly diluted by the programme because of what he described as one unguarded and unsubstantiated statement, which was supported by false film evidence, and this mistake needed to be corrected.

The Committee's decision

The Committee noted the complainant's arguments and that he considered that *Countryfile* had been inaccurate and misleading.

Trustees understood that the complainant was concerned about a single line which he considered to be vitally important, but Trustees believed that due accuracy and due impartiality had to be judged in context and that it was not improper to consider the surrounding material when looking at the issue.

The Committee noted that the programme had set out to examine whether gassing would be a better way to cull badgers or whether it would be better to leave badgers and concentrate on more regular TB testing of cattle. The Committee noted that, in order to do this, the programme interviewed people both in favour of and against gassing, as well as those who believed regular testing of cattle for bovine TB made a real difference in reducing incidence of TB.

The Committee then turned to what the reporter had said about the reduction of bovine TB in the early 1960s. It noted that he had pointed out that high intensity testing during this period had helped reduce the number of infected cattle by over three quarters in just four years. It noted that the reporter had then said that the culling of badgers was widespread at the same time, so making it almost impossible to prove the effectiveness of regular testing. It noted that this led the reporter to ask how one can be sure that regular testing really does make a difference.

The Committee noted that in the 1960s there were no official statistics on badger numbers or numbers culled as there was no government legislation protecting the animal. It noted though that the Badger Trust had said numbers were in decline between 1960 and 1972 partly because of "the increase of illegal gassing and shooting on farms and estates".

The Committee noted that the complainant believed the Badger Trust had no evidence to support this assertion. It also noted his opinion on the RSPCA statement. However, the Committee also noted that The Badgers Act was passed in 1973 and considered that this showed that lawmakers at the time clearly believed that the animal was in peril and needed protecting. It noted the complainant's point that the first badger with TB was identified in 1971 and his argument that this led to a surge in the illegal killing of badgers. However, because of the lack of statistics on badger numbers in the 1960s, the Committee believed there could be no certainty on whether more or fewer of them were killed during the period when high intensity testing of cattle took place. As a result, it considered that it was fair for the reporter to ask how one could be sure that regular testing was the decisive factor in reducing bovine TB during this period.

The Committee then noted that the complainant believed the programme had misled viewers by inferring that an official gassing procedure had existed in the 1960s and that this false impression was supported by film of gassing equipment being unloaded from a 1970s Land Rover.

The Committee noted again that the intention of the report was to look at whether using gas to kill badgers was the right solution to stopping the spread of bovine TB. However, it could find no evidence that the reporter, when talking about culling in the 1960s, had inferred or stated that there was a government or officially sponsored gassing programme.

It noted that a short clip was shown of gassing equipment being unloaded from a Land Rover not registered until 1974. It acknowledged that it would have been better if the programme had shown a clip dating from the 1960s. However, the Committee was of the

view that as culling did take place in the 1960s this was duly accurate and simply demonstrated one way in which gassing took place. It noted the complainant's arguments that illegal gassing would have been carried out in a different way but did not accept that viewers would have inferred from this clip that gassing was official. As a result, it did not believe that the clip was materially misleading.

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

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

News at Ten, BBC One, 12 August 2014

The complaint

A number of complainants contacted the BBC about a report from Gaza broadcast on the *News at Ten* as talks were ongoing to end the conflict between Israel and Hamas. This was the introduction:

“As negotiators for Israel and the Palestinians take part in talks mediated by the Egyptian authorities, questions remain about the conduct of the conflict. The United Nations Human Rights Council has appointed an independent commission to investigate allegations of war crimes on both sides.”

The item featured footage supplied by a third party which claimed to show a Palestinian civilian being shot by an Israeli sniper as he searched bombed out streets for his family. A complainant alleged that the footage was not genuine.

A second point of complaint concerned the reporter’s assertion that there was no evidence for Israel’s claim that Palestinian militants were using their own civilians as human shields. Complainants said there was abundant evidence.

The complainants received responses at Stage 1 from BBC Complaints and at Stage 2 from the Editorial Complaints Unit (ECU). Neither of the points of complaint were upheld.

The Senior Editorial Complaints Adviser read each appeal and considered their respective merits individually, in deciding whether each qualified for consideration by the Trust. Her consolidated decision dealt with all the issues that had been raised and was intended to ensure that the key reasons for the decisions were communicated to complainants in an efficient manner.

Appeal to the BBC Trust

Two issues were raised across the appeals and are summarised here; greater detail is in the decision section below.

- the report inaccurately stated that “there was no evidence of the use of human shields” by Palestinian militants when there was evidence at the time of broadcast; the reporter would have been aware of it and chose to ignore it
- the BBC was either duped into running fake footage depicting the alleged killing of a Palestinian by an Israeli sniper, or the footage was real but had been edited to misrepresent what really happened.

The Trust Unit’s decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser watched the news report and an independent editorial adviser also reviewed the relevant output and carried out further research.

The Senior Editorial Complaints Adviser (the Adviser) decided that neither of the points of complaint should proceed to appeal.

The Adviser considered first the challenge to the authenticity of video footage supplied by a third party which was featured in the news report. She noted the relevant sections from the item which began with sequences from the supplied footage and was followed by a BBC interview and footage filmed at the same location:

REPORTER:

(On screen caption: International Solidarity Movement Video 20th July)

This is one of many cases Palestinians want the UN to investigate. International activists searching for the dead and the wounded during a brief ceasefire. In the green t-shirt a 22 year old local man, Salem Shamaly, looking for relatives. A shot rings out, apparently from an Israeli sniper. Salem was hit but was still calling out, still alive. After two more shots he was dead. British activist Rina Andolini is the woman in the video, an eyewitness to the killing.

RINA ANDOLINI, International Solidarity Movement:

I've never seen anyone pretty much just shot dead in front of me. And no reason you know. No reason. No reason whatsoever. A young lad just wanting to look for his family. Clearly distressed, as anyone would be in that situation. You know, you go to find your family and you end up dead. Where's the justice?

REPORTER:

Back in the rubble Salem's mother is calling on Hamas to avenge her son who was about to graduate from college. The Israeli army told us it cannot verify any of the circumstances in the video, but is reviewing the case. It says it does not target civilians in any circumstances.

The Adviser noted the relevant detail from the complaint:

"If he was shot [the reporter] doesn't know who shot him, let alone whether it was an Israeli soldier. Hamas have killed dozens of their own tunnel diggers and this could be another example. Andolini [the international activist in the video] would not have been able to tell who shot him if he was shot at all...Either the event is completely staged or the video is genuine footage, but so edited to make the audience believe a story that is quite different than the actual event."

The Adviser noted the complainant's statement that the footage had been called "into doubt":

"Al Jazeera published a list of all those who died during the fighting in Gaza this summer. There were some who were unidentified, but if this video had been genuine it would have been easy enough to identify him. The Al Jazeera list was updated daily ...Salem Shamaly was not and still is not on the list. The closest name was Mohamed Saleh Shamaly, but he was 60 years old, not 22."

The Adviser noted the ECU's response at Stage 2:

"You have said that the video of the death of Salem Shamaly shown in the report has been 'called into doubt'. I would not afford the critique that you have pointed to the same weight as the testimony of the eyewitness shown in the piece and I do not agree that this analysis serves to prove that the event did not occur. In any case it was not asserted that this was an Israeli action, only that the shot [*sic*] "apparently from an Israeli sniper" reflecting on what the video appeared to show but not

endorsing any one version of events. The response of the Israeli military was also aired, including that they are investigating the incident and do not target civilians.”

The Adviser shared the ECU’s view. She noted the reporter’s statement informing the audience that it was the Palestinians who were calling for the investigation and also the inclusion of Israel’s perspective on the event. The Adviser noted too that the Israeli army had not asserted the footage was faked, but only that they had not been able to verify it and were conducting a review. She agreed also with the ECU that the evidence submitted by the complainant did not prove that the event did not occur. And finally she noted that the BBC had been to the scene itself to corroborate what it was able to, had conducted its own interview with the eyewitness and spoken to the victim’s family.

The Adviser concluded that the reporter’s reflection of events in the item went no further than the known facts allowed.

The Adviser noted therefore that the output appeared consistent with the relevant clause from the guideline on Accuracy where it states:

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.

The Adviser then considered the second issue raised by the complaint, that the highlighted sentence in the following section of commentary was inaccurate:

REPORTER

While there are growing claims against Israel, it claims that civilians here have been used as human shields – but so far there’s been no evidence of that. During this conflict Palestinian militants have kept a low profile, avoiding the cameras. But we know that at times they have operated from civilian areas. A rocket was fired from this waste ground about ten days ago. There was no ceasefire at the time – but you can see that just across the road, there are people living in these apartments.

These images were filmed by Indian TV just up the road. They appear to show militants firing rockets near their hotel (Captions “ Hamas team assembles rocket under tent” and “ Hamas rocket fired from residential area”)

Below is a summary of the range of arguments submitted by complainants in their appeals on this point:

- Hamas has been boasting of their use of human shields for many years now. It seems ridiculous for the BBC to deny it
- There is explicit evidence of Palestinian militants actively coercing or encouraging civilians to occupy buildings to deter the IDF
- It was widely reported that the Hamas leadership ran operations from inside Shifa Hospital
- Other media outlets were able to find and record evidence on video

- An interview with another BBC correspondent for Radio 4's *Feedback* programme (on 1 August) described children being brought to buildings whilst rockets were being launched from Hamas militants. This was clearly, and by definition, the use of human shields
- the ECU's argument that the densely populated nature of the Gaza Strip might be a reason that Hamas had no option but to fire from civilian areas was not sustainable; the complainant supplied links to aerial maps showing what he said was an abundance of non-populated areas
- the definition of human shield was a "semantic" defence. Under the ICRC's Rule 97, headed "Human Shields", it states that:

"utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations' constitutes a war crime in international armed conflicts."¹⁸

The Adviser considered first the complainants' concerns that overwhelming evidence existed at the time that Hamas was using civilians as human shields and that to suggest otherwise was untrue. She noted that one point of dispute was how the term "human shield" was defined – and whether it meant Hamas using the proximity of civilians to deter an Israeli response to their actions or Hamas forcibly moving or keeping civilians in a location, on the basis that it would be likely to reduce the Israeli response. She noted that the ECU had addressed this point:

"I would accept that there may not be universal agreement over the meaning of 'human shield' in this context - and whether this should be understood to mean the deliberate placement of civilians near combat targets (and preventing them from leaving) or simply firing from residential areas. However I am not sure this distinction is significant in this context, given that viewers were told and shown evidence of what they had done to put civilian lives at risk."

She also noted and agreed with the ECU's statement in response to the script line that there was "no evidence" to support claims that Hamas had used human shields:

"To refer to the 'evidence' put forward by one side would not necessarily endorse their version of events and to that extent I would agree that this might have been better worded."

The Adviser considered, however, that the issue for her to consider was whether the choice of wording would have misled the audience on a material fact. She noted the broader context in which the sentence appeared. She noted the following extract from the ECU finding to one of the complainants:

"Given the explicit references to rockets fired from civilian areas and the inclusion of this footage I can see no prospect of audiences believing that this was not happening or that the actions of Hamas were not putting civilians at risk – which seems to me to be the central charge against them. I would accept that there may not be universal agreement over the meaning of 'human shield' – and whether this should be understood to mean the deliberate placement of civilians near combat targets (and preventing them from leaving) or simply firing from residential areas. However given that viewers were told and shown evidence of what they could be proven to have

¹⁸ https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule97

done to put civilian lives at risk, I am not sure this distinction is significant in this context.”

The Adviser reviewed the Radio 4 *Feedback* item from 11 days earlier which was referred to by one of the complainant's in their submission. She noted that the BBC correspondent on that occasion did not describe, as the complainant alleged, children being brought to buildings while rockets were being launched; there was in fact no mention at all of children in this context, but instead a reference to young men apparently being encouraged to leave the area:

“There was one day on a street we walked past an entry, an alleyway into a building and a man came out and he gestured to some of the young men who were walking on the street – sort of saying go go go. And we walked past not really knowing why he said that and then immediately a mortar was fired. We knew he had been firing mortars from inside that building. There's no doubt that Hamas, Islamic Jihad they're firing from inside residential areas, they're firing from open fields. They deny that they're using Palestinians as human shields. Of course it might depend on what your definition of human shield. Their defence would be, and the defence of Gazans when you say to them 'don't you blame Hamas for your fate, they're using your homes?' They say, 'well where can we go'. There's no place for them to go. It's such a densely populated area that they have no choice but to fire from in there. But for international human rights groups these are violations of international humanitarian law and both sides have been accused of violating it in this war.”

The Adviser noted that the *Feedback* item outlined the difficulty with stating that militants were using civilians as human shields, observing that it depends to some extent on the definition of a “human shield”. The Adviser reviewed all the links which were supplied to material published and broadcast elsewhere. She noted that the examples were broadly similar in nature to the footage which featured in the news item. She noted that material cited by one complainant, which showed civilians standing on the roof of a building, apparently to deter Israeli jets, did not demonstrate that those present had been forced to stand there. Hence the Adviser understood the basis for the reporter's caution.

The Adviser concluded that the audience would have been likely to have understood that there was a case for Hamas to answer in relation to the allegation that it was using civilians as human shields and that taking the section as a whole, the reporter had gone as far as she was able, with the facts that she was able to verify.

The Adviser decided neither point of complaint would have a reasonable prospect of success and the complaint should not proceed to appeal.

Request for review by Trustees

Two of the complainants to the consolidated appeal requested that the Trustees review the Adviser's decision not to proceed.

Regarding the allegation that the video footage supplied by a third party activist group showing the killing of a young Palestinian had been faked, Complainant A continued to assert that “there is no evidence other than that provided by ISM [International Solidarity Movement] that anybody called Salem Shamaly died during the Gaza War”. The complainant said the name was not on the list of deaths in the Gaza War published by Al Jazeera or on any official UN list or any other published list. He said the IDF had not been asked to investigate the case because it did not happen. He questioned the provenance of

the footage and alleged it was faked. He linked to a website which he said exposed details of the fake.

Regarding the second part of the complaint about this section of commentary:

“While there are growing claims against Israel, it claims that civilians here have been used as human shields – but so far there’s been no evidence of that.”

Complainant A continued to assert that the meaning of the term “human shield” in international law was clear and that his appeal contained numerous examples of breaches of the law by Hamas. He again highlighted the relevant clauses from the Geneva Conventions in support, and in particular the following sentence from Clause 28 of the Fourth Geneva Convention:

“The presence of a protected person may not be used to render certain points or areas immune from military operations.”

Complainant B, commenting on the same section of commentary and noting the Adviser’s agreement that it might have been better worded, said:

“This seems to me, quite weak tea by any rational standard. Instead of accepting my complaint, it is simply dismissed with the remark, that the report ‘might have been better worded’. Is this not what the entire complaint process is about?”

Complainant B noted this from the Adviser’s decision:

“the audience would have been likely to have understood that there was a case for Hamas to answer in relation to the allegation that it was using civilians as human shields and that taking the section as a whole, the reporter had gone as far as she was able, with the facts that she was able to verify.”

He said:

“This claim that the audience should be able to draw their own appropriate conclusions simply from the filmed footage is even weaker tea than the first point of justification for dismissal of my complaint! The Adviser is basically saying no matter what the reporter asserts, it should not impact the ability of the audience to understand the filmed footage. If this is the case, why use reporters at all? I fail to comprehend how such a line of reasoning justifies [the reporter’s] inaccurate reporting.”

The Committee’s decision

The footage of a death was faked

The Committee noted the grounds on which the complainant had appealed against the Adviser’s decision, i.e. that there was no external corroboration of the event.

The Committee noted the complainant’s claim that Mr Shamaly’s name did not appear on the Al Jazeera list¹⁹. Trustees noted that this list was published from the official register of deaths released by the Gaza Ministry of Health and included the following:

954. Salem Khalil Salem Shemali 22, male

¹⁹ <http://www.aljazeera.com/news/middleeast/2014/07/gaza-under-seige-naming-dead-2014710105846549528.html>

Trustees noted that the spelling was different but considered that, in the circumstances, there seemed to have been a death of an individual of the right age with a similar name. In particular, Trustees noted that transliteration of words and names from Arabic to English can result in varied spellings for the same name. This supported the account included in the BBC report. The Committee noted that dates related to when bodies were identified.

Trustees noted that: the video's provenance had been clearly captioned; the commentary said that it was the Palestinians who wanted it investigated; a British activist was an eyewitness; the commentary said that the shot was "apparently" from an Israeli sniper; and the Israeli army's statement that they had been unable to verify the incident and that they did not shoot civilians was included.

The Committee concluded that this element of the complaint would not have a reasonable prospect of success were it to proceed to appeal.

"Human Shields"

The Committee acknowledged the complainants' reference to international law. However, Trustees considered that it was clear from the report that the correspondent attached a precise meaning to her words when she said there was "no evidence" so far that civilians "had been used as human shields".

The Committee observed that the complaints, whilst clearly made in good faith, were predicated on testing the content by isolating a single sentence rather than considering the report overall and by a misinterpretation of what the reporter had actually said. It noted, for example, the section of commentary which followed:

"During this conflict Palestinian militants have kept a low profile, avoiding the cameras. But we know that at times they have operated from civilian areas. A rocket was fired from this waste ground about ten days ago. There was no ceasefire at the time. But you can see that just across the road there are people living in these apartments."

The Committee agreed that the subsequent sequences offered further clarification and would have accurately informed the audience that, even without actual evidence of civilians being coerced, there was substantial circumstantial evidence that Hamas had a case to answer.

The Committee therefore agreed with the Adviser that the complaint would not have a reasonable prospect of success were it to proceed to appeal.

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

9.15pm News, BBC News Channel, 11 August 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 a report on the BBC News Channel during a ceasefire in last summer's Israeli-Palestinian conflict.

The majority of the report was filmed in the tri-border area close to the crossings into Gaza from both Israel and Egypt. The editorial focus of the item was the Palestinians' key demand at the negotiations: a lifting of Israel and Egypt's blockade of the Gaza Strip so that normal trade could resume and people could once again enter and leave the territory freely.

The complainant alleged the report inaccurately stated that Israel imposed tight controls on exports from Gaza and restricted similarly what goes into the territory.

The complainant received responses at Stage 1 from BBC Complaints and at Stage 2 from the Editorial Complaints Unit. Neither of the elements of the complaint were upheld.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust on 29 December 2014. He quoted the following sentence from the reporter's commentary:

"Supplies rolling into Gaza today, coming across the border from Israel. And there's aid too. But the Israelis impose tight controls. Almost no exports leave here."

He said:

"The clear suggestion is that Israel tightly restricts what aid comes into Gaza and allows almost no exports out. That is not true. Israel brings in huge amounts of aid daily and has the capacity to supply considerably more, but it is not requested. (Israel doesn't pay for what goes into Gaza it only facilitates its delivery, so while the people of Gaza may want more the authorities in Gaza haven't ordered it.)"

The complainant cited in support of his assertion reports on the movement of goods published by COGAT²⁰, a division of the Israeli Ministry of Defence which implements government policy in the West Bank and Gaza Strip.

The complainant said the reporter had relied on the evidence of UN bodies and individuals who were biased against Israel. He cited the number of resolutions which had been passed against Israel by the UN General Assembly in 2014, in comparison with the rest of the world, and the "anti-Israel record" of some of those who analysed the situation in Gaza for the UN.

Regarding the level of exports from Gaza, the complainant said:

"Israel hasn't denied permits for any goods to leave Gaza through a [*sic*] crossing points for onward sale to a third country. Israel has stopped buying from Gaza for

²⁰ <http://www.cogat.idf.il/894-en/Matpash.aspx> and <http://www.cogat.idf.il/1927-en/Cogat.aspx>

its own market... The reason that Israel has stopped buying for its own markets is that due to Hamas hostility to Israel there is no reason to believe that supply won't be cut off whenever Hamas chooses to do so."

The complainant said it was the security situation and the need to protect the crossing point workers rather than Israeli policy which was responsible for closures of the commercial crossing point from Israel during the recent conflict.

With regard to imports, the complainant said:

"For the past four years all goods are allowed to enter Gaza from Israel, except for weapons and a short list of dual-use items which can be exploited by terrorists. The ban on weapons and the restrictions on dual-use items stem from the fact that since 2007, Gaza has been ruled by a terrorist organisation, namely Hamas, whose declared aim is the destruction of Israel. They are in place solely to protect Israel's citizens from Hamas' ongoing terrorist attacks."

The complainant concluded his appeal by stating that the report was "misleading and totally lacking in impartiality".

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser watched the relevant item and an independent editorial adviser also reviewed the output and carried out further research. The Senior Editorial Complaints Adviser (the Adviser) considered the appeal did not have a reasonable prospect of success.

The Adviser noted that the correspondent began her report from a crossing point, as a series of lorries was seen heading into Gaza:

REPORTER: Supplies rolling into Gaza today. Coming across the border from Israel. Most of this is bought by Palestinian businesses. And there's aid too. But the Israelis impose tight controls. Almost no exports leave here. Now with talks about a longer term ceasefire deal back on in Cairo, maintaining Israel's security and lifting Gaza's blockade are the key demands.

These lorries are bringing goods into Gaza from Israel's only commercial crossing point which is just down the road. Palestinians want it to be open more fully so they can trade effectively and then behind me you have the Rafah crossing point with Egypt. It's been mostly closed to travellers for the past year. But Palestinians say it should be Gaza's gateway to the world.

The Adviser noted the following from the ECU's response at Stage 2:

"The statement made by [the reporter] is, as you know, clearly supported by the statements and evidence of UNRWA, referred to in the response which you received at stage one. You believe, however, that UNRWA is not a credible source as it has a history of bias towards Israel. I am afraid that I cannot agree that its statements should be discounted, as you suggest, in favour of statements from the Israeli Ministry of Defence. Even if it could be demonstrated that UNRWA is 'biased' against Israel that does not in itself disprove that organisation's claims about the nature of restrictions being imposed by Israel any more than contrary

claims would be disproved by the mere fact that they emanated from the Israeli Ministry of Defence. The question is not whether the party making the claims is aligned with one side or another but whether their claims can be corroborated.”

The Adviser took a similar approach in deciding whether the complaint qualified to proceed to appeal; her judgement relied not on an assessment of the bias or otherwise of UN bodies but on whether the reporter’s statement, that Israel imposes tight controls on what goes in and out of Gaza, would likely fulfil the guideline requirement for due accuracy.

The Adviser took the view that the volume of goods entering and leaving the territory was only meaningful when considered in the context of Gaza’s actual requirements: i.e. what might be needed in the way of imports to enable Gaza to function and correspondingly, the level of exports for Gazan merchants to trade effectively.

The Adviser noted that guidance and information on what might be considered sufficient in terms of exports was available from a range of sources, which included the UN but also others, such as the EU, the CIA World Factbook 2013, Christian Science Monitor and National Public Radio all of which are generally considered credible sources. The Adviser noted also the ECU’s citation of research published by the Israeli NGO, Gisha and also by UNRWA. While she noted the complainant’s assertion that neither sources were impartial, the complainant had not specifically challenged any of the data from those sources cited in the ECU’s finding.

The Adviser noted the information provided by those sources in relation to the assertion in the report that “almost no exports leave here”:

- At the time of broadcast Israel did not allow exports to the West Bank from Gaza; according to the Defence Minister this was on security grounds
- Israel also does not permit goods from Gaza to be sold in Israeli markets
- Prior to 2007 when Hamas took control in Gaza those two markets represented 85% of Gaza’s exports
- Prior to the conflict in Summer 2014 Gaza’s exports were less than 3% of their 2007 level. A typical pre-2007 figure was 1000 trucks per month whereas only 10 trucks left Gaza in the three months to July 2014
- Whilst exports to third countries are permitted by Israel, in practice it is hard for Gazan exporters to get a foothold in the wider markets such that those might replace the traditional markets of Israel and the West Bank
- Reasons for this include the unreliability of supply, the difficulty for Gazan merchants to deal directly with overseas buyers, and the fragile nature of the agricultural produce which have traditionally made up most of Gaza’s exports

The Adviser concluded that the sources cited collectively appeared to corroborate the comments in the News Channel item, such that the content would be likely to meet the requirement for due accuracy.

The Adviser noted the second element of the complaint that imports are in the main unrestricted apart from those which might have a military or dual-use application and that it was therefore inaccurate to have stated that Israel imposes “tight controls”. The Adviser noted that the news item gave no detail on import restrictions but focussed instead on exports from the territory (both through Israel and Egypt) and the restrictions on freedom of movement. Nonetheless, the Adviser noted there is well-sourced evidence to support the comment that imports were subject to tight controls. The Adviser noted the following:

- It is a matter of fact that Israel “controls” all goods and people that enter the territory through its crossing points;
- There is an Israeli air and naval blockade of the territory;
- The Israeli list of restricted dual-use goods includes materials which would be required for civilian construction projects. Exceptions are made but subject to detailed scrutiny and oversight on a project by project basis with the effect that such goods are in very short supply for reconstruction in the territory; and
- Whilst the Israeli government maintains the import controls are for security purposes it nevertheless acknowledges that restrictions are in place:

“The State of Israel’s goal is to minimize restrictions of goods allowed to enter into Gaza as much as possible. However the security situation between the State of Israel and the ruling power in Gaza, Hamas, has forced Israel to maintain its restrictions on Gaza imports. Hamas has continuously proven its determination in sabotaging Israeli efforts to loosen restrictions on goods by its continued offensive against Israel.”

The Adviser therefore decided neither of the elements of the complaint raised by the complainant would have a reasonable prospect of success. She therefore did not propose to put them before Trustees on appeal.

Request for review by Trustees

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

The complainant disputed the information in the Adviser’s decision regarding restriction of exports from Gaza, responding to each point in turn:

- It was not true that Israel did not allow exports from the West Bank to Gaza although there were restrictions on marketing Gaza’s produce in the West Bank. Marketing involves travelling between the two places via Israel (hence Israel’s security concerns);
- Refusing to permit goods from Gaza to be sold in Israeli markets is a restriction on Israelis, rather than on Gazans. It is not a feature of control of what goes out of Gaza. If they can find a market in the wider world, they are free to export it. The refusal is not absolute, as the Adviser suggests. If there is a short-term demand for fresh produce in Israel that cannot be fully met by domestic production, then Israelis might buy from Gaza. (The complainant provided a link to a 2013 article in a German newspaper about truckloads of palm fronds being exported to Israel for the Jewish festival of Sukkot);
- The main reason that Hamas lost its market in the West Bank was feuds with Fatah which in 2007 became extremely violent after which cooperation between the authorities in the West Bank and Gaza Strip was reduced to almost zero and trade between the two became almost non-existent;
- Exports at the time of broadcast were not 3% of their 2007 level, but of their 2005 level, i.e before Israeli withdrawal. There were massive exports in 2005 from Israeli communities in the Gaza Strip. These productive communities were handed over intact but allowed to fall into disrepair; and
- Israel had been giving Gazan farmers a lot of help in dealing with the problems of exporting, including inviting Gaza agriculturalists to fairs where international buyers were present.

Regarding import restrictions, the complainant reiterated the points he had made in his appeal. The complainant supplied links to daily reports from Israeli government agencies detailing the number of trucks entering the territory against the number scheduled; there was a shortfall he said because Gaza had ordered fewer goods than the authorities in Israel had expected.

The Committee's decision

The Committee noted the complainant's challenge to the Adviser's decision that there appeared to be well-sourced evidence supporting the comment in the news report that Israel allows almost no exports from Gaza. The Committee noted that the complainant did not dispute that there was a restriction on goods from Gaza being sold in Israeli markets. That he considered it was a restriction on Israelis rather than Gazans did not alter the fact that a key regional market for Gazan exports was effectively closed. The Committee noted too that the example he presented, of the exceptional export of palm fronds from Gaza, appeared to prove the general rule. The Committee noted that in her decision the Adviser had acknowledged one of the points that exports from Gaza to third countries were permitted, but for practical reasons those wider markets were not what Gazan exporters were hoping would expand when they asked for a relaxing of the restriction on exports.

The Committee concluded that nothing in the request to review the Adviser's decision negated the evidence laid out in the Adviser's decision. The Committee considered that, were this to proceed to appeal, it would be likely to conclude that the content was duly accurate, i.e. that the major reason that Gazans were unable to export effectively was because the key regional markets in Israel and the West Bank were closed to it because of restrictions imposed by Israel.

The Committee noted the complainant's contention that the import of civilian goods in Gaza is unrestricted, apart from a few dual-use items with a military application, whereas the content gave the impression that Israel imposed severe restrictions. The Committee noted the detail in the Adviser's decision outlining the effect of the restrictions, in particular where she explained the scope of items covered by the "dual-use" prohibition and also the wider reach of the blockade and its impact on freedom of movement. The Committee noted too the Israeli government's acknowledgement that it imposes restrictions for security reasons. Whatever the reason for the controls, the Committee considered there was adequate evidence that such controls existed and are a key issue for Gazans, which was precisely what the report was highlighting.

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

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

Newsdrive, BBC Radio Scotland, 16 September 2014

The complaint

The complaint concerned an item on *Newsdrive* on BBC Radio Scotland which examined the content of a leaked confidential document which claimed that the NHS in Scotland was facing a funding gap of over £400 million. The presenter of *Newsdrive* interviewed the Health correspondent about the document.

The complainant contacted BBC Audience Services on 16 September 2014. She complained that the correspondent had reported incorrectly that SNP policy on Accident and Emergency departments had altered and that the party was now considering closing these departments:

"According to [the correspondent], the possible closure of A&E departments was '...something the SNP has refused to allow, until now'.

"By adding 'until now', the BBC reporter deliberately misrepresented the stance of the SNP on a key issue of the independence referendum.

"The claim that the SNP is now allowing something they previously refused to allow is entirely false. The SNP stance has remained unaltered and it continues to oppose the closure of A&E departments."

BBC Audience Services responded on 22 October. They included a response from the Editor of *Newsdrive*, who said that the correspondent had not said that SNP policy on A&E departments had altered, nor had she suggested that the party was now considering closing those departments.

The complainant escalated her complaint to Stage 2 on 12 November. The Editorial Complaints Unit (ECU) did not uphold the complaint.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 29 December. The complainant appealed on the substance of her complaint, that a BBC correspondent had deliberately misrepresented the stance of the SNP on a key issue of the independence referendum. The complainant said that the broadcast gave the impression that the SNP policy on closing A&E departments "either *had* changed or that the party was *considering* changing it". The complainant also referred to an online article by the same correspondent and quoted the relevant part of the article:

"The documents suggest that health boards will have to consider centralising hospitals and closing services - a measure which the SNP vowed to stop when it was elected in 2007.

"The Scottish government reversed the closure of Accident and Emergency departments at Monklands and Ayr hospitals, but the papers suggest such dramatic measures may be back on the table."

She considered this was further evidence that the BBC had misled its audience.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser (the Adviser) listened to the relevant report. The Adviser acknowledged the strength of the complainant's feelings; however, she considered the appeal did not have a reasonable prospect of success.

The Adviser considered that the relevant guidelines were those which required that the BBC observed "due accuracy".

The Adviser noted that the complainant had referred to an online article as well as the broadcast report in her appeal to the Trust. She noted that, under the editorial complaints process, the BBC had to be able to respond to each point of complaint before the Trust responded. As the online output had not previously been raised with the BBC, she considered it was not appropriate for her to consider it at Stage 3.

The Adviser listened to the interview in full and the context in which the interview had taken place. She noted that the item concerned a leaked document which dated from August 2014, but had just been passed to the BBC and to The Herald newspaper. The presenter gave the following introduction to the item:

"The NHS in Scotland is facing a funding gap of more than £400m according to confidential papers passed to the BBC. The documents, presented to a meeting of health board bosses and civil servants last month, suggest that radical change will be needed over the next two years if the NHS is to break even."

There was then a clip from a Labour MSP who was introduced as representing the Better Together campaign. She said that the documents showed the Scottish government was planning cuts of up to £450m in the NHS in Scotland which they had not made clear to the electorate. The presenter then introduced a clip from the Health Secretary, as follows:

Presenter: But the Health Secretary, Alex Neil, says Holyrood has protected Scotland's NHS within its fixed budget and that he doesn't accept there's a shortfall.

Alex Neil: Well, I don't accept there's a £400m gap, this is some initial thinking by Chief Executives looking at the efficiency savings required and that's very different from a funding gap. The efficiency savings up until now have been 3% a year - next year we might require 3.5% but every penny saved in efficiency goes back into frontline services.

It was after this that the presenter introduced the Health Correspondent who was speaking in a live two-way. She outlined the information in the papers in more detail – stating that they had been compiled by the Chief Executives of different health boards. She noted that the NHS in Scotland was under a growing burden as a result of the aging population, rising cost of medicine and rising cost of hospital care. She stated that the papers indicated that the burden was also increased as a result of obligations introduced by the Scottish government which had not been fully funded. She said that she had spoken to the health minister and gave a summary of his position. She noted that he said the NHS was already making efficiency savings of around 3% per year over the next two years, that if this were to increase to 3.5% it would cover the sum involved and that this was part of the routine planning process within the NHS. She then went on to say:

Correspondent: The picture presented by this document is slightly different, it puts current savings at 2% a year, so in order to achieve this target that would need to nearly double. It also says that the status quo is simply not an option and that it mentions "the reconfiguration of services". Now in layman's terms that can mean cuts in services; it means centralisation. It could mean the closure of things that are very dear to people like Accident and Emergency Departments, something that the SNP has refused to allow until now.

Presenter: Well the timing of all this can be no coincidence?

Correspondent: It's not a coincidence and the whistle blower who passed this document to the BBC did so because they were frustrated by some of the rhetoric they've heard in the campaign so far, coming from the "Yes" campaign - and clearly the "No" campaign has leapt upon this. Either way though, the language in this document is stark, it comes from the top, it's a clear warning that radical action will be necessary to balance the books whatever happens on Thursday.

The Adviser noted the complainant's view that by adding the phrase "until now", the correspondent had misrepresented the stance of the SNP on the possible closure of A&E departments, and had suggested that this was something the SNP was now considering – a very significant shift in its policy.

The Adviser noted and agreed with the response from the ECU on this point, it said:

"... you have taken the last two words of the sentence to convey the clear meaning that the SNP's policies had now changed. I think the words in question might have the meaning you assign to them, had they appeared in a different context. As it was, the beginning of the sentence said 'It could mean...' – 'could' being the operative word here. It was not claimed that it had happened or that it would happen, but only that something which had not heretofore been considered was now a possibility ... reflecting the fact that this document warned that radical action would be required, whatever the result of the referendum."

The Adviser considered that, taking into consideration the clip of the Health Secretary which had been included and which had clearly set out the view of the Scottish Government, and the fact that the paragraph in question had only raised the possibility of cuts in services by saying they "could" happen rather than "would" happen, it was unlikely that the audience would have understood from the interview as a whole that the SNP's policy towards the closure of A&E departments had changed. The Adviser therefore considered that on this issue the audience would not have been misled.

The Adviser considered that Trustees would be likely to conclude therefore that the programme had met the requirements for due accuracy and therefore it did not have a reasonable prospect of success. She did not, therefore, intend to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. The complainant outlined the focus of her complaint in saying "the reporter in question led listeners to believe that the SNP had ditched a critical pledge not to consider the closure of Accident & Emergency Departments".

The complainant summarised her appeal to the BBC Trust on both the broadcast and online items as follows:

1. She noted the context of the broadcast. She said that in the week before the Scottish referendum, “the most stringent standards” ought to have been met. And these standards “must not be dismissed on an arguable technicality”.
2. She said that the online article was considered by the ECU;
3. She stated that consideration of the online article was key to her complaint. She said the article undermined the programme editor’s argument and demonstrated that the complainant had correctly interpreted the reporter’s meaning.

The complainant noted that she had provided evidence which challenged the meaning of the phrase “until now”. She added that Trustees should consider and question exactly what the reporter was trying to communicate in the radio programme and online article. The complainant alleged that it led the public to believe the SNP had changed a key NHS policy.

The Committee’s decision

The Committee considered the radio programme and the line which was the focus of this complaint.

The Committee noted that the complainant had provided examples of usage of the words “until now” to support her perspective that this was ultimately misleading the audience.

The Committee understood that the complainant felt the online article written by the Health Correspondent, which the complainant viewed as having been considered by the ECU, was central to the evaluation of her complaint. Trustees noted the relevant extract of the online article and noted the line:

“The Scottish government reversed the closure of Accident and Emergency departments at Monklands and Ayr hospitals, but the papers suggest such dramatic measures may be back on the table.”

Trustees noted the words “suggest” and “may” were conditional and that “back on the table” implied an option not a policy decision. This was in line with the ECU’s view on the radio broadcast that: “It was not claimed that it had happened or that it would happen, but only that something which had not heretofore been considered was now a possibility ... reflecting the fact that this document warned that radical action would be required, whatever the result of the referendum.”

The Committee considered that in context, the words “until now” were a legitimate way of expressing the possibility of a policy change. The Committee’s view was not changed by the online article written by the Health Correspondent.

The Committee concluded that there was no reasonable prospect of finding there had been a breach of the Editorial Guidelines on Accuracy.

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 Procedure²¹ 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.

²¹ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

Decision of BBC Audience Services not to respond further to a complaint about an interview with Shimon Peres, BBC News website, 13 August 2014

The complaint

On 13 August 2014 the BBC News website published a video interview with Shimon Peres under the headline "Former Israeli President Shimon Peres 'seeks peace' over Gaza". The interview can be seen here:

<http://www.bbc.co.uk/news/world-middle-east-28768257>

The complainant contacted the BBC on 17 August 2014, describing the interview as "Zionist propaganda". The complainant stated that Mr Peres had been a member of a terrorist group, and that the interview did not cover the "illegal occupation of Palestine". The complainant also stated that the interviewer, BBC Middle East correspondent Wyre Davies, did not interrupt Mr Peres. The complainant asked that the BBC apologise for transmitting the interview, and broadcast an interview with an Israeli peace activist instead.

On 22 August 2014 the BBC replied with a consolidated response to complaints about the BBC's coverage of the recent escalation in violence in Gaza and southern Israel. In order to use TV licence fee resources efficiently, the response answered the main concerns expressed by complainants. The BBC apologised if the response did not address the complainant's specific points. The BBC noted:

- it had reported on Israel's airstrikes on Gaza and subsequent mounting civilian deaths and casualties in a densely populated area.
- it had reported on the context of the conflict in light of Israel's continuing blockade of the Gaza strip and the considerable differences between Hamas and Israel's respective military capabilities
- the BBC believed it had reported on these issues in a fair and impartial manner.

On 25 August 2014 the complainant replied. He was not satisfied with this general response and asked that an interview be broadcast with the former Executive Director of the American Jewish Congress (who is a critic of Israeli policies in the West Bank).

BBC Audience Services replied on 8 September 2014 stating that Shimon Peres was interviewed as a former Israeli President. The BBC stated:

"While you may personally disagree with his views, or indeed in hearing from him at all, he is fully entitled to hold these views in the context of legitimate debate and his experience is relevant to the current conflict. Accordingly we deemed the interview newsworthy and of interest to our audience, a decision that we don't feel was unreasonable or which requires the broadcasting of the interviews to which you refer in mitigation."

On 12 September 2014 the complainant replied. He re-stated his complaint that the interview demonstrated bias and asked that his complaint be escalated to the BBC Trust.

BBC Audience Services responded on 12 September 2014 stating that they had nothing to add to their previous reply and could not correspond further. Audience Services provided details of how the complainant could appeal this decision to the Trust.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 1 October 2014. The complainant appealed on the substance of his complaint, that the interview with Shimon Peres was biased as the interviewer failed to challenge him “on his terrorist history or on Israeli history on negotiating peace with Palestine”. The complainant also stated that a balancing interview was required with someone who held “opposing views”.

The Trust Unit’s decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser (the Adviser) also carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant’s feelings. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success. The Adviser decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted that the interview was embedded in full on the BBC website during a pause for peace talks in Israel’s recent air strikes on Gaza, while a shorter version was broadcast on the BBC News Channel and on BBC Radio 4’s Today programme.

She noted that Shimon Peres was the President of Israel from 2007 to 2014, and had served twice as Prime Minister of Israel. She noted that Mr Peres joined the Haganah movement in 1947, a Zionist military organisation which was dissolved in 1948 and evolved into the Israel Defense Forces²². She noted that Mr Peres is often characterised as a “hawk-turned-dove”²³; in 1994 he was awarded the Nobel Peace Prize (along with Israel’s then Prime Minister Yitzhak Rabin and the Palestinian leader Yasser Arafat) in recognition of his contribution to the Oslo Accords.

The Adviser noted that in the interview Mr Peres claimed that Hamas was “for terror”, that he had “nothing against the people but none of us, neither the Palestinians nor us can live with terror”. He stated that Israel had left Gaza unilaterally, taking Israeli settlers with them by force and had handed the Palestinians a “free open Gaza”.

She noted that the correspondent, Wyre Davies, asked whether, if the peace talks failed, Mr Peres would support going back into Gaza militarily. She noted that Mr Peres stated in reply:

“No I don’t think it will be necessary and I think we should look for a better solution than that. We don’t want to raise the flames. We don’t want to increase the number of victims. Who wants it?”

²² <http://www.britannica.com/EBchecked/topic/251461/Haganah>

²³ <http://www.amazon.com/Why-Hawks-Become-Doves-Foreign/dp/1438453957>

Mr Peres noted that the negotiator and host of the peace talks was Egypt, an Arab country:

"50 years ago nobody here believed that we shall ever have peace with Egypt. We have.... All the pessimists have a short memory... I seek peace, I don't seek war, I don't want to kill anybody."

She noted that Mr Davies challenged Mr Peres on the deaths of 400 children in Gaza, that he asked him whether Israel had been "stung" by international criticism of the air strikes, and observed that critics of the present government said their voices were being drowned out and that Israel was in danger of losing its democratic tradition.

The Adviser noted the introduction to the BBC's guidelines on impartiality, which states that:

"Impartiality lies at the heart of public service and is the core of the BBC's commitment to its audiences. It applies to all our output and services - television, radio, online, and in our international services and commercial magazines. We must be inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected.

"The Agreement accompanying the BBC Charter²⁴ requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output ...

"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.

"Due impartiality is often more than a simple matter of 'balance' between opposing viewpoints..."

The Adviser noted that Mr Peres was a significant international figure who was entitled to hold his views, that it was clear that he was giving his own opinions and that, given his own significance within Israel, there was an editorial justification in the interview.

She noted that the subject under discussion was the recent Israeli military action in Gaza and international responses to it, rather than Mr Peres' early career. She considered that as a former President and negotiator of the Oslo Peace Accords, the audience would be likely to be interested in his view on what Israel should do, if the peace talks failed. She considered that Trustees would be likely to conclude that there was no requirement under the guidelines to "challenge Peres on his terrorist history or on Israeli history on negotiating peace with Palestine" as this was not pertinent to the subject under discussion.

She noted the complainant's view that a balancing interview was required with someone holding opposing views. However, she noted that the BBC's guidelines on impartiality state:

"4.4.26 On long-running or continuous output (such as general daily magazine programmes, the News Channel, Online, etc.) due impartiality may be achieved

²⁴ Paragraph 44 (1), Broadcasting: An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, July 2006

over time by the consistent application of editorial judgement in relevant subject areas. For instance, it is not usually required for an appearance by a politician, or other contributor with partial views, to be balanced on each occasion by those taking a contrary view, although it may sometimes be necessary to offer a right of reply."

She noted that at Stage 1 the BBC had provided the complainant with links to three other News Online articles which detailed life in the Gaza Strip under the blockade, the historical context to Israel/Gaza conflict, and a comparison of the weapons being used by Israel and the armed wings of Hamas and other Palestinian groups.

The Adviser considered Trustees would be likely to conclude that the interview met the requirements for due impartiality set out in the Editorial Guidelines and that there was no requirement for a balancing view to be broadcast, as suggested by the complainant.

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

The Adviser considered that Trustees would be likely to conclude the output met the requirements of the Editorial Guidelines and that it was a matter of the Executive's editorial and creative freedom to choose who should be interviewed in BBC output and what question they should face. She considered Trustees would be likely to conclude that BBC 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

"You appear to be investigating a complaint I never made, for I did not see the interview to which you refer ... I was complaining about an interview by Nicholas Owen of Shimon Peres"

The complainant reiterated his objections to the interview, including the re-broadcasting of the interview "every fifteen minutes" on the News Channel which he cited as a failure of impartiality:

"Had you been following BBC Guidelines you would have immediately after the broadcast, broadcast an interview with the Palestinian President."

The complainant felt this was an attempt to deliberately deceive the audience.

The complainant cited examples of what he felt showed the BBC's bias towards Israel.

The Trust Unit responded to the complainant regarding his view that a complaint he never made had been investigated. The Trust Unit explained:

“We have now looked into this matter in some depth and we are unable to find the interview of Shimon Peres by Nicholas Owen from the BBC News website on 13 August 2014 to which you refer, nor any record of such an interview from that time.”

The Trust Unit said that the only featured interview published on the BBC website on 13 August 2014 was conducted by Wyre Davies and not Nicholas Owen. The Trust Unit said it was unable to progress this aspect of the appeal unless the complainant was able to provide the interview in question.

In response, the complainant wrote to the Chairman of the BBC Trust. He reiterated the main points of his appeal: that the interviewer failed to challenge Shimon Peres and this was a further example of the BBC's bias in favour of Israel in contravention of its own Editorial Guidelines and the Royal Charter.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Complaints Adviser, the complainant's letter asking the Committee to review her decision, the Trust Unit's response and the complainant's letter to the Chairman of the BBC Trust. Trustees also had a copy of the interview conducted by Wyre Davies with Shimon Peres.

As no record could be found of an interview with Shimon Peres conducted by Nicholas Owen the Committee was unable to examine or progress this aspect of the appeal.

The Committee understood that the complainant's primary objection was that the former President of Israel, Shimon Peres, was permitted to speak without challenge during an interview and that this was evidence of the BBC's bias in favour of Israel.

As Mr Peres was a significant figure in the region, Trustees agreed with the Adviser that there was an editorial justification for the interview.

The Committee noted the complainant's view that this interview should have been balanced with an interview airing the Palestinian perspective. Trustees noted that the Editorial Guidelines outlined the way in which “due impartiality” could be achieved and that Audience Services had provided the complainant with links to articles which focussed on the Palestinian perspective.

Trustees noted that Mr Peres was questioned by the correspondent Wyre Davies about the deaths of 400 children in Gaza, the international reaction to Israeli air strikes, that critics of the present government said their voices were being drowned out and that Israel was in danger of losing its democratic tradition.

Trustees noted impartiality could be achieved in many ways but questioning by a BBC correspondent was one way audiences expected that other views could be put to an interviewee.

Consequently, the Committee agreed this was not a matter for the Trust as it would be likely to conclude that the interview met the requirements for due impartiality set out in the Editorial Guidelines and that there was no requirement for a balancing view to be broadcast, as suggested by the complainant.

Trustees further agreed with the Adviser that they would be likely to conclude that BBC Audience Services had provided a reasoned and reasonable response to the complainant's concerns. Accordingly, the Committee concluded that there was no reasonable prospect of success for an appeal.

The Committee agreed with the Trust Unit's decision not to proceed with a complaint about Audience Services' decision to stop corresponding. Trustees found no merit in the complainant's subsequent complaint about the Trust Unit's handling of his appeal.

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 the BBC News Channel, 9.00pm, 12 March 2014

The complaint

The complainant contacted BBC Audience Services on 12 March 2014 about a news story broadcast just after 21.00 on the BBC News Channel which said that the Israel Defense Forces had closed border crossings between Gaza and Israel. The complainant said that the broadcast was misleading because it emphasised the closure rather than explaining beforehand that the closure was a response to a rocket attack from Gaza. He said that the BBC should have reported the events chronologically.

Audience Services responded on 23 March:

"We note you felt the chronological order of events should have been given but this was breaking news and it was made clear that the news was according to Israeli radio.

"We're committed to due impartiality in respect of all news reports and we're careful that this is maintained. The BBC is satisfied its coverage of events in Israel and the Palestinian Authority has been balanced, fair and accurate. Across our programming we have tried to explain how the current situation started and has since developed and given air-time to representatives from across the political spectrum.

"More information on this story can be found here:
<http://www.bbc.co.uk/news/world-middle-east-26549247>

"Our latest Middle East coverage can be found here:
http://www.bbc.co.uk/news/world/middle_east"

A further reply on 16 May stated:

"This was a developing story, which we continued to report on that evening. At 22.00 and 23.00 the BBC News Channel put the rocket attacks in the following context:

'David Cameron is on his first official visit to Israel as prime minister. He was treated to a standing ovation in the Israeli parliament where he spoke of his "unbreakable" commitment to Israel and its security. During his visit the Israelis were faced with their heaviest rocket attack by Palestinian militants in Gaza since 2012. Our deputy political editor James Landale sent this report.'

"The tit-for-tat nature of the Israeli-Palestinian conflict means that it can be difficult to pinpoint a definitive commencement of hostilities during a series of attacks. That said, we believe we reported on this escalation in violence in an accurate and impartial manner."

After further correspondence from the complainant, Audience Services said on 26 June that they had nothing to add to their previous response.

The complainant responded on 20 July expressing his dissatisfaction with the reply. He then escalated his complaint to the Editorial Complaints Unit (ECU) on 10 September. The ECU responded that they were unable to investigate the complaint as it had been closed down at Stage 1 of the BBC's complaints process.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 13 October 2014. The complainant appealed on the substance of his complaint that a broadcast on the BBC News Channel on 12 March stating that Israel had closed its borders with Gaza was misleading, in that it had failed to broadcast in chronological order that the closure was a response to a rocket attack from Gaza.

Also in his appeal, the complainant said that Audience Services had closed down his complaint incorrectly. He said that the BBC had incorrectly used one of the historical examples of coverage to which he had referred – the visit of President Obama to the Middle East in March 2013 – to close down the complaint under the section of the complaints process which stipulated:

“If you have a complaint about a BBC item which was broadcast or published, either online or in a BBC owned magazine, you should normally complain within 30 working days of the transmission or publication.”

In his appeal, the complainant also referred to another complaint about BBC News coverage on 16 September which he requested the BBC Trust investigate. The complainant advised the Trust that he was awaiting a Stage 1 reply to this complaint.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser (the Adviser) also carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant's feelings.

She noted, however, that BBC Audience Services had ceased handling this complaint at stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of Audience Services not to correspond further with the complainant had a reasonable prospect of success.

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

The Adviser looked firstly at the complaint regarding the broadcast on the BBC News Channel on 12 March 2014. She noted that the complainant said that the broadcast was misleading because “...your headline is Israel closing the crossing, which is a response, instead of Hamas fires barrage of rockets into Israel which is the act of war....”

She considered that the relevant guidelines were those which required that the BBC observed “due accuracy” and “due impartiality”:

“The term ‘due’ means that the accuracy/impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content,

the likely audience expectation and any signposting that may influence that expectation."

The Impartiality guidelines required that:

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

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

The Adviser noted how the Impartiality guidelines clarified 'due weight':

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

The Adviser watched the section of the programme concerned. She noted how news of the closure of the border crossings had first been broadcast:

At 21.04 the breaking news strap read:

"The Israel Defense Force has closed border crossings between the Gaza Strip and Israel after Palestinian militants fired rockets into southern Israel."

At 21.06 the strap added:

"Israel has blamed Hamas for the escalation and has warned it will pay a heavy price - there are reports Israeli forces have targeted positions of Hamas' military wing in southern Gaza."

At 21.07 the headline on screen read:

"Gaza Escalation: Israel closes border with Gaza"

This then changed to:

"Gaza Escalation: Militants fire rockets into southern Israel"

The presenter then read:

"We have some news coming out of the Middle East tonight- breaking news - this is according to Israeli radio which is reporting that at 8 o'clock this evening - so about an hour ago - the Israel Defense Force has closed the border crossings between the Gaza Strip and Israel and this follows Palestinian militants apparently firing rockets into southern Israel from Gaza. Israeli radio is also reporting that the Israeli Defense Minister Moshe Ya'alon is holding Hamas responsible for the escalation of violence and the firing of these rockets and has warned Hamas that it will pay a very heavy price."

The Adviser noted the response from BBC Audience Services which explained that the story was broadcast as "breaking news". The Adviser noted that at the time in question,

21.00, the most recent development was the closure of the border crossings. She noted also that this development was immediately put into context by both the news strap and by the presenter - that the closure was in response to rockets fired from Gaza into southern Israel.

The Adviser understood that the complainant felt the attack by Palestinian militants had only been reported once Israel had responded. He said: "you did not at any time report the breaking news that Gaza had committed an act of war by bombing the sovereign state of Israel".

The Adviser noted though that the attack from Gaza had been referred to in an earlier interview just before 19.00 between the BBC News Channel presenter and the BBC's deputy political correspondent who was at a press conference given by David Cameron in Jerusalem. Talking about the Prime Minister's visit to Israel the presenter said:

"...it follows more Islamic Jihad rockets fired from Gaza into southern Israel today with Israel promising a tough response..."

The reporter responded:

"both leaders were asked about [the attacks] and both of them made very clear their condemnation of what had taken place..."

The Adviser also noted the reply from Audience Services which pointed out to the complainant how the story had been covered after 22.00 when the BBC News Channel had broadcast a considered report on David Cameron's visit to Israel:

"David Cameron is on his first official visit to Israel as prime minister. He was treated to a standing ovation in the Israeli parliament where he spoke of his 'unbreakable' commitment to Israel and to its security. During his visit the Israelis were faced with their heaviest rocket attack by Palestinian militants in Gaza since 2012. Our deputy political editor James Landale sent this report."

After featuring Mr Cameron's visit to the Yad Vashem holocaust memorial in Jerusalem the piece continued:

"But after acknowledging Israel's past he was confronted with its present. Palestinian militants fired more than 40 rockets into Israel from Gaza. Israeli forces hit back with airstrikes."

Taking all these points into consideration the Adviser concluded that the audience would not have been misled by the way in which the story had been reported at 21.00. She considered Trustees would be likely to conclude that BBC 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.

The Adviser then considered the view of the complainant that his complaint had been incorrectly closed down at Stage 1 by BBC Audience Services by saying that they could not investigate the complaint as it had not been made within 30 working days of the transmission or publication.

The Adviser looked at the relevant correspondence.

In his response of 30 May the complainant mentioned what he described as historical evidence of BBC bias:

"It is appropriate to mention here Barack Obama's visit to Israel while Gaza was firing rockets, the BBC TV did not report the rockets, for the reason that Israel did not respond"

On 26 June BBC Audience Services responded:

"Thank you for contacting us about BBC News broadcast on 12 March 2014.

"We understand you're unhappy with our previous response regarding the 'non report Gaza rockets until Israel responds'.

"While we thank you for your further correspondence we have little to add to our previous response, and we don't agree with your assessment of how we report on instances of violence in the Israeli-Palestinian conflict.

"With regard to the example of coverage you provide, President Obama visited the Middle East in March 2013. Our complaints process stipulates:

"If you have a complaint about a BBC item which was broadcast or published, either online or in a BBC owned magazine, you should normally complain within 30 working days of the transmission or publication.'

"<http://www.bbc.co.uk/complaints/handle-complaint/>

"With this in mind, we don't believe it would be an appropriate use of licence fee resources to circumvent the complaints process on this occasion."

The Adviser understood that there had been some confusion surrounding the correspondence between the complainant and BBC Audience Services at this time. She noted that BBC Audience Services had sent another response on 22 August which stated that the complaint had been closed down because 20 days had elapsed between the first reply from BBC Audience Services and the complainant's response of 20 July. Despite this confusion, the Adviser concluded that the BBC had made it clear in their response of 26 June that, on the issue of the broadcast on the BBC News Channel on 12 March, they had nothing to add to their previous correspondence.

The Adviser also considered that in this response the BBC had made it clear that the 30 day rule was being applied to the complaint concerning Barack Obama's visit to the Middle East and not to the broadcast of 12 March on the BBC News Channel.

For clarity, the Adviser noted that the Trust represented the third and final stage in the complaints process. Complainants appealed to the Trust if they remained dissatisfied after their earlier correspondence with the BBC.

Under the Complaints Framework, the BBC was required to consider the interests of all licence fee payers and was entitled to close down correspondence if it had nothing further it wished to say and considered the complaint did not raise an issue of substance. The Adviser noted that this was what had happened in this instance – the BBC had closed down the correspondence at Stage 1b.

The Complaints Framework stated:

1.7 At all stages of this Procedure, your complaint may not be investigated if it:

1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or
1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious....

1.9 If the BBC Executive decides not to investigate your complaint for one or more of the reasons set out in paragraphs 1.7 and 1.8 above, you can write to the BBC Trust and ask the Trust to review that decision...

1.10 If the Trust agrees with you, the Executive will be directed to investigate your complaint. If the Trust does not agree with you, the Trust's decision is final.

The Adviser noted that BBC Audience Services had notified the complainant on 26 June that they had nothing to add to their earlier correspondence. She therefore concluded that the BBC had made clear its intention to close down at Stage 1 the complaint relating to the BBC News Channel broadcast of 12 March. She therefore considered that this element of appeal too did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Finally, the Adviser noted that in his appeal the complainant had referred to another complaint about BBC News coverage on 16 September which he requested the BBC Trust investigate. The Adviser noted that the complainant had contacted the BBC about this complaint but was awaiting a Stage 1 reply.

The Adviser noted that as the BBC complaints process stated that the BBC Trust could not consider an appeal where the BBC Executive had not already had the opportunity to respond, the BBC Trust could not consider this part of the complainant's appeal at this time.

Request for review by Trustees

The complainant asked the Trustees to review the Adviser's decision on 21 January 2015.

He thanked the Trust Unit for making a start at looking at the issues he had raised. However, he believed that a number of issues had not been addressed:

- The David Cameron report on bombings from Gaza was in one section of news and in another section of news the BBC reported the response of Israel as a headline and Gaza rockets on the back of the headline.
- The complainant asked for an explanation of why it was OK for the BBC to report the bombing first in the Cameron report but then report it in the wrong order in another section of the news.
- His main complaint was that the BBC did not report rockets fired at Israel from Gaza until Israel responded and then the BBC reported Israel's response as headline/breaking news and on the back of the news report the BBC mentioned Gaza rockets.

The Committee's decision

Following the complainant's appeal to the Trust against Audience Services' decision to close down the complaint, Trustees noted that the Adviser stated in her decision letter:

"If you disagree with my decision, you can ask the Trustees to review it by contacting the Complaints Adviser, at trust.editorial@bbc.co.uk or at the above address, by 17 December 2014. You should state your reasons, which will need to demonstrate clearly to Trustees why, contrary to my decision, your complaint stands a reasonable prospect of success. Please send your reasons by this deadline in one document if possible."

The Committee noted that the Adviser's response was emailed to the complainant on 2 December 2014 and the complainant's request for a review of her decision was not submitted until 21 January 2015 which was well beyond the 20 working days stipulated in the Complaints Procedure. Trustees noted that no reason was given by the complainant for the delay. Trustees saw no reason to accept this request to review the Adviser's decision in view of the delay but, for the sake of completeness, Trustees took into account the fact that the Adviser had given a detailed and comprehensive reply to his concerns and in their view the complaint did not raise a possible breach of the editorial guidelines.

Trustees agreed that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. However, they noted he should have been offered an appeal to the Trust when his complaint was closed at Stage 1. This point would be made to Audience Services.

The Committee agreed it was not appropriate, proportionate or cost effective to proceed with this appeal and that this complaint did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about *Strictly Come Dancing*, BBC One, 25 October 2014

The complaint

The complainant contacted the BBC on 25 October 2014 and complained that a young baby had been seen during the programme sitting with a balloon. She said this was very irresponsible as balloons were not recommended for children under 8 years old due to the high risk of choking. She felt that, by showing a baby with a balloon, the BBC had told families that this was an acceptable practice.

BBC Audience Services responded on 3 November 2014 stating that although the BBC appreciated the complainant's concerns, it was not for the BBC to tell parents how to raise their children; nor did they consider that showing a baby with a balloon meant the BBC approved of the practice.

The complainant felt the response was flippant and showed indifference and a lack of responsibility and she renewed her complaint on 3 November 2014.

A member of Audience Services responded at Stage 1b on 5 November 2014. He apologised if the previous response had seemed flippant and said this was not the intention and:

"Having reviewed the section in question I think it is important to consider that the child was playing with the balloon under full parental supervision – in fact, a parent is in shot (and within reach of the child) during all of the scenes with the balloon."

He informed the complainant that Audience Services had nothing further to add on the matter and would not engage in further correspondence on the issue.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 6 November 2014. She reiterated her concern that the BBC had shown a disregard for its responsibility in terms of children's safety by showing a baby with a balloon on *Strictly Come Dancing*.

The Trust Unit's Decision

The Senior Editorial Complaints Adviser (the Adviser) viewed the section of the programme and carefully read the correspondence that had passed between the complainant and the BBC. She acknowledged the strength of the complainant's feelings but decided that the appeal did not have a reasonable prospect of success.

The Adviser noted that the complainant appealed on the substance of her complaint, that the BBC had shown a disregard for child safety by showing a baby with a balloon on *Strictly Come Dancing*. She noted that the complainant was also unhappy about the handling of her complaint and felt the BBC had issued a flippant response.

The Adviser noted that the programme sequence at the centre of the complaint involved the baby's mother who was a contestant on the programme, and was recorded in a dance

rehearsal studio where the mother was sitting with her full attention on the child, who was seen crawling after a balloon before balancing it on his hand. The Adviser acknowledged the complainant's concern and agreed that child safety was an extremely important issue. However, she believed that the context of the programme sequence in question did not suggest an irresponsible approach to child safety.

The Adviser believed that Trustees would be of the view that the BBC had behaved responsibly in the way it had shown the sequence, in which two adults had been seen giving their full attention to the child's actions while it crawled after the balloon. She was sorry to hear that the complainant felt she had received a flippant reply from Audience Services but she noted that they had made clear this was not their intention and had apologised in the subsequent response.

The Adviser believed that Trustees would conclude that Audience Services had provided a reasoned and reasonable response to the complaint and had acted appropriately in closing down the correspondence. She did not believe the appeal had a reasonable prospect of success and decided that it should not proceed further.

Request for review by Trustees

The complainant asked the Trustees to review the Adviser's decision. She reiterated her concern that showing a baby playing with a balloon was a dangerous scenario to show and it had not been editorially necessary to the programme. She said that she would not expect the BBC to show a baby playing with a firework, and a balloon was just as dangerous as a firework to a baby because of the choking hazard.

The Committee's decision

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

Trustees acknowledged the complainant's concerns and agreed that safety issues concerning young children were of paramount importance. They considered the relevant BBC Editorial Guidelines were those on Harm and Offence including the requirement that:

"The BBC must apply generally accepted standards so as to provide adequate protection for members of the public from the inclusion of ...harmful material."

Trustees accepted that balloons are a risk to babies and young children as they can present a serious choking hazard. There were two risks then to be considered: the risk to the baby who took part in the programme and the risk that people watching might be misled by the programme into unsafe behaviour. Trustees considered the context of the programme sequence concerned and noted that the mother had her full attention on the baby throughout. They noted the BBC programme guidance requirement for a child participant to be accompanied at all times and considered this had been met. They did not consider there was evidence that the child had been at risk. Nor did they consider the programme had shown an unsafe practice, as the baby was clearly supervised.

The Committee understood that the complainant was motivated by child safety, but it did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

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 the style of interview in the Daily Politics Conference Special, Sunday Politics, 26 October 2014 and various Daily Politics programmes, BBC Two, Autumn 2014

The complaint

The complainant originally contacted the BBC on 29 September 2014, following the broadcast of *Daily Politics Conference Special*. He found the style of interviewing in the programme objectionable because he said that in most of the interviews there were “pointless, rude and aggressive interruptions”. He asked why such an interview tactic was necessary and noted that it was used by other interviewers too. He also said he found the BBC’s online complaints procedure lengthy and obtuse.

BBC Audience Services responded on 22 October 2014 explaining that

“The interviewer’s job is to put the questions likely to be in the minds of informed viewers and to look for answers. While this can lead to forceful and persistent questioning, most leading politicians expect their views to be put under scrutiny and are prepared to respond with corresponding firmness.

“Those being interviewed can sometimes significantly influence the style and outcome of the interview by their unwillingness to respond to certain questions. The interviewer’s intention in this situation is not to generate hostility but to persist in pressing for answers to important questions with the proper combination of firmness and civility. While courtesy should always be observed, it is worth noting that politicians are no less professional in handling questions than our interviewers in posing them, and that the task of informing the public sometimes demands a degree of persistence which would be out of place in ordinary social conversation.”

The complainant said this response did not address the unnecessary rudeness of repeated interruptions during interviews which resulted in guests not being able to finish their sentences or complete their arguments.

He also said that Audience Services had not addressed his complaint about the online complaints procedure.

The complainant made further Stage 1 complaints about the *Daily Politics* broadcast on 13, 20 and 28 October 2014 and the *Sunday Politics* broadcast on 26 October 2014. The substance of his complaint remained the same – he objected to repeated interruption and considered it was rude, bullying, disruptive and not good journalism.

Audience Services sent further responses on 4 and 5 November 2014 and made the following points:

- They reiterated the response given in their previous reply about the interviewer being there to test the weakness of arguments put forward and that the intention was not to be an overall aggressive style of interviewing.

- Interruptions during interviews were usually to clarify a point.
- No two interviews would be the same and different approaches might be needed in order to press for a definitive reply to questions asked.
- It was inevitable, given the diversity of the audience, that some viewers would dislike or disapprove of certain presenters and it was clear that opinions varied considerably.
- Presenters were not engaged unless the BBC believed they were competent and able to meet the specific demands required of them. However, the BBC acknowledged that judgements were often subjective and did not expect everyone to agree with every choice of presenter made.

The complainant wrote to the BBC again on 10 November 2014.

Audience Services responded again at Stage 1b on 16 December 2014 stating that they had nothing to add to their previous reply and did not believe that the complaint raised a significant issue of general importance that might justify further investigation; therefore, they would not correspond further on the issue.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 18 December 2014. He included the following points:

- His central concern was that Audience Services had failed to answer his question which was "Why do these interviewers continue to interrupt and 'bully' their guests?"
- He wanted this style of interviewing to be discontinued.
- He would have liked a reply from the programme producer but this had not emerged. He hoped his complaint would be sent to the producer of the programme.
- The BBC's letters contained irrelevant points that did not explain why interviewers kept interrupting their guests in "mid-flow".
- It was not enough for the BBC to say that the presenters who adopted this style of interviewing were experienced, had to challenge their guests and get at the truth.
- The presenters were always looking down at their notes immediately after asking the question, which was disrespectful.

The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged that the complainant had experienced a great deal of frustration in trying to communicate and receive answers to his concerns. However, she decided that the complainant's appeal did

not have a reasonable prospect of success.

The Adviser noted that the complainant had appealed both on the substance of his complaint – that the interviewers on *Daily Sunday Politics* interrupted guests inappropriately – and on the handling of his complaint. She noted that most of the complaints made by the complainant had not been pursued after the initial response from Audience Services. The decision to close down the correspondence related specifically to the complaint about output of 28 October 2014 in which the complainant had referred specifically to the interview with the energy minister Matt Hancock. The Adviser decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser acknowledged that the complainant was unhappy with the style of interviewing adopted on *Daily Sunday Politics*. She also acknowledged that he felt that the points made by Audience Services did not answer his central concern about the interruptions, which apart from being rude and bullying, in his view prevented programme guests from developing their arguments and therefore also prevented the audience from fully understanding those arguments.

The Adviser noted that the BBC received around 250,000 complaints contacts each year and that the complaints process was intended to ensure they were answered in a reasonable and proportionate way. This reflected both the interests of licence fee payers generally and also the need to allow programme makers to focus on the creative task of making programmes. While she appreciated the complainant would have preferred a response from the programme producer, she noted that it was entirely in line with the editorial process for complaints to be answered at Stage 1 by Audience Services.

For completeness, the Adviser watched the relevant output of 28 October 2014 and the interview with Matt Hancock that had been conducted by Jo Coburn. She considered that Mr Hancock had been allowed a good deal of time to set out his arguments and respond to the questions put to him. She did not consider the number or manner of interruptions was untoward. She considered the interview would have been well within the expectations both of Mr Hancock and of the programme's viewers generally.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case. The Adviser decided that Trustees would conclude that decisions relating to the choice of presenters and the manner of their interviewing fell within the "editorial and creative output" of the BBC and that the responsibility for those decisions rested with the BBC Executive rather than the Trust.

The Adviser acknowledged that the complainant wanted his feedback acted upon, but she noted that decisions about editorial content ultimately rested with the programme makers.

She considered Trustees would be likely to conclude that, overall, BBC Audience Services had provided reasoned and reasonable responses to the complaint and it was appropriate for them to say that they could not respond to further correspondence on the issue.

She noted the complainant's points about the BBC's online complaints process. She thought the complainant might be interested to be aware of a "mystery shopping" exercise carried out by the Trust to assess how Audience Services responded to complaints at Stage 1, the initial level of complaint to the BBC, which accounted for the great majority of complaints received each year. The results were published in 2014 and can be found through this link:

http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html

She was interested in particular about the complainant's comments regarding the webform and would ensure these were brought to the attention of Trustees – who were concerned that the complaints process should be speedy, efficient and easy to use. However, while she acknowledged the complainant's irritation with the webform, she did not consider that Trustees would be likely to uphold his complaint about complaints handling.

Overall, the Adviser did not consider that the complainant's appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked the Trustees to review the Adviser's decision. He made the following points:

1. He said that the essence of his complaint was that on *Daily Politics* and *Sunday Politics*, the constant and regular interruptions of guests by the interviewers are offensive and counter-productive.
2. The interruptions caused the following problems:
 - The developing arguments and logic are fractured and derailed by the interruptions which occur on almost every programme.
 - The guest was not listened to fully which is discourteous.
 - Every interruption risked losing the sense of developing discussion or arguments being proposed.
 - Interruptions did not clarify points - they clouded the issues and prevented the viewer from understanding and accepting the essence of the views being expressed.
 - He objected to being told that decisions about editorial content rested with the programme makers and yet he was denied access to the editor.
 - He noted that the Trust [Unit] considered that interviewing "fell within the editorial and creative output of the BBC", but submitted that it was not "creative output" if it confused viewers.

The Committee's decision

Trustees acknowledged that the complainant found the style of interviewing on *Sunday Politics* and *Daily Politics* programmes confusing, frustrating and impolite because of

“constant and regular interruptions of guests”. They noted the points made by the complainant in support of his appeal against Audience Services’ decision to close down the complaint at Stage 1b of the Complaints Procedure.

In terms of the output of 28 October 2014, Trustees agreed with the Adviser that during Matt Hancock’s interview with Jo Coburn, he had been allowed an ample amount of time to make his arguments and respond to questions put to him by the interviewer. They also agreed that the style of the interview would have been within the expectations of the programme’s general audience.

Trustees acknowledged the points made by the complainant about the handling of his complaint, and they appreciated that he wanted to make his points about editorial policy directly to the programme makers and have his feedback acted upon. However, they noted that decisions about editorial content ultimately rested with the BBC Executive, and although feedback was circulated to programme makers and played an important part in shaping future decisions about content, the BBC was not obliged to engage in correspondence with individual complainants about the direction of its editorial policy.

Trustees concluded that Audience Services had responded in a reasoned and reasonable manner to the complaint and it was appropriate for them to close down the correspondence at Stage 1b in accordance with the published BBC Complaints Procedure. It did not engage the BBC’s Editorial Guidelines. It stood 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 to a complaint about the description of Hamas as “militants” in BBC news bulletins

The complainant asked the Editorial Standards Committee to review the decision by BBC Audience Services not to correspond further about his complaint.

The complaint

The complainant wrote to the Director-General on 9 August 2014. Alongside other issues, he complained regarding the description in BBC news bulletins of Hamas and its allies as “militants”. The complainant stated that BBC World Service news regularly described organisations such as Islamic State, Al-Shabab and Boko Haram as “terrorist groups”. The complainant asked the BBC’s Director of News, who was copied into the email, to explain the BBC’s guidelines on the use of such terms, and how he distinguished between “militant” and “terrorist” attacks. The complainant also submitted a request for information with regard to BBC iPlayer.

In subsequent correspondence with Audience Services, the complainant reiterated and developed his arguments, and repeatedly requested an escalation to Stage 2 of the complaints process. The complainant also pursued his request for information about BBC iPlayer. So far as relevant to this appeal, he made the following further points:

- During the 1980s, the IRA was referred to (impliedly, by the BBC) as “terrorists”.
- The EU Council of Foreign Ministers and the UK and USA governments had declared Hamas and its allies to be terrorist organisations.
- The Prime Minister had reportedly described Islamic State as a terrorist organisation comparable to Hamas and its allies.
- Audience Services had failed to answer the complainant’s point concerning the dictionary definitions of “terrorists”, “extremists” and “radicals”.
- Citing by way of example a politician and a trade union leader whom he regarded as “militants”, the complainant queried how the BBC justified describing Islamic State as “terrorists” and Hamas and others as “militants”.
- The complainant asked whether the Editorial Guidelines specified what terms should be used in particular circumstances, whether reporters were entitled to use their own discretion, and whether an editor’s permission was required.
- According to the complainant, the CEO of the Britain Israel Communications and Research Centre had stated that the BBC (and another news organisation) had described Hamas as “militants”, but Fusilier Lee Rigby’s killers as “terrorists”.

BBC’s responses

Stage 1a

On 24 August 2014, BBC Audience Services replied saying that the BBC was obliged to be impartial, independent and accurate. Audience Services said that the BBC used neutral language to describe news events, particularly in complex situations such as the Middle East, where any appearance of bias would undermine the BBC’s credibility. According to Audience Services, the BBC was explicit in reporting the issues surrounding attacks such as suicide bombings, and the consequences of those attacks. In Audience Services’ view, the public could make their own judgements on how such organisations operated.

On 1 October 2014, the Director, Editorial Policy and Standards, informed the complainant that the BBC's approach to the use of the word "terrorist" could be found on a public facing web site in the Guidance to the Editorial Guidelines²⁵. He explained that, although the word was not proscribed it was used sparingly, for the reasons given in the Guidance.

Stage 1b

Audience Services sent the complainant a Stage 1b response on 8 October 2014. Audience Services explained that, as the complainant had not cited any specific examples, it was difficult to address this. Nevertheless, Audience Services noted that Hamas had both political and military wings, and that, while its charter called for Israel's 'nullification', Hamas was the democratically elected government in Gaza. In Audience Services' view, Hamas's strategy was to end the occupation through armed resistance, while its charter also called for Israel's destruction. According to Audience Services, Hamas had modified its position over time, and also enjoyed considerable support among Palestinians, particularly in Gaza. Audience Services also considered it noteworthy that (in its view) this was as much to do with Hamas's humanitarian wing as with its military wing. After quoting from the Editorial Guidelines on War, Terror and Emergencies²⁶, Audience Services stated that the BBC's coverage strove to describe the nuanced nature of the organisation (i.e., Hamas) in an accurate and impartial manner, allowing the audience to make up their own minds. As it had nothing further to add at Stage 1, Audience Services advised the complainant that, if he wished to escalate his complaint about the description of Hamas, he should contact the Director of BBC News.

On 10 October 2014, the Editorial Complaints Unit's (ECU) Head of Editorial Complaints wrote to the complainant, stating that (as the ECU's Complaints Manager had previously explained) the ECU could only consider a complaint that fell within its remit and that had been duly referred to it after completion of Stage 1.

Following further correspondence with Audience Services, the complainant emailed the ECU's Head of Editorial Complaints on 4 December 2014, requesting a Stage 2 escalation. He gave reasons for the delay in submitting this request.

On 7 December the complainant was given information about the availability of programmes on iPlayer which had increased to 30 days.

Stage 1 closedown

On 20 December 2014, following multiple contacts by the complainant over several weeks to various members of the BBC and to Stages 1 and 2 of the BBC's complaints service, Audience Services informed the complainant that it had little to add to its previous responses. Audience Services noted that the ECU had already explained its remit and the nature of the complaints it investigated. After apologising if this had not been made clear, Audience Services stated that his complaint did not fall within the ECU's remit. Audience Services did not believe the complaints had raised significant issues of general importance that might justify further investigation. Therefore, Audience Services would not correspond further in response to additional points, comments or questions about this issue or its responses.

²⁵ <http://www.bbc.co.uk/editorialguidelines/page/guidance-reporting-terrorism-full>

²⁶ <http://www.bbc.co.uk/editorialguidelines/page/guidelines-war-introduction>

In response, the complainant stated that Audience Services had ignored points he had made.

Appeal to the BBC Trust

The complainant made contact with the Trust on 20 and 21 December 2014. The complainant wished to appeal to the Trust. The complainant requested an extension of the period for submitting an appeal so that he could add a dossier of information. He also asked the Trust to consider his "simple request for information" concerning BBC iPlayer which was a request for information on a proposed Archive service.

After receipt of his appeal was acknowledged, the complainant wrote to the Trust Unit on 6 January 2015. He raised "some other serious matters not directly connected to my own case", which he wished to bring to the Trust Unit's urgent attention. These concerned what he regarded as potential breaches of the Editorial Guidelines on Impartiality in BBC news coverage of Israel and the Middle East. The complainant asked the Trust to investigate these matters, and to include its response in its answer to his complaints.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser (the Adviser) also carefully read the correspondence that had passed between the complainant and the BBC. The Adviser considered the appeal did not have a reasonable prospect of success.

The Adviser noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not proceeded for consideration at Stage 2. The Adviser noted that the BBC's editorial complaints system has three stages. The first two stages lie with the BBC; the third and final stage is an appeal to the Trust. Under the Complaints Framework, the BBC must consider the interests of all licence fee payers and is entitled to close down correspondence if it has nothing further it wishes to say.

The Editorial Complaints and Appeals Procedure states:

1.7 At all stages of this Procedure, your complaint may not be investigated if it:

1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or
1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious...

She therefore decided that the point she should consider was whether an appeal against the decision not to correspond further with the complainant had a reasonable prospect of success.

She considered the complaint about the terms used to describe Hamas fighters. She noted:

- The Director, Editorial Policy and Standards, had given the complainant information about the use of the term "terrorist" and explained that it was not proscribed
- Audience Services had noted that this complaint did not relate to specific output.

The Adviser considered Trustees would be likely to conclude Audience Services had provided a reasoned and reasonable response on the substantive complaint and had acted appropriately in closing down the correspondence at Stage 1b. She therefore did not consider that this point of appeal had a reasonable prospect of success, and she did not propose to put it before Trustees.

The Adviser noted that, at Stage 3 of the complaints process, the complainant had raised “some other serious matters not directly connected to my own case” which he also wished to have considered. She noted that the Trust only considered complaints after they had been addressed by the BBC. She considered these additional points fell outside the remit of the Trust and it was not appropriate for Trustees to consider them. She considered they were matters for the complainant to pursue through Audience Services in the first instance.

Request for review by Trustees

The complainant responded to the Adviser’s decision on 24 February 2015. The complainant stated the following in relation to matters relevant to this appeal:

- The Adviser had ignored the point in his previous email in which he asserted his right under the complaints procedure to appeal directly to the BBC Trust following a 1B closedown.
- He also wanted the information regarding the proposed Archive system and asserted that the Director-General’s office had failed to answer him.
- He made a number of additional points which related to his concerns about the nomenclature used to describe Hamas and provided examples of where in regards to other groups the BBC had used the term “terrorist”; he cross-referred to the definition in the Prevention of Terrorism Act 2000; he reiterated the substance of his allegation on this point, namely that Hamas is a terrorist organisation and that the BBC ought to describe it as such.

The complainant’s response also included:

- a request for a response to a question he had previously submitted to the Director-General’s office for information (regarding the proposed Archive system) which remained outstanding
- additional concerns about a number of other matters.

The Committee’s decision

The Committee noted that the complainant’s Stage 3 appeal to the Trust had been handled in accordance with the complaints procedure. The Committee noted that the procedure was explained to the complainant in the letter accompanying the Adviser’s decision informing him that his complaint would not proceed to appeal. Trustees noted the relevant extracts from that letter:

“We review the complaints that come to us to assess whether they should be put before the BBC’s Trustees for them to reach a final decision. If you want to find out more about how the complaints system works – and in particular about how

the BBC Trust fits in – this is the web link:

http://www.bbc.co.uk/bbctrust/governance/complaints_framework/

“I am sorry to send a disappointing response, but I do not believe your appeal against Audience Services’ decision not to respond further to your complaint should be put in front of Trustees...”

“If you disagree with my decision, you can ask the Trustees to review it by contacting the Complaints Adviser... You should state your reasons, which will need to demonstrate clearly to Trustees why, contrary to my decision, your complaint stands a reasonable prospect of success...”

“If the Trustees agree that your case has no reasonable prospect of success then it will close.”

The Committee noted that the complaints procedure had been complied with. In the case of this complaint the decision had been made by the Adviser that the matters raised did not qualify to be heard on appeal.

The Committee then noted the additional points in support of the complainant’s substantive allegation. It considered that the Adviser had made an appropriate and adequate assessment of the basis for Audience Services’ decision not to correspond further. The Committee considered that the additional points in the complainant’s response to the Adviser’s decision did not suggest that the complaint had a reasonable prospect of success were it to proceed to appeal.

The Trustees noted that the Trust had approved the BBC’s Editorial Guidelines (following public consultation) which contained the following:

Use of Language

11.4.5 We must report acts of terror quickly, accurately, fully and responsibly. Terrorism is a difficult and emotive subject with significant political overtones and care is required in the use of language that carries value judgements. We try to avoid the use of the term “terrorist” without attribution. When we do use the term we should strive to do so with consistency in the stories we report across all our services and in a way that does not undermine our reputation for objectivity and accuracy.

The word “terrorist” itself can be a barrier rather than an aid to understanding. We should convey to our audience the full consequences of the act by describing what happened. We should use words which specifically describe the perpetrator such as “bomber”, “attacker”, “gunman”, “kidnapper”, “insurgent”, and “militant”. We should not adopt other people’s language as our own; our responsibility is to remain objective and report in ways that enable our audiences to make their own assessments about who is doing what to whom.

The Committee agreed that the choice of what terminology to use in individual circumstances was an editorial decision which rested with the BBC Executive and was not a matter for the Trust.

The Committee noted the complainant had been advised previously where he should direct new matters in the first instance and Trustees confirmed therefore that they were

not able to engage on the additional editorial issues raised at Stage 3.

While Trustees acknowledged the complainant's frustration at not yet receiving a response to his question about a new Archive Service they noted that he had submitted multiple queries about various topics across many different contacts and not only through Audience Services. Whilst the BBC tried to respond to requests for information they were not obliged to do so. The complainant's correspondence was particularly difficult to follow. The Committee noted that the BBC planned to launch such a service this year but the date of launch was not yet known.

The Committee agreed it was not appropriate, proportionate or cost effective to proceed with this appeal and that this complaint did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about BBC Breakfast, BBC One, 14 October 2014

The complaint

The complainant contacted the BBC on 14 October 2014. He was concerned that a presenter on *BBC Breakfast* had announced that the Chancellor had relaxed the rules on pension annuity purchase. He said this announcement was misleading as the relaxation only applied to Defined Contribution Schemes, not Additional Voluntary Contribution Schemes.

Audience Services responded on 21 October 2014 and stated:

"I understand you feel the item regarding pensions had been misleading as it didn't specify which type.

"Having reviewed the programme it was referring to private pensions throughout the programme for example [the presenter] stated:

'The rules for accessing savings invested in private pensions are to be relaxed. In the budget back in March the Chancellor, George Osborne, announced that people could withdraw their pensions as cash, rather than buy an annuity.

'Now he says they'll have the freedom to take as much or as little as they want, at any time.'

"We also reported this back in March 2014 at the time it was reported

'The changes affect those over 55 who have savings in a defined contribution (DC) pension scheme, such as a personal pension. In a DC scheme, the pension depends on the amount of money you, and perhaps your employer, have saved in the scheme.

'The position for those in defined benefit (DB) - or final salary - pensions is unlikely to change, although there may be a restriction preventing people in public service pension schemes from transferring into a DC scheme.'"

The complainant remained unhappy. He considered the statement had been misleading, because not everyone could take their pension in cash, for example, teachers with "private pension, Additional Voluntary Contributions" were excluded.

Audience Services sent a final response on 5 January 2015 stating that they had nothing to add to their previous response and did not believe the complaint raised a significant issue of general importance that might justify further investigation.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 5 January 2015 and made the following points:

- The BBC had used the term “Private Pension” with regard to the current situation concerning poor value for money annuities. He said that this would lead the audience to believe that no one would need to purchase an annuity after April 2015, but that was not true as “Additional Voluntary Contributions” (AVCs) were NOT included in the Government’s annuity purchase scheme.
- His MP had been shocked to learn that School Teachers’ AVCs were currently excluded from the government’s scheme commencing during April 2015.
- His MP had taken the matter up with David Laws MP, Minister of State for Schools who had replied. – The complainant offered a copy of the letter from the Minister to the BBC three times, but the BBC failed to take him up on his offer.
- The BBC had a duty to ensure that their news announcements did not mislead people and to clarify the position around the purchase of annuities.

The Trust Unit’s decision

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

The complainant had appealed on the substance of his complaint which was that the BBC had been misleading by stating that following a relaxation of the rules governing private pensions, people could withdraw their pensions in cash, rather than buy an annuity.

The Adviser noted that the complainant had raised concerns that the BBC’s output was misleading. The Editorial Guidelines relating to Accuracy set out the BBC’s commitment to achieving due accuracy. This commitment was fundamental to the BBC’s reputation and the trust of audiences. It was also a requirement under the Agreement accompanying the BBC Charter. The term “due” meant 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 might influence that expectation. The guidelines also stated that the BBC must not knowingly and materially mislead its audiences.

The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the *BBC Breakfast* report was a short news headline item and that the subject was not reported in any depth. The Adviser did not consider that the *BBC Breakfast* audience would expect such a brief report to include the sort of detailed information on private pensions that the complainant would have preferred, and would not have been materially misled. She acknowledged that he would have liked the BBC to report on the subject in more depth, even in such a short piece, and that he would have liked the BBC to ask him for a copy of the letter from David Laws MP; however, she believed the letter was not relevant to the headline report in question and it was not material to the substance of the complaint.

The Adviser believed that Trustees would be of the view that the complainant had received a reasonable response from Audience Services, and that it would be a disproportionate use of the licence fee to consider the complaint further. It followed from this that she considered the appeal did not have a reasonable prospect of success and she decided that it should not be placed 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 BBC should cover the new pension legislation “thoroughly and in a proper manner, in accordance with BBC Editorial Guidelines and the BBC Charter”.

The complainant observed:

“I am restricted by the BBC complaints procedure in making my point, because your system only allows complaints about specific incidents and not by subject matter. This makes complaints appear to be more trivial than they actually are.”

He also reiterated the essence of his complaint, namely the definition of a “Private Pension” as being of a fund used to purchase an annuity.

The complainant said he did not agree with the Senior Editorial Complaints Adviser’s interpretation of the Editorial Guidelines on Accuracy. He said:

- she took the idea of “due accuracy” out of context; that the guidelines intend for this to be used in relation to drama and entertainment and not news output
- that in the item, the term Private Pensions was used for Defined Contribution. He said there could be no justification for this
- although the item was brief, it was “a controversial issue” and therefore should have contained more detail. He noted that output should be “well sourced [and] based on sound evidence”
- the BBC had contravened its own Editorial Guidelines and the Royal Charter. He cited other media sources which he felt set much higher standards.

The complainant asked Trustees to recognise the difficulties caused for some people by the new legislation. He explained that he had to seek additional information from another source as the BBC had failed to provide adequate detail. The complainant noted that he had informed his MP about the legislative changes.

The Committee’s decision

Trustees understood that the complainant felt the item was misleading in stating that people with private pensions could withdraw their pensions in cash, rather than buy an annuity. Trustees noted that the manner of the BBC’s reporting had led him to consider the BBC to be in breach of its own Editorial Guidelines and the Royal Charter and Agreement.

The Committee noted that the Adviser had considered the complaint against the Editorial Guidelines on Accuracy. Trustees were aware, however, that the complainant felt that “due accuracy” did not relate to news output and that the test had been incorrectly

applied by the Adviser. The Committee observed that the Agreement (Clause 44 (1 and 8)) stipulates that controversial subjects must be treated with due accuracy in news, and that the BBC Editorial Guidelines require due accuracy of all BBC output (3.2.1). While the requirements might differ, "due accuracy" still applies to news output.

The report in question was a brief item on *BBC Breakfast*. The Committee noted that the complainant felt that the subject was "a controversial issue" and therefore the fact that it was a short piece was not relevant.

The Committee did not feel that, in context, the report would have misled the audience. "Private pensions" had been used as a shorthand. It had been duly accurate in context. Trustees considered that if they were to take this case on appeal they would reach the view that Audience Services was correct to close the correspondence down as it did not concern a possible breach of the Editorial Guidelines.

The Committee agreed it was not appropriate, proportionate or cost effective to proceed with this appeal and that this complaint did not have a reasonable prospect of success.

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

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 Procedure²⁷ 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.

²⁷ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

Decision of BBC Audience Services not to respond further to a complaint about Afghanistan: The Homecoming, Inside Out London, BBC One, 27 October 2014

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 complainant contacted the BBC on 28 October 2014 to express his concern about “graphic scenes of battle surgery with close ups of blood and gore”. He made the following allegations in his complaint:

- These scenes were inappropriate for the time of day.
- These scenes were produced by the MOD and were propaganda.
- This was building hate against Muslims.

Audience Services made the following points in response to the complaint on 6 November 2014:

- The segment of the programme at the centre of the complaint was part of Harry Gration’s report from Camp Bastion where he looked at the work undertaken by military medics at the field hospital there. The footage of the wounded soldiers was supplied by the Ministry of Defence and had been recorded in 2010 as part of an MOD recruitment video.
- The BBC was very much aware of the wide range of people who would watch a programme of this nature, particularly at the time of day it was broadcast. Although the BBC hoped the footage would not have been generally viewed as too graphic, it would be unacceptable for the BBC to distort or suppress certain aspects of stories because of their subject matter.
- Impartiality was the cornerstone of BBC output.

The complainant made a follow-up complaint. Audience Services responded at Stage 1b acknowledging the complainant’s concerns. They made the following points in response:

- They did not accept that the use of footage showing a medical team at work was an attempt at “propaganda”.
- The BBC was committed to fair and impartial reporting, and used the footage to illustrate the conditions that the medical teams had to work in.
- The BBC had made it very clear to viewers – both in voiceover and in an on-screen graphic – that the footage had been supplied by the MOD.

Audience Services said that they had nothing further to add 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 submitted an appeal to the BBC Trust on 21 December 2014 following the decision of Audience Services to close down the complaint at Stage 1b. He reiterated his concern that the footage at the centre of his complaint amounted to race hate and said the BBC complaints process had failed to set a serious injustice right.

The Committee's decision

Trustees noted the points made by the complainant and by the BBC.

Trustees noted that the programme was produced to mark the withdrawal of military troops from Afghanistan after 13 years of war and to assess its impact on different regions in the UK. Each region produced its own version and every programme included a specially shot story in Camp Bastion Trauma Hospital as the medics prepared for their journey home. Trustees noted that it included footage of wounded soldiers which was clearly signposted in voiceover and by on-screen wording, which appeared twice, as having been supplied by the MOD. They also noted that at no stage did the viewer have a clear view of the soldiers being treated in the MOD footage and that this, combined with the footage having been treated to demonstrate it dated from 2010, had a distancing effect.

Trustees considered it entirely appropriate to feature footage of wounded soldiers as part of a record of the work of the medics at Camp Bastion. They did not consider there was any prospect of success for an appeal suggesting that there had been a breach of the BBC's Editorial Guidelines because this footage amounted to race hatred or propaganda or that the footage chosen was too graphic for broadcast.

Trustees considered that Audience Services had provided a full and reasonable response to the complainant's concerns.

The Committee considered that this complaint did not have a reasonable prospect of success and that it was not appropriate, proportionate or cost effective to investigate it further.

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 BBC bias in favour of England

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 complainant contacted the BBC on 28 October 2014 to express his concern that the BBC was biased towards England, and in particular, the south of England. He gave two examples:

- *A Taste of Britain*, which was being repeated on BBC Two. He said that only food from England was discussed and presented, with nothing shown about Scotland, Northern Ireland or Wales.
- BBC morning news programmes which featured mainly southern accents and south-focused stories.

Audience Services responded on 5 November 2014 acknowledging the complainant's views and explaining that although the BBC tried very hard to produce a wide range of shows which would appeal to a hugely diverse audience, there would always be certain things which did not appeal to some people, and that was the nature of broadcasting.

Audience Services explained that what to include in any series is frequently a very difficult decision for programme makers, and it was not always possible or practical to cover every single aspect of any subject within one series. They acknowledged that some viewers would be disappointed with the topics and locations chosen for each episode. However, they emphasised that the BBC would never discriminate against or display a bias towards any particular part of the UK.

The complainant was not happy with this response and made a follow up complaint. He said his main question had not been addressed which was, "why was the programme called 'A Taste of Britain' when it only covered England?"

Audience Services apologised for their first reply. They addressed *A Taste of Britain* specifically in a second response and made the following points:

- One of the programmes in the series had featured Monmouthshire in Wales, so it was not correct to say that the programme "covered only England".
- Any output had to be viewed in context and in *A Taste of Britain*, the presenters explored some areas of Britain but it was never stated or guaranteed that everywhere in the UK would be able to be visited in just one series.
- They gave examples of other BBC output about British food which featured other regions of Britain: *Great British Menu*, BBC Two; *The Food Programme*, Radio 4; *James Martin's Food Map of Britain*, [BBC Two]; *Our Food*, BBC Two; *The Incredible Spice Men*, [BBC Two]. They also mentioned a BBC report on the launch of the Scottish Year of Food and Drink a few days previously.

- The BBC has no bias against Scotland.
- BBC Scotland is a thriving and growing production base producing a huge amount of both national and local output across all genres.
- The BBC did not select presenters and newsreaders on the basis of their accent or where they came from. BBC Breakfast was not broadcast from the south of England and featured a range of voices. Examples were given: Carol Kirkwood, Sally Nugent, Louise Minchin, Steph McGovern.
- Editorially, breakfast news reports came from around the entire UK as well as further afield. It was not true to say that the BBC was biased in favour of the south of England.
- Whilst, as a national institution, the BBC's headquarters were in London, and, as London was the UK's capital city and seat of national government there would be many news reports that were London-based; the BBC had moved, and was continuing to move, large proportions of its operations out of London. Production centres were located in Glasgow, Salford, Cardiff, Belfast with facilities also in Aberdeen, Dumbarton, Dumfries, Dundee, Edinburgh, Glasgow, Inverness, Selkirk, Stornoway, Shetland and Orkney.

The complainant remained unhappy and made a further complaint. He made the following further points:

- He said he had been complaining about the title "A Taste of Britain" and why it was so called.
- He said he believed that the BBC controllers in London and the South East were racist towards Scotland.
- When "A Taste of Britain" was presented to the BBC in London, why did no-one take the time to question the title, as the programme only went around England and Wales, omitting Scotland and Northern Ireland. He believed that to be indicative of his belief that BBC controllers gave little thought to what went on outside England.

Audience Services responded saying that they had nothing further to add 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 submitted an appeal to the BBC Trust on 30 December 2014. He said he believed the BBC to be institutionally racist because its programmes were biased towards England, (the south of England in particular), and made only scant reference to other nations, i.e. Northern Ireland, Scotland and Wales. He gave further examples and made further points in later correspondence.

The Committee's decision

The Trustees acknowledged the complainant's views, noting his arguments and the BBC's responses. They noted that they could not consider points which had been raised for the first time at the Trust because the BBC Agreement between the Secretary of State for Culture, Media and Sport and the BBC made it clear that all complaints had to be made to the BBC in the first instance. It was open to the complainant to raise his concerns about other specific output mentioned in his appeal correspondence separately in a Stage 1 complaint if he wished to do so.

Trustees understood the complainant's concerns but considered that Audience Services had explained correctly that the series "A Taste of Britain" had covered Monmouthshire and therefore it was correct to say it did not cover only England. Audience Services had also provided other examples of other cookery programmes such as "The Great British Menu" which went around each nation of the United Kingdom.

Trustees acknowledged that the complainant did not feel that Northern Ireland, Scotland and Wales were sufficiently represented in BBC output, but they considered that BBC Audience Services had provided a full and reasoned response to the complainant's concerns. The complainant had not raised a matter which concerned a possible breach of the BBC's Editorial Guidelines and for this reason the complaint did not have a reasonable prospect of success and the Trustees would not take it as a full appeal.

However, the Trustees understood that this was a matter that interested audiences, who wanted to see their nation or region in programmes. The Committee wished to draw to the complainant's attention that the Trust had Audience Councils based in England, Northern Ireland, Scotland and Wales. Those Councils advised the Trust on audiences' views about the BBC and how it was fulfilling its public purposes. The public purposes are set out in the Royal Charter. One of these is to represent "the UK, its nations, regions and communities". The Trust took this issue very seriously. It had commissioned research every year about the BBC's representation of life in the Nations and Regions. The BBC's performance had improved but the Trust was clear this was still a key area for improvement. Audience Council reports and the research commissioned by the Trust were published on the Trust's website. This was work the complainant might find particularly interesting.

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

Panorama: “Putin’s Gamble”, BBC One, 8 September 2014

The complainant asked the Editorial Standards Committee to review the decision of the Editorial Complaints Unit (ECU) not to uphold the complaint at Stage 2.

The complaint

The complainant contacted the BBC on 11 September 2014 to express his concern that the *Panorama* programme, “Putin’s Gamble”, breached BBC Editorial Guidelines on accuracy and impartiality. He believed the programme was based on inaccurate and misleading evidence backed by unsubstantiated allegations.

The editor of *Panorama* supplied comments in response:

“We believe this film was balanced and fair in its representation of Russia and of the conflict in eastern Ukraine. It included a long section which showed the impact on civilians of Ukrainian military action in Donetsk and other areas, including the aftermath of bombing, and mothers-to-be sheltering in the basement of the maternity hospital. It gave space to pro-Russian voices and it allowed President Putin himself to put forward his critique of the actions of the Ukrainian government.”

The complaint was subsequently investigated by the ECU Complaints Director at Stage 2 and was not upheld. The ECU investigation focused on specific examples of inaccuracy cited by the complainant in previous correspondence:

1. The programme referred to a Russian “ghost army” operating in Ukraine.
2. References were made to wars in Chechnya and Georgia without mentioning that neither of these was started by Russia.
3. The programme claimed that Russia planned to shoot down one of its own passenger aircraft.
4. The programme used now discredited Kiev-produced footage of BUK missiles in rebel-held territory which was actually taken 70 miles west of where it was claimed.
5. The programme presented footage which it said was filmed from the back of a bus in Ukraine but this was not authenticated and its use was misleading.

The ECU also considered whether the omission of other information cited by the complainant in his Stage 2 request of 19 November 2014 contributed to a lack of due accuracy and due impartiality. The ECU further considered whether the programme had been duly impartial as it included “anti-Putin commentary by various people who all had an axe to grind” as alleged by the complainant.

In rejecting the complaint, the Complaints Director issued his conclusions in relation to each of the points cited above:

- The programme made numerous references to a “ghost army” and did so in terms which would have left viewers in no doubt that members of that army were Russian soldiers.

- There was nothing in the *Panorama* reporter's language, or in the context of his comments, which would have led viewers to draw any conclusions as to who was responsible for starting the war between Russia and Chechnya or the war between Russia and Georgia. He did not therefore consider that this section of the programme was misleading.
- The programme assessed a number of possible theories behind the attack on Flight MH17, attributed such claims appropriately and made it clear that the suggestion the Russians intended to shoot down one of their own passenger planes was made by the Ukrainian security service, thereby allowing the audience to judge the claim in the correct context. He therefore considered the programme met the requirement for due accuracy and due impartiality on this point.
- The footage in question was described as "disputed" in the programme, and was not presented as persuasive or conclusive evidence that pro-Russian forces shot down the Malaysia Airlines plane. He did not agree that the material was presented in a misleading way and considered that there was no material evidence to cast reasonable doubt on the information presented in the programme.
- The Complaints Director agreed that it would have given the audience more information if the precise location and date of the footage had been available, but he considered that viewers would have formed the impression from this sequence that there appeared to be evidence of a significant Russian military presence inside Ukraine. The audience would have been aware that the clip had been taken from YouTube, and therefore it was reasonable to assume an understanding that there was no guarantee of its authenticity. The Complaints Director did not consider it misleading to include the footage in the manner it was presented.

The Complaints Director considered the further points made by the complainant in his Stage 2 complaint, but did not regard them as material to the due accuracy or due impartiality of the programme.

The complainant objected to this decision and said:

1. The ghost army was not in Donetsk and Luhansk.
2. The implication was that Russia started these wars.
3. Most of the programme discussion was about wild theories and accusations against Russia and the rebels in Donbass.
4. The programme tracked locations shown in photographs of the BUK launcher but this was pointless as there was no date or time context.
5. The convoy footage lacked contextual or visual proof.

The complainant raised other points and said his complaint still stood in its entirety.

The Complaints Director considered the further points but did not change his decision.

Appeal to the BBC Trust

The complainant submitted an appeal to the BBC Trust on 31 December 2014 following the ECU's decision not to uphold the complaint at Stage 2. He requested a review of his complaint because he felt that none of his concerns about the BBC's integrity regarding the *Panorama* programme, "Putin's Gamble", had been attended to.

The Committee's decision

Trustees noted the complainant's arguments and the BBC's responses at Stages 1 and 2. They noted that the ECU had issued a detailed finding at Stage 2 which addressed all the complainant's points, though the complainant had not agreed with the ECU's conclusions and considered that he and the BBC were "very far apart" in their positions.

It was noted that the programme contained a range of contributors who reflected a range of views and perspectives. Trustees agreed with the ECU that this range was sufficient to achieve the necessary due impartiality. In particular, President Putin and Alexander Zakharchenko, Prime Minister of the Donetsk People's Republic, were included in the programme.

Trustees saw no material evidence to cast reasonable doubt on the information presented in the programme and agreed with the ECU that the broadcast was not likely to have misled the programme's audience. They agreed that it met the requirements for due accuracy.

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 as the responsibility of the Executive Board (Article 38, (1) (b)), 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 noted that it was a matter of legitimate editorial discretion for programme-makers to decide what information to include in a programme providing it did not breach editorial standards and they agreed that the responsibility for such decisions rested with the BBC Executive rather than the Trust. They therefore decided that the appeal did not have a reasonable prospect of success.

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

BBC London News, BBC One, coverage of the People's Climate March at 18.50 and 22.20 on 21 September 2014

The complainant asked the Editorial Standards Committee to review the decision of the Editorial Complaints Unit (ECU) not to uphold the complaint at Stage 2.

The complaint

The complainant contacted the BBC on 22 September 2014 to express his concern at the way climate change figures had been reported during news coverage of the People's Climate March. He said it was misleading and biased to show a graph titled "Average Global Temperature" and say that "More than fifteen years ago, for some reason temperatures stopped rising". He believed this statement contained evidence of bias because the suggestion that there had been a "pause" in global warming was "straight out of the climate 'sceptics' text book".

When reviewing the broadcast, Audience Services noted that straight after the graph was shown,

"the question was put towards one of the [march] organisers....who stated that the vast majority of the world's scientists say it's a temporary pause and that climate change was about to accelerate. He finished by saying, 'we need to act, starting from now,' and none of this was challenged."

The complainant felt that the fact that the above statement was not challenged was irrelevant. He considered that the statement about the "pause" in climate change was all that was needed to be misleading and demonstrate bias because he had produced evidence to show that "proper science sources refuted the 'pause' disproving man-made climate change some time ago, so just showing that graph + voiceover was misleading".

The complaint was escalated to Stage 2 and was investigated by the ECU. The ECU's understanding of the complainant's central concern was that there was no justification for referring to a "pause" in climate change, and the reference would have planted "a seed of doubt in the audience's mind about climate change".

The ECU did not uphold the complaint. The Complaints Director referred to the statement in the programme:

"In fact the vast majority of the world's scientists say that was a temporary pause and that climate change is about to accelerate. So we need to act and starting now."

He believed this statement would

"...have offset any impression that climate change was not happening or that there was no need to take action to counter anthropogenic global warming..."

The Complaints Director also addressed the complainant's view that it was inaccurate for the programme to state that "more than fifteen years ago for some reason temperatures stopped rising".

The Complaints Director acknowledged that there appeared to have been a considerable slowdown in the rate of average temperature increase in the period since 1998 rather than a complete halt. However, although he acknowledged that the wording in the programme could have been more precise, he did not believe the wording in the programme could be regarded as materially misleading in the context of a report aimed at a general audience.

Appeal to the BBC Trust

The complainant submitted an appeal to the BBC Trust on 2 January 2015 following the ECU's decision not to uphold the complaint at Stage 2.

He made the following points in support of his appeal:

- He maintained that it was inconsistent with comments made by Professor Steve Jones in the BBC's own 2011 Impartiality Report to frame the question:

"But how do the organisers deal with measurements that show that something happened recently to the long term trend. More than 15 years ago for some reason temperatures just stopped rising."
- He said the BBC had deliberately adopted an adversarial stance by raising the "pause", which implied that there was scientific disagreement or debate over the measurements, thus questioning the basis for the climate change consensus.
- By continuing to raise the "pause", even after reputable scientists such as Tim Palmer said he "wouldn't say it's paused", the BBC left itself open to the charge that it had aligned itself with climate contrarians.
- In summary, he said the report was misleading because "it implied the consensus, that climate change is real, man-made and manageable if acted upon urgently, depends on explaining the 'pause' satisfactorily. Whereas, e.g. The Royal Society says 'No' to the question: Does the recent slowdown of warming mean that climate change is no longer happening?"
- He said the report showed bias because, "paraphrasing Professor Jones, the BBC's 'oppositional treatment' of this 'science story' represented 'bogus impartiality' which can, perversely, lead to bias in its own right, for it gives disproportionate weight to minority views".

The Committee's decision

Trustees acknowledged the complainant's concern that the report was misleading and showed bias. They noted his arguments in support of his appeal but did not agree that the general audience were likely to have been misled. They noted that Audience Services and the ECU had pointed to the following statement in the programme as a comment which would have offset any misapprehension on this point:

"In fact the vast majority of the world's scientists say that was a temporary pause and that climate change is about to accelerate. So we need to act and starting now."

Trustees acknowledged that the complainant felt that the treatment of climate change in the report represented “bogus impartiality” by giving disproportionate weight to minority views. However, they agreed with the ECU Complaints Director that “reflecting a legitimate area of scientific analysis and discussion” would not necessarily “undermine the evidence for man-made climate change”.

Trustees acknowledged the point made by the Complaints Director that the language used in the report to describe a slowdown in the rate of average temperature increase in the period since 1998 could have been more precise. However, they agreed that a general audience was likely not to have been materially misled by the statement “more than fifteen years ago for some reason temperatures stopped rising” into thinking that climate change had come to a complete halt. They noted the Complaints Director’s comment that “Climate scientists generally refer to a pause or hiatus (the UK Met Office uses the phrase ‘relatively flat’)” when referring to a very small rate of increase. The ECU’s understanding was that the rate of increase concerned was around 0.05 degrees Celsius per decade based on data from 1998 to 2012.

Trustees did not consider they had seen evidence of a breach of Editorial Guidelines.

They acknowledged that the complainant did not agree with the way information related to climate change was presented in the programme, but they 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 as the responsibility of the Executive Board (Article 38, (1) (b)), 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 decisions relating to programme content were the responsibility of the BBC Executive rather than the Trust. They decided the appeal did not have a reasonable prospect of success.

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

Today, Radio 4, 28 July 2014

The complainant asked the Editorial Standards Committee to review the decision of the Editorial Complaints Unit (ECU) not to uphold the complaint at Stage 2.

The complaint

The complainant contacted the BBC to raise his concern about comments made by the presenter John Humphrys that most domestic violence was perpetrated by men. The complainant alleged that there was new data to show that domestic violence was in fact mostly perpetrated by women. The complainant believed there were serious problems with the under-reporting of incidents where males were victims of domestic violence.

The complaint was investigated by the ECU at Stage 2 against the BBC's Editorial Guidelines on Accuracy. The ECU noted that the presenter had made two remarks which might be interpreted in the way the complainant had stated:

"Many lives are blighted, if not destroyed, by violent husbands or even, occasionally, wives..."

"If a man is violent towards his wife, and that is usually the case, obviously...."

The ECU considered data contained in the Office of National Statistics (ONS) Statistical Bulletin 2013, referred to in the BBC's Stage 1 response, which the complainant had rejected as unreliable because it comprised "mere aggregate reports to police of domestic violence incidents".

The ECU found that the ONS data was not based simply on reports to police as the complainant believed, but on the results of the Crime Survey of England and Wales (Survey) which claimed to record crime not otherwise reported to the police. The ECU noted that the Survey did acknowledge the issue of possible under-reporting of domestic abuse. The ECU noted the Survey addressed this issue with respondents through the use of self-completion questionnaires in addition to face-to-face interviews. The ECU also noted that the Survey did not identify the gender of the abuser in each case of domestic violence but believed that, generally speaking, it was reasonable to assume that women reporting abuse would have been abused by men and vice versa.

The ECU concluded that the figures on which the BBC based its confidence in the presenter's comments were "considerably more robust" than the complainant believed and were not subject to the same problem of under-reporting that reports to the police by victims might be. Therefore, the ECU decided that the requirement of due accuracy as set out in the Editorial Guidelines had been met. The complaint was not upheld.

Appeal to the BBC Trust

The complainant asked the Editorial Standards Committee to review the decision of the Editorial Complaints Unit on the basis of the following points alleged by the complainant:

- Domestic violence is typically perpetrated by women against their male partners.

- Men are more likely to under-report domestic violence against them in self-completion questionnaires as opposed to females and therefore any national statistics are inaccurate.
- By implementing self-completion questionnaires rather than face-to-face interviews, the Crime Survey of England and Wales still fails to minimise the risk of under-reporting by male victims of domestic violence.
- The BBC's position on domestic violence and men as the main perpetrators is factually inaccurate and biased.

The Committee's decision

This appeal was considered against the Editorial Guidelines on Accuracy (section 3).

The Committee noted the complainant's arguments in support of his contention that the presenter had inaccurately stated that women are the most common victims of domestic violence. It noted the presenter had acknowledged that men are also victims of domestic violence.

The Committee further noted data provided by the Office of National Statistics (ONS) which strongly suggests that women are more likely to be victims of domestic violence. The Committee noted that this data includes both (1) reports made to the police and (2) the results of the Crime Survey of England and Wales in order to capture instances of domestic violence which may not have been reported to the police. The Committee noted that the Crime Survey of England and Wales allowed feedback either face-to-face or in the form of a self-completion questionnaire to minimise the risk of under-reporting by male and female victims of domestic violence. The Committee noted the complainant's belief that the survey would fail to accurately capture incidences where men were victims of domestic violence, and his reasons for this belief, but it considered the BBC was entitled to rely on this reputable survey. In the Trustees' view this was well sourced and the evidence was sound

Trustees considered that the programme had complied with the requirements of the Editorial Guidelines on Accuracy and that it was duly accurate and not misleading.

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

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

Decision of BBC Audience Services not to respond further to a complaint about “The woman who swapped home for a hut near Chechnya”, BBC Online, 27 January 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 complainant contacted the BBC on 27 January 2015 to express his concern about the accuracy of this online article. He believed the BBC was wrong to accept that a man in Germany sent his wife away from their children and into exile. He thought the article was implausible and the BBC should not portray men in such a bad way without sufficient corroboration of the woman's story. He believed the article was inaccurate and misleading and reflected badly on all men.

Audience Services reviewed the content of the article and did not agree this was the case. They explained that the article was based on the individual's personal experience; was written from her perspective; contained several personal quotes from her; and was not related to any other European couple.

The complainant was not happy with the response and reiterated his concerns in a follow-up complaint on 28 January 2015.

Audience Services responded at Stage 1b on 3 February 2015, stating that 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 submitted an appeal to the BBC Trust on 3 February 2015 following the decision of Audience Services to close down the complaint at Stage 1b.

He reiterated his concerns, and said that the article stated “as fact that she was ordered away from her home and three children and into exile in Georgia. I do not believe this is true (as it does not fit with her character nor my understanding of women's rights in Germany). The response I have received from the complaints advisor agrees that this is just her version of events”.

He said that as the article was already published he would “just like to see a note at the end of it making it clear that the story of her exile has not been corroborated”.

The Committee's decision

Trustees noted the complainant's view that the article might not be factually accurate and was misleading because he thought it reflected badly on all German men.

Trustees acknowledged that the complainant felt the personal experiences of the woman as described in the article were implausible, but noted that they had not seen evidence which suggested the article was incorrect.

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 as the responsibility of the Executive Board (Article 38, (1) (b)), 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 decisions about the content of BBC online articles was the responsibility of the BBC Executive rather than the Trust.

Trustees acknowledged the complainant’s concerns but did not agree that there was evidence to suggest a breach of the Editorial Guidelines. They considered that Audience Services had provided a full and reasonable response to the complainant’s concerns. They decided the appeal did not have a reasonable prospect of success.

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