

# Editorial Standards Findings

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

May 2015, issued July 2015

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

# Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

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1 [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2014/complaints\\_fr\\_work\\_ed\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf)

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

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

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

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

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

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

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

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

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

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

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

# Summary of findings

Trail for *Any Questions?* In Today, Radio 4, 29 May 2015

## Summary of finding

The Committee considered the serious editorial breach which occurred during a trail for the programme *Any Questions?* on Radio 4's *Today* programme. In the trail, the *Any Questions?* presenter Jonathan Dimbleby included information on the charity he had helped to establish in memory of his father and explained how listeners could support it.

The Committee concluded that this was a serious breach of the Editorial Guidelines on Impartiality, Conflicts of Interest, and External Relationships and Funding.

## **Personal tweets reporting the Queen's death, posted during an exercise in which the BBC rehearsed how it might report the breaking news of a Royal death**

### **Summary of finding**

The Committee considered a series of tweets by a BBC journalist from her personal Twitter account during a technical rehearsal for the reporting of a Royal death. The first tweet announced that the Queen was being treated in hospital, the second that the Queen had died. The tweets included a link to BBC World's official Twitter feed and were reported in good faith by some media outlets in America and Germany; there was also widespread coverage of the tweets being posted by mistake.

The BBC issued an apology for any offence that had been caused. Trustees considered that the tweets had included information that was of a highly sensitive nature and had the potential to cause a great deal of distress. They noted that the tweets had not come from an official BBC Twitter account; however, they saw the messages included links to a BBC World account and considered this was likely to have caused some degree of confusion. They considered that the journalist's connection with the BBC had, in all likelihood, resulted in her reaching a far higher number of followers than she would have done otherwise.

The Committee concluded this was a serious breach of the Editorial Guidelines which required that individuals working for the BBC must not bring it into disrepute.

## BBC London News report, 8 April 2014

### Summary of finding

The Committee considered a first party appeal on accuracy and fairness by the Chief Executive of the Hightown Praetorian and Churches Housing Association (HHA). He felt he had not been given a right of reply and that his organisation's position had been inaccurately described in reports broadcast in regional Breakfast bulletins on BBC One.

The Committee concluded that:

- the MP's criticism amounted to a strong and damaging critique of an institution which therefore should be offered a right of reply under the guidelines.
- the reporter's e-mail indicating that the MP would be critical – and the indication that his criticism was about HHA's decision to continue charging residents rent in particular – had described the MP's allegations accurately and in sufficient detail to enable HHA to make an informed response.
- the BBC's request for a response "asap" as well as noting that the report was likely to be broadcast "on 'BBC London News' tomorrow" gave the complainant a fair opportunity to respond.
- there was no evidence that the BBC had deliberately intended to deny HHA a right of reply. However, the simple request for a response "asap" in the same sentence as the request for a 9.30am interview meant that the deadline was not sufficiently clear as to be unambiguous. The Committee therefore considered that there had been a breach of the Fairness guidelines in this respect.
- viewers of this short bulletin would have received the impression that HHA was intending to take positive steps on behalf of its tenants by seeking more suitable temporary accommodation.
- the balancing statement used by the BBC did not address the MP's allegation about the fairness of tenants paying rent whilst living in alternative accommodation. The Committee considered that the content was not presented in clear, precise language and that therefore the BBC had breached the Accuracy guideline.
- this inaccuracy in the way the complainant's response had been reported risked causing unfairness to HHA and therefore the Fairness guideline had also been breached.
- publication of this finding would act as remedy; Trustees agreed an on-air apology/correction was not appropriate.

The complaint was upheld

## Reporting Scotland, BBC One Scotland, 16 September 2014

### Summary of finding

Two complainants contacted the BBC to complain that *Reporting Scotland* showed bias in its approach to interviews with Alistair Darling MP and Alex Salmond MSP two days before polling day in the referendum on Scottish independence. One of the complainants also complained about the way in which his complaint was handled.

The Committee concluded that:

- the programme was duly impartial in relation to each interview individually but also overall.
- when the two interviews were compared, there was no evidence that the presenter's approach had resulted in a failure of due impartiality or that she had shown bias. Trustees were satisfied that there had been no breach of the Editorial Guidelines on Impartiality
- whether taken individually or together, there was no evidence of guideline 4.4.18 having been breached in relation to the way in which the interviews were conducted.
- Mr Salmond was not prevented from making his point about the proposed currency union should Scotland vote Yes.
- it was unfortunate that the complainant had had to pursue a written response to his complaint but Trustees noted that the BBC had apologised for this error.
- there was no evidence of a breach of the Accountability guideline, which requires the BBC to deal with complaints quickly, courteously and with respect.

The complaint was not upheld, but the Committee considered it valuable to remind editors that when interviews were scheduled back-to-back, audiences would be likely to compare the tone of the interviews and this might affect their perceptions of the BBC's impartiality.

# Serious editorial breaches

## Trail for *Any Questions?* In *Today*, Radio 4, 29 May 2015

### Summary

BBC Radio 4's *Today* programme is the network's flagship news and current affairs output and has its largest audience. It includes a number of trail slots for other BBC output; some of these trail slots are allocated each week depending on changing output while other slots are established. One established slot is the Friday 7.30am trail for that evening's edition of *Any Questions?* This trail is normally broadcast live by the presenter, Jonathan Dimbleby, and he joins the programme down-the-line rather than in the studio.

On Friday, 29 May 2015 the trail included information about that evening's broadcast, but then continued to include information about a charity event the presenter was involved with and had helped to establish in memory of his father – including details about how listeners could support the charity. The BBC Executive was asked about this breach of the Editorial Guidelines by the Editorial Standards Committee on Thursday, 4 June 2015. The Committee considered this was a serious breach of the Editorial Guidelines for Impartiality, Conflicts of Interest, and External Relationships and Funding.

### Background

The trail is usually scripted and is seen by the programme producer prior to transmission. On this occasion, the presenter gave information about that evening's broadcast and then ad-libbed a reference to the charity event he was involved in. The trail was preceded by a brief light-hearted exchange in which the *Today* presenter, Justin Webb, apologised that he was coming to the *Any Questions?* trail late because he had forgotten about it before the 7.30am news bulletin; the exchange made clear that Jonathan Dimbleby was not in the studio. The programme trail continued as follows:

Jonathan Dimbleby: And Justin, I just want to add a football, a personal football, a footnote not football – well it'll turn out to be a football...

Justin Webb: Not some kind of confession is it?

Jonathan Dimbleby: Well it's going to hit me in the face I think probably– I'm not going to be with you next Friday morning. I haven't resigned, I haven't been sacked - yet. But when *Any Questions?* goes on air, I shall be leading a fifty kilometre night-time walk through London to raise funds for the cancer charity we set up after the death of my father fifty years ago. If you want to support our work, our walk, you can find out more online – Dimbleby Cancer Care. Er, now I will be sacked won't I?

Justin Webb: Er, I won't answer that actually Jonathan...

Jonathan Dimbleby: ...No I think you'd better not, otherwise you could be... Eight o'clock this evening, we're on air anyway.

Justin Webb: ...exactly, but I will support you privately at least.

Jonathan Dimbleby: You're a good man, thanks.

## **Applicable Editorial Guidelines**

### **(Chapter 4) Impartiality – Campaigns**

4.4.20 – ...the BBC must remain independent and distanced from government initiatives, campaigners, charities and their agendas, no matter how apparently worthy the cause or how much their message appears to be accepted or uncontroversial.

### **(Chapter 15) Conflicts of Interest – Other Output Areas**

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

The degree to which external activities are constrained will depend on the nature of both the output and the individual's role. Heads of department must judge what is appropriate.

### **(Chapter 15) Conflicts of Interest – Charities and Campaign Work**

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

Any proposal by individuals to work for, or be publicly associated with, charities and campaigning groups must be referred to the head of department, who may wish to consult Editorial Policy.

### **(Chapter 16) External Relationships and Funding - References to Charities in Other BBC Output**

16.4.56 – ...BBC programmes and online content should not appeal for funds for charities or urge audiences to give money to any particular charity.

16.4.57 – We must retain our impartiality and independence when we cover the work of charities and not appear to favour one charity over another.

## **Response from the BBC Executive**

The Executive confirmed that they considered this was a serious breach of the Editorial Guidelines. They noted that it was an off-the-cuff addition to an otherwise scripted trail. They stated that it was not uncommon for presenters who were well known to audiences to mention activities they were involved in from their personal lives. However, they noted that it was less usual for this to happen during a brief trail slot and that, in this case, the information about how listeners could support a presenter's charitable endeavour went significantly beyond what could be editorially justifiable. They stated that the Director of Editorial Policy had written to Jonathan Dibleby very shortly after the broadcast and the Director, Radio Production, had also discussed it personally with the presenter. The head of the department responsible for the programme's production had also reminded the presenter about the requirements of the Editorial Guidelines conflicts of interest.

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

Trustees noted that the presenter's trail had been scripted and that the script had been seen prior to transmission. However, the presenter had ad-libbed to refer to a charity event of considerable personal significance to him. They appreciated that he had a strong emotional link to the charity. However, they noted that a considerable number of other well-known BBC correspondents and presenters also had enduring links with particular causes and charities to which they had an equally significant emotional commitment.

Trustees noted that the BBC had set up strict protocols around the broadcast of charitable appeals. They also noted that the Editorial Guidelines guarded against any individual's interest having an undue impact on broadcast output and that this also served to protect charities generally from an individual favouring one particular cause. They noted that the timing of the trail gave the presenter access to a very large audience – and that other charities did not have the opportunity to reach that audience.

Trustees noted the action that had been taken by the Executive and considered this was an isolated case and would remind presenters and correspondents generally of the requirements of the Editorial Guidelines. They considered that the broadcast was a serious breach of the Editorial Guidelines for Impartiality, Conflicts of Interest, and External Relationships and Funding but it had been mitigated by the swift Executive action.

## Personal tweets reporting the Queen's death, posted during an exercise in which the BBC rehearsed how it might report the breaking news of a Royal death

### Summary

On 3 June 2015, BBC News staged a technical rehearsal for how it might report the breaking news of a Royal death. Beforehand, some news staff had been emailed to alert them to the exercise and to advise them that, as it was a sensitive scenario, they should not discuss it externally or refer to it on social media. A journalist working for the BBC's language services, who had not been sent the email, saw an internal TV monitor which was showing the rehearsal. A number of tweets were sent from her Twitter account. The first stated that the Queen was being treated in hospital, the second stated that the Queen had died; the tweets included a link to BBC World's official Twitter feed. The messages were reported in good faith by some media outlets in America and Germany; there was also widespread coverage of the tweets being posted by mistake. The BBC issued an apology for any offence that had been caused. Trustees considered that the tweets had included information that was of a highly sensitive nature and had the potential to cause a great deal of distress. They noted that the tweets had not come from an official BBC Twitter account; however, they saw the messages included links to a BBC World account and considered this was likely to have caused some degree of confusion. They considered that the journalist's connection with the BBC had, in all likelihood, resulted in her reaching a far higher number of followers than she would have done otherwise. They found this was a serious breach of the Editorial Guidelines, which required that individuals working for the BBC must not bring it into disrepute.

### Background

The tweets had come from a BBC journalist's personal Twitter account. She had more than 8,000 followers and the page included the following description of her:

BBC Broadcast Journalist. All views strictly my own. London, United Kingdom  
bbcurdu.com

A number of tweets relating to the obituary rehearsal were posted, they stated:

BREAKING: Queen Elizabeth is being treated at King Edward 7<sup>th</sup> Hospital in London. Statement due shortly: @BBCWorld

Queen Elizabrth [*sic*] has died: @BBCWorld

False Alarm to Queen's death! She is being treated at King Edward 7<sup>th</sup> Hospital. Statement due shortly

False Alarm: have deleted previous tweets!!

By coincidence, the Queen had been taken to the King Edward VII hospital that day for an annual appointment and, as a result of media coverage of the story, Buckingham Palace issued a statement which clarified the nature of the visit:

This was a routine, pre-scheduled appointment, the Queen has now left hospital.

The BBC issued the following apology:

During a technical rehearsal for an obituary, tweets were mistakenly sent from the account of a BBC journalist saying that a member of the Royal Family had been taken ill. The tweets were swiftly deleted and we apologise for any offence.

The tweet was picked up around the world; NBC used it in a story about the Queen's supposed death and both CNN and the German Newspaper *Bild* stated that the Queen had been taken to hospital. There was widespread coverage of the tweets having been posted in error.

### **Applicable Editorial Guidelines**

#### **(Chapter 15) Conflicts of Interest – principles**

15.2.1 – External activities of individuals working for the BBC must not undermine the public's perception of the impartiality, integrity, independence and objectivity of the BBC. Nor should they bring the BBC into disrepute.

#### **(Chapter 15) Conflicts of Interest – other output areas**

15.4.5 – The external activities of BBC editorial staff, reporters and presenters should not undermine the public's perception of the impartiality, integrity or independence of BBC output. External activities should not bring the BBC into disrepute.

### **Guidance – Social Networking and Other Third Party Websites (including Blogs, Microblogs and Personal Webpace): Personal Use**

To be read in conjunction with the Chapters 15 and 16 of the Editorial Guidelines, which relate to Conflicts of Interest and External Relationships and Funding

#### **Introduction**

...when someone clearly identifies their association with the BBC and/or discusses their work, they are expected to behave appropriately when on the Internet, and in ways that are consistent with the BBC's editorial values and policies.

This editorial guidance note sets out the principles which BBC staff are expected to follow when using the Internet and gives interpretations for current forms of interactivity. It applies to blogs, to microblogs like Twitter and to other personal webpace...

#### **Basic Principles**

...when identified as a BBC staff member or BBC talent, people:

- Should not engage in activities on the Internet which might bring the BBC into disrepute;

#### **Blogging and Microblogging**

Many bloggers, particularly in technical areas, use their personal blogs, and increasingly their microblogs like *Twitter*, to discuss their BBC work in ways that benefit the BBC, and add to the "industry conversation".

This editorial guidance note is not intended to restrict this, as long as confidential information is not revealed.

...If a blog makes it clear that the author works for the BBC, it should include a simple and visible disclaimer such as “these are my personal views and not those of the BBC”.

### News and Current Affairs Staff, Blogging and Microblogging

Impartiality is a particular concern for those working in News and Current Affairs. Nothing should appear on their personal blogs or microblogs which undermines the integrity or impartiality of the BBC.

### **Hybrid Sites**

It should be clear to users whether the site they are interacting with is a BBC page run by the BBC for BBC purposes or whether this is a personal page run by an individual for their own purposes.

### **Response from the BBC Executive**

The BBC Executive confirmed that they considered this was a serious breach of the Editorial Guidelines. The Director-General reported it to the Trust as a serious breach of the requirement in the Editorial Guidelines not to bring the BBC into disrepute and that it also fell short of the BBC’s Social Media guidance. The BBC Executive noted that the messages had been posted from a personal Twitter feed, but had carried links to an official BBC feed.

They stated that a refresher training course in social media and editorial values had already started to be rolled out across the languages department. The course was compulsory for all languages staff – whether or not their roles were editorial ones. They stated there was an ongoing inquiry into what had happened in this instance and that this was part of a formal internal disciplinary process.

### **The Committee’s decision**

Trustees noted that the Editorial Guidelines made clear that individuals had to guard against their personal activities bringing the BBC into disrepute. They also noted that specific guidance, which had been drawn up after the publication of the Guidelines, had included more detailed information about the potential benefits and risks of online microblogging sites and advice about how they should be used.

Trustees noted that a number of precautions had been taken to reduce the likelihood of information about the rehearsal being leaked. Technically, the studio being used had been isolated from any output and the TV monitors that showed the material also carried a notice that it was a rehearsal. BBC Tours had been suspended and blinds from public areas – including the Media Café – had been closed. Some news staff had been informed in an email that there was no editorial reason behind the timing of the rehearsal and that it was “essential” that it should take place without publicity. They had been asked to refrain from “...any external conversations and all social media activity about this exercise”.

Trustees noted that the tweets had been published on a personal Twitter account rather than an official BBC account. They appreciated that, in line with the Guidance, the account included a disclaimer that stated: “All views strictly my own”. However, they also noted that the individual referred to herself as a “BBC Broadcast Journalist” and that her description included a link to bbcurdu.com. Trustees noted that she had more than 8,000 followers and considered that it was potentially a result of her being identified with the BBC. Trustees considered that it was also likely that a substantial proportion of her

followers lived outside the UK and noted that public affection for the Queen and the Royal Family stretched well beyond the UK.

The Trustees noted that several tweets had included links to BBC World's official Twitter feed. They considered it was likely that a significant proportion of people who saw the messages would have been confused as to whether they were receiving information that had been officially published by the BBC.

Trustees noted that the BBC took very seriously how it conveyed delicate and important information about the Queen and members of the Royal Family. They considered that the tweets had included information of a highly sensitive nature and that they had the potential to cause a great deal of distress in the UK and beyond. They considered it had been a grave error of judgment to publish the tweets and they profoundly regretted any distress that had been caused.

Trustees also noted that the BBC's reputation globally was of great importance to the Corporation. They noted that the Social Media guidance stated that those who made their links to the BBC clear should operate in a way that was "consistent with the BBC's editorial values" and they noted that central to the BBC's editorial values was its commitment to impartiality and accuracy.

Trustees noted that some media had reported the information in good faith and that there had been very widespread coverage that the tweets had been sent in error. They considered this was deeply regrettable. They considered it was also regrettable that there had been confusion as to whether the information had officially been published by the BBC; however, they found that while the tweets had the capacity to confuse, this did not amount to the BBC itself publishing information that was wrong.

Trustees noted the action that had been taken by the BBC Executive to guard against a leak and also the action that had been taken subsequently. They considered that the incident was a serious breach of the Editorial Guidelines for Conflicts of Interest and that it had also not been in accordance with the BBC's Social Media guidance. They considered that the additional training was an appropriate measure to guard against any recurrence of this kind of failing. They also considered that, when the Editorial Guidelines were next reviewed, consideration should be given to including specific information about the use of social media within the Guidelines, where it would reach as wide an audience as possible.

# Appeal Findings

## BBC London News report, 8 April 2014

### Background

On 8 April 2014 BBC London News broadcast reports about 38 families from Hemel Hempstead who were continuing to live in temporary accommodation following the appearance of a sinkhole under one of their properties in February 2014. Longer reports were shown in the regional bulletins broadcast at 1.30pm and 6.30pm. A shorter report was broadcast four times during Breakfast bulletins on 8 April 2014. The report stated:

“A Government Minister is accusing a housing association of appalling behaviour over its treatment of residents who had to leave their homes after a sinkhole appeared in Hemel Hempstead. MP Mike Penning says he’s angry that families who’ve been living in alternative accommodation since February are still being expected to pay rent. Hightown Housing Association says it will now fund more suitable temporary homes.”

The complaint related to the four Breakfast bulletins rather than to the longer reports shown later in the day.

### The complaint

#### Stages 1 & 2

The complainant, who is the Chief Executive of the Hightown Praetorian and Churches Housing Association (HHA), contacted the BBC on 9 April 2014 to complain that HHA had no prior knowledge that the MP was going to make such a serious allegation (of “appalling behaviour”), and that they had not been given the opportunity to respond to the comment before transmission. He also stated that the remarks attributed to the housing association were not relevant to the accusation.

The BBC stated in reply that the reporter had been in contact with HHA both the week before transmission and on the day before broadcast, when she had emailed HHA explaining that the programme might include an interview with Mike Penning, MP for Hemel Hempstead, who was critical of the way HHA had handled the situation, in particular its decision to charge residents rent. The BBC stated it had requested a response to this point “asap” as well as an interview with the Chief Executive, but whilst HHA had agreed to an interview, it had not provided any response to the criticism by the MP, so the BBC had used part of an email sent by HHA on 3 April 2014 to achieve balance.

The complainant escalated his complaint to the Editorial Complaints Unit (ECU) on 15 May 2014, stating that he had not been made aware that the MP would use such strong language in his criticism, and HHA should have been given an opportunity to respond before broadcast.

The ECU concluded that there was nothing in the broadcast that could be regarded as a serious allegation of wrongdoing or incompetence that warranted a specific right of reply, and the bulletin had achieved balance by including the statement about funding “more suitable temporary homes”. The ECU believed this would have left viewers with the clear

impression that the association was taking action to resolve the issue.

### Appeal to the Trust

The complainant first appealed to the BBC Trust on 1 July 2014 on the substance of his complaint that HHA had been unfairly treated. The Senior Editorial Complaints Adviser (the Adviser) considered that Trustees would be likely to conclude that the complaint had no reasonable prospect of success. The complainant asked the ESC to review this decision.

In his request to the Trustees to review the Adviser's decision the complainant raised a point which had not previously been considered by the Executive. This point was that the BBC had attributed a response to the housing association that was unconnected with the MP's criticism and did not take account of the information it had already supplied to the reporter. Trustees decided that the matter should be returned to BBC News for consideration.

BBC News responded to the complainant on 19 November 2014 stating that it did not consider there had been a breach of editorial standards on this point.

The complainant appealed to the Trust on 19 November 2014. The Adviser again considered that Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success.

On 7 January 2015 the complainant asked the Trustees to review this decision. Trustees decided to consider the complaint in its entirety.

The complainant had raised the following points in relation to the accuracy and fairness of this item:

Point (A) HHA had been unfairly treated; in particular it should have been informed that an MP had accused it of "appalling behaviour", that his comments were to be broadcast on breakfast television, and that they needed to respond immediately.

Point (B) The response attributed to HHA was unrelated to the allegation made by the MP. The BBC reporter was aware of HHA's reasons for continuing to charge rent and the decision to use this comment led to the bulletin being inaccurate and unfair.

### **Applicable Editorial Guidelines**

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

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

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

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

## Point (A)

The Committee noted the complainant's view that HHA should have been offered an opportunity to respond to the MP's accusation of "appalling behaviour". The Committee noted the BBC's Editorial Guidelines on Right of Reply (6.4.25-27) which include the following:

"When our output makes allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a "right of reply", that is, given a fair opportunity to respond to the allegations."

The Committee noted the view of the ECU that it did not believe that "anything was broadcast which could be regarded as the kind of serious allegation of wrongdoing or incompetence which warranted a specific right of reply". However, Trustees concluded that Mr Penning's criticism of "appalling behaviour over its treatment of residents... he's angry that families who've been living in alternative accommodation since February are still being expected to pay rent" amounted to a strong and damaging critique of an institution which therefore should be offered a right of reply under the guidelines.

The Committee noted that the Right of Reply Guideline (6.4.25) goes on to say:

"...We should normally describe the allegations in sufficient detail to enable an informed response, and set a fair and appropriate deadline by which to respond."

The Committee therefore then considered whether the BBC had described the allegations in sufficient detail to enable HHA to make an informed response, and whether it had set a fair and appropriate deadline by which to respond.

The Committee took into account that the evacuation of local residents from Oatridge Gardens was a long-running story. BBC News had covered the story on the day the sinkhole had appeared and had provided updates in the weeks following the incident. The complainant had stated that he had "done a number of interviews" with the same reporter on the subject.

The Committee noted that on 2 April 2014 the reporter had been in contact with the Communications Manager of HHA, who emailed her answers to a number of questions about the works carried out to remedy the sinkhole problem. The reporter had replied, stating that "we won't be running our report today but may run it next Monday or Tuesday – I'll let you know when".

The Committee noted that the BBC has stated that its reporter spoke to Mike Penning MP by telephone on the afternoon of 7 April 2014, and the MP made critical comments about HHA during that phone conversation.

Following that conversation, at 4.48pm, the reporter informed HHA's Sales and Lettings Manager that the BBC planned to broadcast the story the next day. In an email she stated:

"As discussed, we are planning to run a report on 'BBC London News' tomorrow about the latest situation at Oatridge Gardens.

"We may be including an interview with Hemel Hempstead MP Mike Penning who is critical of the way Hightown has handled the situation and in particular its decision to continue charging residents rent.

"I'd be grateful if you could provide a response to this point asap and if you could find out if anyone from Hightown could be available for interview tomorrow morning at Oatridge at about 9.30 please?"

HHA's response stated:

"Thank you for your e-mail. I can confirm that David Bogle CEO of Hightown will be at Oatridge Gardens tomorrow morning at 9.30am."

The Committee noted that HHA had not been given a verbatim account of the MP's accusation of "appalling behaviour" but Trustees considered that the reporter's e-mail indicating that the MP would be critical – and the indication that his criticism was in particular about HHA's decision to continue charging residents rent – had described the MP's allegations accurately and in sufficient detail to enable HHA to make an informed response.

The Committee noted that the BBC email had requested "a response to this point asap", and said that the report was likely to be broadcast "on 'BBC London News' tomorrow". The Committee considered that, as this was a long-running story, the reporter would have regarded this as giving the complainant a fair opportunity to respond.

However, the Committee noted there was a degree of ambiguity in the reporter's email. Firstly, it had referred to 'BBC London News' and this could have been taken by HHA to mean the 1.30pm or 6.30pm bulletins the following day. It had not specifically drawn HHA's attention to the possibility that this story might run on the Breakfast bulletins. In the Trustees' view this left HHA without significant information that they required. Secondly, the reference to requiring a response "asap" was included in the same sentence as the request for an interview at 9.30. The Committee considered that HHA could reasonably have understood that by agreeing to provide an interview as requested at 9.30 the following morning, they were providing a timely response to the impending allegation.

Trustees noted that there was no evidence that the BBC had deliberately intended to deny HHA a right of reply; indeed it had described the MP's allegations to HHA the same afternoon as he had made them to the BBC, and had asked for HHA's response and indicated its intention to run the story. However, Trustees concluded that the simple request for a response "asap" in the same sentence as the request for a 9.30 interview meant that the deadline was not sufficiently clear as to be unambiguous. The Committee therefore considered that there had been a breach of the Fairness guidelines in this respect.

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

#### Point (B)

The Committee noted the complainant's allegation that the BBC had reported that a government minister was accusing HHA of appalling behaviour because residents were still being expected to pay rent despite living in alternative accommodation. The complainant had stated, however, that its insurance company had advised residents to continue paying rent and service charges as the insurers were paying for temporary accommodation. The Committee noted that the complainant had informed the BBC of this advice by email on 5 March 2014:

"The insurance company have advised residents to continue paying rent and service charges in accordance with their lease as the insurers are covering the cost of temporary accommodation."

The Committee noted that the BBC chose instead to use a statement that HHA would "now fund more suitable temporary homes". It noted the complainant's view that this statement was irrelevant as balancing comment to the MP's accusation, and led to the bulletin being inaccurate and, as a result, unfair to HHA.

The Committee noted the BBC's view that the MP's accusation related to the treatment of residents rather than the legality of HHA's position, and the statement used in the bulletin provided balance in this respect; also that viewers would have had the impression that HHA was trying to resolve the situation.

The Committee noted the view of the Head of Editorial Standards for BBC News, who stated at Stage 2 that

"While in retrospect a specific response dealing with the insurance position might have been preferable, the editors chose, quite reasonably in my view, to select the most recent line that the HA [Housing Association] had given them on the issue – that it wanted to resolve the situation with more suitable, longer-term, temporary homes. The report therefore included a response on the issue of the quality of accommodation that was being provided for the money."

The Committee noted that under the Accuracy guidelines the BBC was required to achieve due accuracy in a way that is adequate and appropriate to the output taking into account the subject and nature of the content and the likely audience expectation. The Committee noted that this was a brief report broadcast in four short bulletins.

The Committee agreed that viewers would have taken the message from this short bulletin that HHA was intending to take positive steps on behalf of its tenants by seeking more suitable temporary accommodation. However, Trustees agreed that the statement used by the BBC did not address the MP's allegation about the fairness of tenants paying rent whilst living in alternative accommodation.

The Committee considered that the content was not presented in clear, precise language and that therefore the BBC had breached the Accuracy guideline.

The Committee concluded that this inaccuracy in the way the complainant's response had been reported risked causing unfairness to HHA and therefore the Fairness guideline had also been breached.

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

### **Points (A) & (B) Finding: Upheld**

Trustees noted that this finding would be published and that this would act as remedy. They also were aware that in the case of an upheld finding the BBC Executive would apologise to the complainant. The Committee noted that where an upheld finding was exacerbated by for example the seriousness of the matter, the deliberate or reckless nature of a breach or by repetition (for example where compliance repeatedly failed) then an on-air apology/correction may also be an appropriate remedy. In this case, the

Committee agreed that such exacerbating factors did not exist. There was no evidence that the programme team intended to broadcast the short Breakfast news reports in the absence of comment from HHA. Trustees agreed that the email to HHA suggested that the programme team was seeking to offer a right of reply albeit in unclear language which had led to confusion in relation to the actual reply deadline. The inclusion in the report of a comment reflecting actions by HHA again suggested that the programme team was trying to be both accurate and fair to them even though in this case the comment amounted to something of a *non sequitur*. Taking these factors into account, Trustees agreed an on-air apology/correction was not appropriate.

# Reporting Scotland, BBC One Scotland, 16 September 2014

## Background

On 16 September 2014, two days before polling day in the referendum on Scottish independence, BBC One Scotland's 6.30pm news programme *Reporting Scotland* interviewed leaders of the Yes and No campaigns: Alex Salmond MSP and Alistair Darling MP.

The two interviews were of similar length (8'16" with Mr Darling, 9'01" with Mr Salmond), both took place in a BBC studio with the presenter Jackie Bird, and both interviews were broadcast in the same programme. The BBC has stated that this was the last opportunity for the programme to interview both campaign leaders before the vote on 18 September 2014.

## The complaint

### Stages One & Two

Two complainants contacted the BBC on 16 September 2014. One stated that the presenter was biased against Alex Salmond and/or towards the No campaign saying that she constantly interrupted Mr Salmond and that her body language was aggressive. The second said the presenter allowed Mr Darling freedom to answer her questions and showed him due respect but that she constantly interrupted Mr Salmond so that he had no time to develop his points. The complainant also objected to her tone.

BBC Audience Services rejected the accusation of bias, saying that both guests had been treated in the same manner; the questions had been robust and the presenter had interrupted only to keep them on point and make sure the important areas had been covered.

Both complainants escalated their complaints to the Editorial Complaints Unit (ECU). One stated that the presenter was "hectoring" towards Mr Salmond and that he was not given the opportunity to answer fully any question put to him. He argued that the presenter's body language and often her speaking tone verged on the aggressive. The second complainant said that, setting aside interruptions when the interviewee was clearly reaching the end of his answer, the presenter had interrupted Mr Darling twice and Mr Salmond eleven times. He also said that the presenter talked over Mr Salmond four times but did not talk over Mr Darling. He said it was clear that the two interviews were not conducted in a "like-for-like manner".

The ECU responded on 17 and 25 November 2014 respectively, stating that, while the BBC's Editorial Guidelines on impartiality make it clear that programmes should be fair and open-minded in their approach to a subject, this did not mean that each interviewee had to be treated in the same manner.

"The frequency with which a contributor is interrupted or the number of times a presenter speaks over a contributor may contribute towards a lack of due impartiality but a simple comparison between two interviews will normally be of little or no value because each interview has to be assessed on its own merits. It may be reasonable to challenge a particular interviewee for a number of reasons; to get them to answer a direct question; to bring them back to the original question; to

prevent them from repeating points which have previously been made; or to question a claim or statement which has been made, to name but four."

The ECU concluded that both interviews had been conducted in a way that met the requirements for due impartiality: the interview with Mr Salmond had been robust and he had been pushed to provide an answer, but the questions were put in "a considered and courteous manner, and gave Mr Salmond the opportunity to provide a full and informed response". Meanwhile the interview with Mr Darling was not "unduly emollient" and contained an opening question which suggested the No campaign's pledge to give more powers to Scotland was "too late and it smacks of panic". The ECU concluded that both interviews, when considered on their own merits, had been "fair and balanced".

### Appeal to the Trust

One complainant appealed to the Trust on 8 December 2014. He was unhappy that the ECU had declined to compare and contrast the two interviews:

"Given that these interviews were held consecutively, in the same broadcast and by the same interviewer, I wholly disagree ... that the two interviews need not have been conducted in the same manner. As a bare minimum, and given the format of the programme, I would assert that equitable approaches by the interviewer would have been an essential component of impartiality. However, the remarkable disparity between the rates [the presenter] interrupted and talked over each interviewee, and the way she prevented Mr Salmond from developing one particular answer, can only be taken as a clear indication of bias towards Mr Darling."

The second complainant appealed to the Trust on 5 January 2015, referring to his previous correspondence with the BBC. He wished to appeal on the substance of his complaint, and he also asked Trustees to investigate the way the complaint had been handled. It was decided that as the complaints were very similar, they should be considered together.

The complainants were initially told by the Trust Unit that their appeals had no reasonable prospect of success. Both asked the Trustees to review this decision. Trustees agreed to take the matter on appeal.

The complainants raised the following points in relation to the impartiality of the programme:

Point (A) Both complainants contrasted the presenter's tone in the two interviews: one stated that her approach to Mr Darling was "friendly and gently probing" whilst her approach to Mr Salmond was "sneering and hostile"; the second stated that her tone with Mr Darling was "deferential and supportive whilst being hostile and hectoring to Mr Salmond".

Point (B) Both complainants contrasted the number of times the presenter interrupted the two interviewees, stating that Mr Salmond was given "no chance to answer fully any question put to him" whereas Mr Darling was allowed the freedom to answer questions.

### **Applicable Editorial Guidelines**

The sections of the BBC Editorial Guidelines relating to Impartiality and Politics are

applicable to this case. The full guidelines are at [www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines), as are the BBC Referendum Guidelines which are also applicable to this case.

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

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

In reaching its decision the Committee took full account of all of the available evidence, including (but not limited to) the Editorial Adviser's report including information from BBC Audience Services.

The Committee noted that *Reporting Scotland* is BBC One Scotland's flagship news programme and the presenter Jackie Bird is well known to viewers, having presented the programme for 25 years.

The Committee noted that each interview began with a discussion of that day's main news story in relation to each campaign:

- for the No campaign, a discussion about the "pledge", when the leaders of the UK's three main political parties signed a joint pledge to devolve "extensive new powers" to Scotland if voters rejected independence
- for the Yes campaign, a discussion about a leaked report which claimed that the NHS in Scotland faced a funding shortfall of £400 million, and that plans for cuts had been drawn up by the SNP Scottish Government.

In addition, Mr Darling was asked about his running of the campaign (and the narrowing gap between Yes and No) and the future of the Union were Scotland to vote No. Mr Salmond was asked whether he intended to use sterling if Scotland voted Yes, whether he wanted to be part of the EU (two topics which had dominated the campaign), and, if Scotland voted Yes by a very small margin, whether such a "divided nation" was the basis for a new country.

The Committee noted that neither complainant had complained about the editorial content of the two interviews. For instance, neither complainant had stated that the presenter showed bias in asking questions about a particular issue, or that the interviews omitted specific subject areas. Instead, both complaints related to the manner in which the interviews were conducted.

The Committee noted the ECU's view that, while the Editorial Guidelines on Impartiality make it clear programmes should be fair and open-minded in their approach to a subject, this did not mean each interviewee or contributor had to be treated in the same manner. The Committee agreed with the ECU that interviews did not have to be carried out in the same style to be judged duly impartial: Trustees considered the interview process to be an interactive one, with the tone dependent in part upon the style of the person being interviewed and their responses to the interviewer. Interruptions were sometimes required to keep an interviewee to time, to remind them of the point of the question, and to curtail answers when the interviewee repeated points made previously. In this case the BBC had been attempting to ensure both interviewees had equal time, so repetition cut down the opportunity for the audience to hear fresh points.

The Committee noted that the BBC was required to achieve due impartiality in a way that was adequate and appropriate to the output taking into account the subject and nature of the content. Trustees noted that Mr Darling was in effect supporting the status quo, whereas Mr Salmond was advocating constitutional change, and that this was another potential factor in a different tone to the interview, though Trustees expected an appropriate level of scrutiny to be given to each side of the debate.

However, the Committee noted that the referendum was a major matter under the guidelines and that the interviews were broadcast at a decisive moment in the campaign – two days before polling day. This would require the BBC to take particular care to achieve due impartiality. Under the Referendum Guidelines broad balance should be achieved. Trustees considered that, in order to do that, the interviews would have needed to be similarly rigorous with a comparable level of scrutiny given to both the Yes and No campaigns. Trustees also noted that the BBC had chosen to broadcast these two interviews back-to-back at this crucial point in the campaign, and that viewers were therefore able to compare them directly.

Trustees noted that Mr Darling and Mr Salmond were different characters, each with his own particular style. They noted that the pace of the two interviews differed, with Mr Salmond speaking more quickly. They noted that the interview with Mr Salmond included many interventions by the presenter – and by Mr Salmond – and that this contrasted with the interview with Mr Darling.

The Committee noted that the presenter interrupted Mr Salmond's first answer about alleged NHS cuts almost immediately to clarify the period of time under discussion. She then allowed him to answer the question at length, interrupting when he said "so let me repeat...", saying "I think you've made your point" and "time is tight". The presenter then outlined the leaked plans for cuts and Mr Salmond appeared anxious to start answering before she had finished her question. He eventually made a lengthy reply and was interrupted by the presenter who pressed her point that the NHS in Scotland was a devolved matter and that the Scottish Government had tax-raising powers. Mr Salmond stated that he would "come to that in a second" and pursued his argument that cost pressures had come from National Insurance rebates to the Treasury.

Trustees noted that Mr Salmond made a similar point about National Insurance rebates three times during this section of the interview and they considered that it had been legitimate for the presenter to interrupt him to reduce repetition and make sure the interview covered all of the areas required.

Trustees noted that the presenter and Mr Salmond talked at the same time as each other during the subsequent section of the interview which dealt with the question of sterling, with claim and counter-claim about what the Chancellor of the Exchequer and the No campaign had said about whether Scotland could use the pound, and whether a "commonsense agreement" on a common currency was an "official" or "unofficial" currency union.

The Committee considered that two people talking was invariably difficult for a listener and was ideally to be avoided but they noted that Mr Salmond was one of the UK's most experienced politicians with a robust, challenging approach to his interviewers and that during the interview he frequently interrupted the presenter's questions. They concluded that Mr Salmond was not prevented from making his point about the proposed currency union should Scotland vote Yes.

Turning to the interview with Mr Darling, Trustees noted that the presenter was challenging at the start of the interview, asking: "A big pledge today: more powers for Scotland – a grand gesture. Your opponents say it's too late and it smacks of panic." Mr Darling was allowed to answer this question at length. They noted that the presenter then asked two robust follow-up questions on this point. During Mr Darling's third answer the presenter interrupted him when he was clearly intending to continue ["And it's an important point because..."], to pin him down on the feasibility of getting powers through Westminster in 2015 when, she suggested, the parties would be distracted by a general election.

Moving on to the narrowing gap between Yes and No, the presenter interrupted Mr Darling's answer apparently to try and hasten a conclusion by restating her question. She repeated this technique when Mr Darling began to talk about the leaked report about NHS cuts. Mr Darling gave a full reply to this question and the presenter interrupted his next answer when he began to talk about Alex Salmond not having a plan B [stating "you've obviously gone over some of that ground"]. He continued with his final answer, interrupted twice by the presenter as she signalled that the interview was coming to an end.

Trustees were satisfied that the programme was duly impartial in relation to each interview individually but also overall. Length is not a decisive factor in terms of impartiality but they noted that each interview was of similar length, with each interviewee given adequate opportunity to address the questions put to them, and that each interview was approached in a "devil's advocate" style. Trustees were satisfied that when the two interviews were compared, there was no evidence that the presenter's approach to the interviews had resulted in a failure of due impartiality or that she had shown bias. Trustees were satisfied that there had been no breach of guideline 4.4.13:

"Our audiences should not be able to tell from BBC output the personal prejudices of our journalists or news and current affairs presenters on matters of public policy, political or industrial controversy, or on 'controversial subjects' in any other area."

or of 4.4.12

"News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument. The approach and tone of news stories must always reflect our editorial values, including our commitment to impartiality."

Noting that the complainants had objected to the manner in which the interviews were conducted, the Committee felt that, whether taken individually or together, there was no evidence of guideline 4.4.18 having been breached:

"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..."

The Committee therefore did not uphold the two complaints but considered it valuable to remind editors that when interviews were scheduled back-to-back, audiences would be likely to compare the tone of the interviews and this might affect their perceptions of the BBC's impartiality.

### **Points (A) & (B): Not Upheld**

## Complaints handling

The Committee noted that one of the complainants had asked the Trust to consider how his complaint had been “logistically and organisationally handled”. The complainant stated that he had received initial replies from two members of staff from BBC Audience Services at Stage 1, with three case numbers for the same complaint, and he said that the two replies differed in that one of them appeared to uphold his complaint before going on to rebut it.

Trustees noted that the complainant had contacted the BBC by telephone on 16 September 2014 and that telephone complaints are not normally replied to in writing. They noted that on this occasion the complainant had requested a written reply and that, according to BBC Audience Services, he went on to ask about some other points in the phone call and was transferred to another agent. Unfortunately the agent did not tick his call as needing a written reply.

The Committee noted that the complainant contacted the BBC again on 9 October 2014 to pursue the delay in receiving a reply. It noted that BBC Audience Services has stated that the complainant had called twice within an hour and “regrettably these two calls weren’t linked together, so two replies were sent out but handled by different people” (on 9 and 12 October 2014 respectively). The Committee noted that the BBC had apologised for the delay in both of its replies but that BBC Audience Services has stated that the complainant “should however have later received a stronger apology for the duplication in response to his two telephone calls”.

The Committee noted that the complainant had pointed out that though the two replies were similar, the first reply began by appearing to agree with the complainant:

“We understand you felt during Jackie Bird’s interview with Alex Salmond you feel it was entirely biased and Alex Salmond was continually interrupted. I note this was in stark contrast to the interview with Alistair Darling.”

BBC Audience Services has stated that this paragraph, “which summarised [the complainant’s] position, should indeed have been written more clearly but was not intended to agree with his views and we apologise that this was not clearer”.

The Committee considered it unfortunate that the complainant had had to pursue a written response to his complaint but it noted that the BBC had apologised for this error. It agreed with BBC Audience Services that one of the replies could have summarised the complainant’s position more clearly but it found no evidence of a breach of the Accountability guideline, which requires the BBC to deal with complaints quickly, courteously and with respect.

### **Finding: Not upheld**

# Requests to review the Trust Unit's decisions on appeals

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

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

## Test Match Special, Radio 4 LW, 19 July 2014

### The complaint

The complaint related to *Test Match Special*, Radio 4 LW, 19 July 2014. During the match, a player had appealed to the umpire that a cricketer was out. It was evident that he was wrong and the cricketer was not out. One commentator implicitly criticised him for making the appeal and the other said:

"His mum didn't smack him enough when he were little I reckon.  
...see, I grew up in that [era]. No political correctness then. You got a little clip from your mum. That sorted you out."

The complainant considered that the presenter had condoned the physical abuse of children when discussing an incident during the cricket match between England and India and that BBC management should have corrected this impression. The Editorial Complaints Unit (ECU) did not uphold the complaint at Stage 2.

### Appeal to the BBC Trust

The complainant appealed to the BBC Trust, saying that he was unhappy with the response received at Stage 2. He said that, while he understood that the commentator's remarks were intended to be funny, he believed they were insensitive and inappropriate given the importance of combating the abuse of children. He said the BBC should not condone comments that trivialised what remained an extremely serious issue for society: the physical abuse of children.

The complainant said he remained surprised that there was not greater appreciation within BBC management that in the context of continuing physical violence against children comments such as these – even made in jest – were problematic. He said that it was precisely because in the past the issue had been treated lightly that it persisted. He said the BBC, as a public service broadcaster, had a duty not to endorse comments that suggested it was acceptable to hit children. He pointed out that the BBC Editorial Guidelines contained a number of strong statements making clear that protection of children was high on the BBC's priorities as a broadcaster and quoted one section from the Guidelines to do with Harm and Offence:

“We should take care to ensure that individual programmes, or programmes taken together across the schedule, avoid including material that condones or glamorises violence ... or material that is likely to encourage others to copy such behaviour, unless clearly editorially justified.”

### **The Trust Unit’s decision**

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Adviser listened to the relevant section of the programme. An independent editorial adviser also reviewed the relevant output and carried out further research. The Senior Editorial Adviser (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 the relevant Editorial Guidelines were those for Harm and Offence, and noted the introduction to that section:

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

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

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

The Adviser also noted the section of the Harm and Offence guidelines quoted by the complainant in his appeal to the BBC Trust.

She noted that output producers were required to bear in mind audience expectations as well as generally accepted standards. She noted that *Test Match Special* had been a fixture of radio broadcasting for many decades and that the two commentators involved in this exchange – author and sports journalist Henry Blofeld and former batsman for Yorkshire and England Geoffrey Boycott – were very well known to the audience and had well-established characters.

The Adviser noted the exchange in question. The English bowler, Stuart Broad, had been criticised by Geoffrey Boycott for proceeding too slowly to the next over when, Boycott believed, the priority should have been to put the Indian batsmen under pressure. She noted that, having bowled a leg bye which struck the batsman’s pad, Stuart Broad appealed for lbw and there was then a short exchange about Broad appealing for anything.

Henry Blofeld: He'd have lost another DRS [Decision Review System] there, wouldn't he? Absolutely.

Geoffrey Boycott: His mum didn't smack him enough when he were little, I reckon.

Henry Blofeld: You're a tough man, Geoffrey. Err, anyway, Broad...

Geoffrey Boycott: ...see I grew up in that [era]. No political correctness then. You got a little clip from your mum. That sorted you out.

Henry Blofeld: I had a bit of that too ... here comes Broad...

The Adviser noted that Geoffrey Boycott laughed during this exchange and that Henry Blofeld's remarks and tone were jocular and that he too was laughing.

The Adviser considered that the mixture of cricket analysis and more light-hearted conversation were hallmarks of the programme and would have been well within the expectations of the *Test Match Special* audience.

The Adviser noted the complainant's view that the fact that the exchange had been made in jest made it more dangerous. However, she considered Trustees would not agree with this analysis and would not conclude that Mr Boycott was endorsing the abuse of children – or that audiences would have understood him to mean that.

The Adviser noted the complainant also raised complaints handling issues. She noted that Audience Services had acknowledged and apologised that their initial response had not addressed the complainant's concerns and the complainant had acknowledged this. She noted too that he considered the ECU's Complaints Director had been "disingenuous, not to say patronising" in his response. She did not consider Trustees would agree with his analysis of the Complaints Director's tone. However, she noted that, in any event, the Complaints Director had assured the complainant that this had not been his intention.

For the reasons set out above, the Adviser considered the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that it was in the public interest for the Trust to decide whether remarks endorsing the physical punishment of children should go uncorrected.

The complainant said that allowing the remarks on *Test Match Special* to remain unchallenged appeared to condone violence against children which was dangerous and a breach of the Guidelines.

The complainant said that the Senior Editorial Adviser had disagreed that there had been a breach of the BBC Editorial Guidelines because, she had said, *Test Match Special* was a mixture of cricket analysis and light-hearted conversation and the remarks would have been well within the expectation of the programme's audience. But, the complainant said, that analysis could not reasonably be extended to include these remarks. They were only half-heartedly challenged and "no political correctness then" did not feel like a joke. The complainant viewed it as meaning that it was only political correctness that prevents

people giving “a little clip” to children now. This did not meet generally accepted standards. He added that the logic of the Adviser’s position was that making an offensive comment in a jocular way meant that no one could take that comment seriously. He said he believed such remarks reinforced discriminatory attitudes and behaviour towards women and children. The BBC had a responsibility to influence thresholds of behaviour of what is and is not acceptable.

The complainant cited the BBC Editorial Guidelines regarding Harm and Offence that state that when content includes challenging material that risks offending, the BBC must always be able to demonstrate a clear editorial purpose and ensure it is clearly signposted. He said there was no editorial purpose or signposting for the remarks, which were inappropriate and offensive and had not been apologised for.

The complainant said the BBC had failed to grasp the nature of his complaint and he believed that it had not genuinely attempted to engage with the issue he had raised. He said that it was ten months since he had made his original complaint and he said he had had to write ten times to the BBC about it. He said that this suggested to him there was something wrong with the BBC’s complaints process.

### **The Committee’s decision**

The Committee began by acknowledging the seriousness of the protection of children. In doing so, the Committee noted the strength of the complainant’s concerns and the point he had made.

The Committee considered the exchange between Henry Blofeld and Geoffrey Boycott against the Guidelines on Harm and Offence. Trustees noted that, being a live and unscripted programme, it was difficult to signpost contentious content. However, the Committee considered that, as *Test Match Special* was a long-standing fixture in the radio schedules and the two commentators were very well known to the audience and had well-established characters, regular listeners would have been familiar with Mr Boycott’s style and this in itself was a form of signposting. In terms of editorial justification it was clear that the remarks were made in the context of criticising the behaviour of the player who appealed to the umpire that a cricketer was out in circumstances when it was evident he was wrong.

Trustees noted that Mr Boycott was laughing during the exchange and they felt this indicated that these remarks were intended to be light hearted. They noted too that Mr Blofeld’s ripostes were also jocular. Given this, they considered that the audience would have understood that there was no serious intent behind the remark. Trustees understood the complainant’s concern that light hearted remarks can excuse or perpetuate discriminatory behaviour in society but felt that this short exchange in the context of a cricketing decision did not amount to condoning, endorsing or inciting physical violence against children.

The Committee noted the complainant’s concern about the way his complaint had been handled and the length of time it had taken to be heard. It noted that Audience Services had acknowledged and apologised that its initial response had not addressed the complainant’s concerns. It noted too that the complainant had considered the Complaints Director had been “disingenuous, not to say patronising” in his response. The Committee noted that the Complaints Director had assured the complainant that this had not been his intention. The Committee was of the view that the BBC had engaged with the complaint but had not agreed with the complainant that this was a breach of the BBC’s

Editorial Guidelines. The Committee was satisfied that the BBC had apologised for any misunderstandings and delays in the process.

Trustees agreed this appeal did not have a reasonable prospect of success.

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

## BBC News Online, "AfriLeaks website to expose abuses in Africa", 13 January 2015

### The complaint

The complaint concerned the way Eritrea was represented in the BBC News Online article headlined "AfriLeaks website to exposes abuses in Africa"  
<http://www.bbc.co.uk/news/world-africa-30799807>

The complainant made the following points:

- He said Eritrea had been singled out by the BBC as a repressive African country, which was not correct. He requested the reference to Eritrea be removed from the article.
- He suggested Ethiopia would have been a better example of a repressive African country.
- He said that a recent report by the Danish Immigration Service stated that there was no political repression in Eritrea, but the BBC had ignored this.
- He wished to know why the BBC had singled out Eritrea as an example of a repressive African country, and wished the BBC to demonstrate how Eritrea was more repressive than other African countries.
- The online article did not make it clear that internet access restriction in Eritrea was purely a case of infrastructure and capacity and not a result of government surveillance or action.
- He disputed the examples given by Audience Services about the use of "they say" as qualifying statements. He noted that the claim that Eritrea was repressive was made in a separate paragraph and was not attributed to correspondents, giving the impression that it was the BBC's view.

### Stage 1

Audience Services made the following points at Stage 1 of the complaints procedure:

- The article was conveying the news that a whistle-blowing website, AfriLeaks, had been launched by media and campaign groups in Africa.
- The reason for the reference was that Eritrea was one of two countries cited by correspondents who considered it was a place where internet control was tight and where they believed AfriLeaks could face challenges.
- There was no suggestion that Eritrea and Sudan (the other example given) were the only countries in Africa where oppression takes place.
- The BBC had deliberately used the term "they say" to make it clear that these were examples of why AfriLeaks could face challenges. For example:

“Correspondents say newspapers in multi-party democracies in Africa have often exposed corruption and human rights abuses.”

“The challenge AfriLeaks faces is to get whistle-blowers in repressive states like Eritrea and Sudan, where control over the internet is tight, they say.”

- Audience Services supplied links to websites which supported the BBC's position in the article.

## Stage 2

The complaint was investigated at Stage 2 by the Editorial Complaints Unit (ECU) who made the following points in the provisional finding:

- The ECU considered whether the article was duly accurate. The Complaints Director read a number of reports from respected, independent international organisations and detailed in his Stage 2 response points of evidence presented in those reports which supported the view that Eritrea was a “repressive state”, by which he thought the reader would understand that Eritrea was a country where at least some of the population were subjected to a state of subjugation.
- The ECU acknowledged that the complainant questioned the independence of some of the organisations which produced these reports and his belief that they had relied on information from those seeking asylum from Eritrea rather than visiting the country themselves. The Complaints Director accepted that this could be true and said he could see it might undermine the weight that could be attached to the various reports (though he noted that a UN Special Rapporteur had asked to visit Eritrea but had been denied access to the country). However, he thought it was reasonable for journalists to rely on material published by recognised international organisations, particularly when gathering evidence first hand was problematic.
- The Complaints Director also read the report from the Danish Immigration Service, cited by the complainant as a report which rebutted the claim that Eritrea was a “repressive state”. He noted the sections quoted by the complainant but formed the view that, overall, the report did not give the impression the complainant suggested. His impression was that the Danish report suggested that torture, detention and oppression had reduced in the last three years and that might not be reflected in some of the available human rights reports. However, the report also recognised that political opponents of the government still faced considerable difficulties.
- The Complaints Director believed that, taken together, the sources he had cited, combined with the Danish report, provided sufficient evidence to justify the description of Eritrea as a “repressive state”.
- The Complaints Director believed there was sufficient, persuasive evidence to justify the reference that “control over the internet is tight”. He accepted that internet access was limited across Eritrea, in part due to infrastructure issues, but noted that independent organisations had raised serious concerns about freedom of access to the internet, and detailed those examples.

- The ECU decided that, in view of the evidence cited in the Stage 2 response, it was justified to describe Eritrea in the terms used in the BBC online article and did not uphold the complaint.

The complainant challenged the provisional finding on the following grounds:

- He said the reports cited by the ECU were contradictory and misleading, and did not determine with any certainty that Eritrea had a more repressive government than other African countries.
- He believed that Eritrea could not be cited as a repressive country where internet control was tight due to lack of infrastructure, and this point had not been properly addressed.

The Complaints Director responded to these two points:

- He acknowledged that the complainant challenged the legitimacy and independence of the sources he had cited in his Stage 2 response but considered it was a point they were unlikely to agree on. He considered he had not seen persuasive evidence which would undermine the publicly stated views of the bodies he had referred to and considered that it was justified to reflect the evidence they had gathered.
- He accepted that infrastructure in Eritrea might be a legitimate reason for why access to the internet was not widely available, but he considered that was a separate issue to whether or not the internet was tightly controlled. He was not persuaded by the evidence cited by the complainant on this matter.

### **Appeal to the Trust**

The complainant asked the Trust to review the ECU's decision not to uphold the complaint at Stage 2. He made the following points detailing the reasons why he did not agree with the ECU's decision:

- He considered that, by its very nature, the AfriLeaks project required a well-established internet network within the country to be effective and viable. He considered AfriLeaks would be severely hampered not by the control exerted by the government of Eritrea, but the underlying lack of infrastructure.
- His concern about the objectivity of the sources of information had not been addressed. None of the sources mentioned the security threat posed by the Ethiopian government; nor did they mention the "No War No Peace" policy of the Ethiopian government which was designed to bring about a change of government in Eritrea.
- He said the UN's reluctance to push Ethiopia to implement the Eritrean-Ethiopian Border Commission ruling and its decision to impose sanctions on Eritrea exposed the UN's anti-Eritrea bias.
- When independent reporters saw the situation in Eritrea and filed reports that contradicted the widely held but unsubstantiated beliefs of western editors, their reports were largely ignored.

- There were other countries more deserving of the title of being a “repressive state with tight control on the internet” than Eritrea.

### **The Trust Unit’s decision**

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

The Adviser noted that the complainant had raised concerns that the online article, “AfriLeaks website to expose abuses in Africa”, contained inaccuracies and demonstrated bias against Eritrea because it described Eritrea as an example of a “repressive state” where “control over the internet is tight”. She noted that the online article was a brief report about an initiative that was intended to make it easier and safer for whistle-blowers to reveal sensitive information anonymously, in the light of growing surveillance by governments and companies.

She considered the relevant Editorial Guidelines were those relating to Accuracy and Impartiality. These can be found in full at: <http://www.bbc.co.uk/guidelines/editorialguidelines>. The Adviser noted that all output was required to meet standards of due accuracy and due impartiality. 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.

She noted the main substance of the article was the launch of the AfriLeaks website – which was intended to help whistle-blowers release information online while protecting their identity. She noted that the ECU’s Complaints Director had referred to the United Nations, Human Rights Watch and Amnesty International as having been critical of the degree of control held by the state in Eritrea. They had noted, for example, there were arbitrary arrests, no right to carry out peaceful protests and no freedom of expression. She noted that the complainant disputed these findings and the independence of the organisations. However, she considered that Trustees would agree with the Complaints Director’s view that:

“I do think it is reasonable for journalists to rely on material published by recognised international organisations, particularly when gathering evidence first hand is problematic.”

She also noted that the Royal Charter and 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 a duty that is the responsibility of the Executive Board under article 38, (1)(b). She noted that this distinction is intended to protect the BBC’s editorial freedom and independence. It means that the BBC is entitled to make editorial decisions without the Trust’s intervention unless, for example, a complaint raised a matter that was a potential breach of the BBC’s editorial standards (as set out in the Editorial Guidelines).

The Adviser acknowledged the complainant’s view that there were other countries more deserving of the title of being a “repressive state with tight control on the internet” than Eritrea. However, she considered that the decision to name Eritrea as one example of such a state was an editorial choice made by BBC News Online and she believed that

Trustees would be likely to agree with the ECU Complaints Director that it was duly accurate to refer to Eritrea as an example of a repressive state where control over the internet was tight. She considered the article did not seek to investigate or compare levels of repression among different African states. She acknowledged the complainant's point that the lack of infrastructure limited people's ability to access the internet, but considered that this was a separate issue to the degree of control of the internet by the government.

The Adviser considered Trustees would be likely to conclude that the description of Eritrea in the context of this article met Editorial Guideline requirements for due accuracy and due impartiality. She therefore decided that the appeal would not have a reasonable prospect of success and should not proceed further.

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

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

- He said the main thrust of his complaint was that Eritrea could not be labelled as a country which exercises tight control over internet access within the country due to a lack of a viable internet infrastructure.
- He believed that the important fact about the lack of a viable internet infrastructure had been set aside during the complaints process and not taken into proper consideration: the Complaints Director had acknowledged that lack of infrastructure did limit people's ability to access the internet, but he had considered it to be a separate issue to the degree of control of the internet by the government.
- To date the BBC had relied upon external sources which had never visited Eritrea. He noted that a BBC news team had recently visited Eritrea and a member of that team had spoken of his experience of using the internet there. He had stated that most western websites were accessible but access was hampered by the speed of the internet. He said these statements could be found at the following website: <https://www.youtube.com/watch?v=VUtxKZjCN-4>
- From that, he concluded that even the BBC's own staff on their visit to Eritrea had not witnessed a "tight control" of the internet by the Eritrean Government, and it was inaccurate to describe Eritrea as having "tight control". He believed that the internet in Eritrea was only limited by the underlying poor infrastructure.

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

Trustees acknowledged the complainant's view that the aspect of his complaint concerning internet access within Eritrea had not been addressed satisfactorily during the complaints process and that "the important fact about the lack of a viable internet infrastructure had been set aside".

Trustees noted that the issue of a viable internet infrastructure in Eritrea formed one aspect of the wider original complaint about the description of Eritrea as repressive.

They noted that the ECU Complaints Director believed that, taken together, the sources he had cited, combined with the Danish report, provided sufficient evidence to justify the

description of Eritrea as a “repressive state”. He also believed there was sufficient, persuasive evidence to justify the reference that “control over the internet is tight”. He accepted that internet access was limited across Eritrea, in part due to infrastructure issues, but noted that independent organisations had raised serious concerns about freedom of access to the internet, and detailed those examples.

Trustees noted the complainant’s objection to the Adviser’s view that, although a lack of infrastructure in Eritrea might be a legitimate reason for why access to the internet was not widely available, that was a separate issue to whether or not the internet was tightly controlled.

Trustees acknowledged the complainant’s comments about a member of the BBC News team which visited Eritrea and noted that the comments about access to the internet were made in the context of a wider discussion about control of the media in general in Eritrea, which was generally acknowledged to be repressive.

Trustees observed that the BBC News article at the centre of the complaint was a brief report about an initiative that was intended to make it easier and safer for whistle-blowers to reveal sensitive information anonymously, in the light of growing surveillance by governments and companies.

Trustees believed that if this matter came to them on appeal they would be likely to conclude that in the context of this article, and based on the evidence they had seen, it was duly accurate to refer to Eritrea as an example of a repressive state where control over the internet was tight.

The Committee agreed that this appeal had no reasonable prospect of success.

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

# Appeals against the decision of BBC Audience Services not to correspond further with the complainant

The BBC's editorial complaints system has three stages. During the first two stages complaints are considered and replied to by the BBC. At the third stage the Trust may consider an appeal against a decision by the BBC.

Complaints are answered at Stage 1 by BBC Audience Services. Where complainants remain dissatisfied after a Stage 1 response, they can request a further response at Stage 1. If they are still dissatisfied they may escalate their complaint to Stage 2. Complaints at Stage 2 are answered either by the BBC's Editorial Complaints Unit, or by a senior manager within the BBC.

However, under the Complaints Framework, it is open to the BBC to close down correspondence at any stage – this means the BBC notifies the complainant that it does not wish to respond further. The complainant can appeal to the Trust if they consider the BBC was wrong to close down the correspondence. This is what happened in the following cases. Where a complainant appeals to the Trust in these circumstances, and Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The Editorial Complaints and Appeals Procedure<sup>4</sup> 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.

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<sup>4</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2014/complaints\\_fr\\_work\\_ed\\_complaints.pdf](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 *Review 2014: The Year in Politics*, BBC News Channel, 25 December 2014

### The complaint

The complainant contacted BBC Audience Services on 13 January 2015. He said that the programme *Review 2014: The Year in Politics* had inaccurately stated that the Bank of England had said “no” to a currency union during the Scottish independence referendum campaign. The complainant referred to a speech given by the Governor of the Bank of England, Mark Carney, in January 2014 in which he had stated that:

“All aspects of any such arrangement would be a matter for the Scottish and UK Parliaments.”

Audience Services responded on 15 January 2015:

“...what was actually stated in this part of the programme was: ‘Much of the debate focused on money, mainly whether an independent Scotland could use the pound. No, said the Governor of the Bank of England.’

“This was a reference to the comments made by Mark Carney in September 2014 that a currency union between an independent Scotland and the remainder of the United Kingdom would be ‘incompatible with sovereignty’.”

The complainant remained dissatisfied and Audience Services sent a further reply:

“...we feel that the ‘Year in Review’ provided a fair reflection of the view put forward by Mark Carney in September 2014. The review segment effectively summarised several stories from the year and was not designed to go into great detail on each topic. Nonetheless, we feel it was an accurate summary.”

Audience Services added that they had nothing further to add to their previous reply and that they did not believe the complaint had 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 4 February 2015. The complainant appealed on the substance of his complaint, that the programme *Review 2014: The Year in Politics* had inaccurately stated the position of the Bank of England on currency union during the Scottish referendum campaign.

### The Trust Unit’s decision

The Senior Editorial Adviser (the Adviser) read the correspondence that had passed between the complainant and the BBC and watched the relevant part of the programme.

The Adviser noted 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.

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

The Adviser noted that all BBC output was required to meet the standard of due accuracy and impartiality. Under the Editorial Guidelines, this was defined as follows:

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

The Adviser noted that this requirement meant that the degree of accuracy and impartiality varied depending on the output – for example, a serious subject that was addressed in a news programme would require a very high level of accuracy and impartiality, whereas the same subject could be addressed in a topical comedy programme and the level of accuracy and impartiality required would be significantly lower. The Adviser considered this was broadly understood by audiences.

She noted that in assessing "due" accuracy, output producers had to take into account the subject and nature of the programme and what the likely audience expectations would be.

She noted the presenter's script for the relevant section of the programme:

"For most of 2014 Scotland grappled with what sounded like a simple question: to be an independent country, yes or no? ... much of the debate focused on money – mainly whether an independent Scotland could use the pound. Err – no said the Governor of the Bank of England."

The Adviser noted that in stating that the programme had contained an inaccuracy, the complainant had referred to a speech on the economics of currency unions given by the Governor of the Bank of England in Edinburgh in January 2014. She noted also that in their stage 1(a) reply Audience Services had referred the complainant to comments made by Mr Carney in September 2014 and had said that the statement in the programme was based on these comments.

The Adviser looked at what Mr Carney had said at the TUC Conference in Liverpool in September. He was speaking in response to a question from a delegate who asked if an independent Scotland would be able to remain in currency union with the rest of the UK and, if so, what the consequences would be. In answering, Mr Carney said that there were three components necessary for a successful currency union: the free movement of goods and services, a centralised bank and shared banking regulations, and common taxation and spending. He then went on to say:

"I think we only have to look across the channel at what happens if you don't have all of those components in place. So that's just the economics of it. I've said this before but we take note of the positions of all the major Westminster parties to rule out a currency union between an independent Scotland and the rest of the UK. So it's in that context – if you put it together – a currency union is incompatible with sovereignty."

The Adviser accepted that this had been a significant matter of debate during the referendum campaign – and that the Governor of the Bank of England had not given an unequivocal “no” during the TUC speech referred to by Audience Services. However, she noted that this was not a news report of the speech itself, but a broad-brush review several months later. She noted too that the script had not simply reported his position as saying “no” but had introduced a note of equivocation by summarising his position as “err, no”. She noted that the programme had aimed to “look back at the big political events of the year” in half an hour – a proposition which indicated that it would not cover the subjects in detail – and that Audience Services had made this point separately, explaining to the complainant that “the review segment effectively summarised several stories from the year and was not designed to go into great detail on each topic”. She considered that the style of the programme had a lighter tone than a standard news report – for instance the presenter structured his script around life-sized cardboard cut-outs of the five most significant political leaders of the year.

Given these points about the context of the output, the Adviser considered that what had been said in the programme was duly accurate and would not have misled the audience.

The Adviser considered therefore that 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 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 that:

- The Adviser described the programme as being of a “lighter tone” in relation to the required standard of accuracy/impartiality. However, the content was political and was presented as factual, so had a duty to be correct.
- If the items had been treated with a broad brush, then each section had even more of a responsibility to be accurate and not mislead the viewer.
- Currency played an important part during the referendum with both sides trying to claim ownership of it.
- Mr Carney did not come out for any side during the Referendum campaign and remained neutral. The word “no” was never used.

### **The Committee’s decision**

The Committee noted the complainant’s view that the programme had misled its audience by using the decisive word “no” to describe the Governor of the Bank of England’s position over a currency union when in fact he had not used the word “no”. The Committee agreed that the content of the programme had a duty to be accurate and not mislead viewers; however, it noted that “due accuracy” as explained in the BBC’s guidelines must be adequate and appropriate to the output, taking account of the nature of the programme and the likely audience expectation.

In this case the Committee agreed with the Adviser that as it had been made clear to the audience that the programme’s intention was to look back at the big political events of the year in just 30 minutes, there would have been no expectation that any of the stories covered would be looked at in any great detail. The Committee noted that this had been

pointed out by Audience Services in their correspondence with the complainant. Taking into account what Mr Carney had said during his speech to the TUC conference in September 2014 and noting that the programme had based its summary on this speech, the Committee agreed with the Adviser that “err, no” was in the circumstances a fair summary of Mr Carney’s position. The Committee considered that, in reported speech, it was perfectly acceptable to summarise what had been a clearly negative stance by Mr Carney, as his saying “no”. The Committee also took into account that the broadcast took place some months after the referendum in which currency union had been such a significant matter of debate.

Taking this context into account the Committee concluded that if the complaint were to come to it on appeal there was no reasonable prospect that Trustees would find the programme had breached the requirements of the BBC Editorial Guidelines on due accuracy.

Trustees therefore agreed with the Adviser 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.

**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 Sport's coverage of the sacking of Kevin Pietersen

### The complaint

The complainant contacted BBC Audience Services on 24 November 2014 saying that BBC Sport's reporting of Kevin Pietersen's sacking had lacked balance. She made the following points about the BBC's coverage:

- it had failed to investigate the circumstances surrounding the sacking
- it had not asked Paul Downton, Andy Flower or Alastair Cook about their involvement
- it had not featured one independent interview or article questioning the England and Wales Cricket Board's (ECB) actions
- it had been led by Jonathan Agnew, who had spoken openly of socialising with Alastair Cook and Giles Clarke and who had "totally failed to hold the ECB to account on this issue".

The complainant also contacted *Test Match Special* by email on 26 November, 10 December and 16 December.

BBC Sport responded on 17 December and made the following points:

- the story had been a particularly divisive one and one that had been difficult to cover because of confidentiality clauses in place for both the Pietersen team and the ECB
- they had put in numerous bids to talk to both Kevin Pietersen or his team and representatives from the ECB
- they also interviewed the England managing director Paul Downton in May and again on 16 December and asked him directly about the reasons surrounding the decision and about the handling of the issue
- when the confidentiality clause was lifted, Kevin Pietersen had been interviewed on various BBC platforms including *BBC Breakfast*, *5 live Daily*, *Sportsworld* and the *Today* programme
- while no ECB official had been made available for a response, they had interviewed Alastair Cook and former ECB chief executive David Collier on the *Sportsworld* programme to investigate the reasons why the ECB had taken the decision
- they had put in bids to speak to Andy Flower but their requests had been declined
- they outlined the range of experts they had featured in coverage who had given a variety of views throughout the year including Michael Vaughan and Geoff Boycott who had consistently questioned the ECB decision
- that as a sports correspondent Jonathan Agnew had been asked to give his view on whether the decision was correct and he had been equally critical of the ECB for their handling of the affair as he had been of Kevin Pietersen
- the BBC considered that mixing with the England captain and the chairman of the ECB would have been expected of a correspondent but this did not mean that he took sides.

The complainant sent a response to this reply to BBC Sport and to Audience Services. She reiterated her view that the BBC had failed to interview Andy Flower and had failed to

question adequately Paul Downton and Alastair Cook. She repeated her criticisms of Jonathan Agnew and said that the BBC had failed to reflect the opinions of cricket fans on the sacking.

BBC Sport responded to these points on 13 January 2015. They highlighted interviews with Alastair Cook and Paul Downton and provided links to these and supporting interviews. They again outlined their attempts to interview Andy Flower. The BBC repeated their position that Jonathan Agnew had provided broad and balanced coverage and the BBC had pointed the complainant to several outlets where the views of cricket fans had been represented. BBC Sport informed the complainant on 4 February that they had nothing to add to their previous responses.

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

The complainant appealed to the BBC Trust on 17 February. The complainant appealed on the substance of her complaint, that BBC Sport's coverage of the sacking of Kevin Pietersen had been biased.

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

The Senior Editorial Complaints Adviser (the Adviser) noted 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 the key points of complaint:

- the BBC had failed to question or question adequately Paul Downton, Alastair Cook and Andy Flower
- cricket correspondent Jonathan Agnew had demonstrated bias against Kevin Pietersen
- the BBC had not taken into account the views of supporters
- the BBC had failed to investigate the ECB's actions.

The Adviser noted the replies from the BBC which addressed the questioning of Paul Downton, Alastair Cook and Andy Flower.

The Adviser noted that the BBC had pointed out to the complainant that they had interviewed Paul Downton in May and that following this interview, which had been broadcast on *Test Match Special* and elsewhere, the ECB had issued an apology following comments made in the interview. This had been reported online in a BBC article: "Kevin Pietersen: ECB apologises over Ashes 'attitude'". The Adviser noted that Paul Downton had been interviewed again in December. In this interview he was asked about the decision to sack Kevin Pietersen, about how it had been handled and about criticisms made in Pietersen's book about bullying in the England team.

The Adviser noted that the BBC had referred the complainant to an interview with Alastair Cook after the release of Kevin Pietersen's book. She noted also that the BBC had explained that because of a confidentiality agreement it had not been possible to interview Alastair Cook before this time. The BBC had provided a link to a report of the

interview “Alastair Cook says Kevin Pietersen book has ‘tarnished’ England era” during which Cook was challenged on what Pietersen had said.

The Adviser noted that in regard to Andy Flower, the BBC had pointed out to the complainant that they had requested an interview on numerous occasions and that they would continue to do so.

The Adviser then noted that the BBC had provided the complainant with a list of articles which had featured other comments in an attempt to reflect a broad range of views on the issue, including those in support of Kevin Pietersen and his claims. These included comments by Eoin Morgan, Stuart Broad and the former Australia batsman Matthew Hayden.

The Adviser then noted the complainant’s view that Jonathan Agnew had displayed “a lack of even-handedness” in his reporting. The Adviser considered the replies from the BBC which had explained the role of the correspondent. She noted that the BBC had referred to online articles written by Jonathan Agnew which had been as critical of the ECB as he had been of Kevin Pietersen.

The Adviser noted that the BBC had been able to direct the complainant towards numerous phone-in programmes where fans had been invited to have their say, including a phone-in on 5 live in October 2014 following an interview with Kevin Pietersen on the network that day. The BBC also referred to the *Test Match Special* Facebook page which had featured supporters having their say.

Finally, the Adviser considered the view of the complainant that the BBC had failed to investigate the ECB’s actions. She noted that the BBC had pointed out that the ECB had been invited to respond as the story had developed and that where possible they had done their best to ask questions of ECB officials when the opportunity had arisen. The BBC had also pointed out that they had interviewed the former ECB chief executive David Collier and had featured a range of commentators who had taken strong stances on either side of the argument, including Geoff Boycott, Michael Vaughan and Steve Harmison, who had all questioned the ECB’s handling of the affair.

Taking into account the detailed replies and examples provided to the complainant and the strenuous efforts outlined by BBC Sport in attempting to interview the key figures in the story, the Adviser considered Trustees would be likely to conclude that the BBC had given a reasoned and reasonable response to the complaint and, in the interests of all licence fee payers, 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**

Having sent the full grounds of her complaint (with supporting details) previously, the complainant set out in her request for a review brief reasons why she considered her complaint raised a substantial breach of the BBC’s Editorial Guidelines.

- BBC cricket had failed to ask any adequately challenging questions of those responsible

- BBC cricket had chosen not to reflect or acknowledge the strength of public opinion (e.g. by publishing articles exploring supporters' reactions or by broadcasting any official interviews with fans unhappy with the ECB's actions)
- The BBC had not directly challenged the fairness, reasonableness or damaging consequences of the sacking, or given equal space and airtime to cricket supporters wishing to raise these matters themselves. The impression given was that the reluctance to embarrass senior officials was due to an overly close relationship with the ECB. Jonathan Agnew had consistently expressed the view that Pietersen was to blame for his situation and Mr Agnew had social contacts with Clarke and Cook. BBC cricket's reporting of Kevin Pietersen's sacking was therefore substantively inadequate/biased in clear breach of the Editorial Guidelines.

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

Trustees acknowledged the complainant's views on the reporting of the sacking of Kevin Pietersen. They noted the points made in support of her complaint.

The Committee noted the replies to the complainant from BBC Sport which had explained the role of the correspondent. The BBC had said that mixing with the England captain and the chairman of the ECB would have been expected of a correspondent but this did not mean that he took sides. Trustees also noted that the BBC had referred to online articles written by Mr Agnew which had been as critical of the ECB as he had been of Kevin Pietersen. This was evidence that Mr Agnew had explored both sides and that allegations of bias against him were not substantiated.

The BBC had also provided the complainant with a list of articles which had featured other comments in an attempt to reflect a broad range of views on the issue, including those in support of Kevin Pietersen.

Trustees acknowledged the complainant's view that the BBC had not asked adequately challenging questions of the ECB as the story developed. They noted that BBC Sport had pointed out to the complainant that they had interviewed the former ECB chief executive David Collier and had featured a range of commentators who had taken strong stances on either side of the argument, including Geoff Boycott, Michael Vaughan and Steve Harmison, who had all questioned the ECB's handling of the affair.

Trustees also acknowledged the complainant's view that BBC Sport had chosen not to reflect or acknowledge the strength of public opinion on the issue. However, they saw that the BBC had pointed the complainant towards phone-in programmes in which fans expressed their views, including a phone-in on 5 live in October 2014 following a broadcast interview with Kevin Pietersen that day. The BBC had also referred to the *Test Match Special* Facebook page which had featured supporters having their say on the matter.

Trustees considered that the complainant had received very reasonable responses from the BBC explaining the measures which had been taken to try to secure interviews on the issue. They noted that decisions about which stories should be covered, the manner of their reporting, and the extent to which they should be investigated were editorial ones which rested with the programme makers. Trustees believed they would be likely to conclude that BBC Sport's coverage of the sacking of Kevin Pietersen met Editorial

Guideline requirements and they considered that it was reasonable for the BBC to have declined to engage in further correspondence on the issue.

**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 Last Journey of the Magna Carta King*, BBC Four, 9 February 2015

### The complaint

The complaint concerned a comment made by Dr Ben Robinson in the programme. He stated:

“...it’s menacing behaviour, and not only that, John upset the wealthy demanding money with a new 13th century mansion tax; the rebels hoped to curb that.”

The complainant made the following points:

- This remark was suggestive of bias against the Labour Party as it could be seen by the viewer to mean that the “mansion tax” was a “bad tax”.
- He disagreed the analogy was appropriate and stated: “...the concept of opinion in 13th century England is laughable, only the king and his nobility and the church had opinions, that’s why it was feudal.”

Audience Services made the following points:

- The programme looked at the history of England and compared King John’s introduction of a tax on the wealthy in the 13th century with the present-day proposal for a “mansion tax”.
- They felt it could be helpful in understanding the past to draw analogies with the present. While the BBC had no view itself on the tax, it was likely that opinion in the 13th century was no less divided than it is today.

Audience Services said they had nothing further to add and that they did not believe the complaint had raised an issue that justified further investigation.

### Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of his complaint, reiterating his concern that the presenter’s analogy between a 13th century tyrant king’s imposition of a tax on the wealthy with present-day Labour Party plans for a “mansion tax” was inappropriate and demonstrated bias against the Labour Party.

### The Trust Unit’s decision

The Trust Adviser understood that BBC Audience Services had decided not to correspond further with the complainant after Stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

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

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

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

She noted the programme was entitled: *The Last Journey of the Magna Carta King* and was billed with the following information: “Dr Ben Robinson traces the dramatic last days of King John, famous for the creation of the Magna Carta, and uncovers the legend of his lost treasure”.

She noted the scripting in the introduction to the programme, which stated:

“Ten days, from King of England to death and ruin. This is the last journey of King John, the Magna Carta king.

“Through the treacherous flatlands of East Anglia to the great cathedral of Worcester.

“Rediscovering the landscape of Magna Carta... Searching for the King’s lost treasure – is it really still hidden in the fens? A legend, still alive after eight hundred years...”

She considered this would have clearly signposted to viewers the historical focus of the programme and that audience expectations would have been for a consideration of the last days of King John rather than any comment on current party politics.

She considered Trustees would be likely to conclude the analogy used in the programme was a reasonable journalistic device to explain a historical situation – and that this had been explained by Audience Services.

The Adviser acknowledged the complainant’s concerns about the importance of maintaining impartiality in the run-up to the general election; however, she did not believe Trustees would conclude there was information to suggest a breach of the Editorial Guidelines on Impartiality. She decided 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 it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees.

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

The complainant made the following points:

- Regarding the Trust Adviser’s comment: “...audience expectations would have been for a consideration of the last days of King John rather than any comment on current party politics”.

He said that audience expectations were NOT met.

- Regarding the Trust Adviser’s comment: “...a reasonable journalistic device”.

He said the programme was about history, NOT the present day, therefore using a "journalistic device" of a Labour party pledge as a bad thing done by a tyrant, crossed the line.

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

Trustees acknowledged the complainant's concern that the programme failed to meet the Editorial Guideline requirement for due impartiality in the run-up to the General Election because of the presenter's analogy between a 13th century tax on the wealthy imposed by King John, and the Labour Party's plan to introduce a "mansion tax".

Trustees noted that the complainant believed it was wrong to state that audience expectations were met. However, they agreed with the Trust Adviser that the historical focus of the programme was clearly signposted and the audience would have been likely to place the comment in its intended historical context. The "journalistic device" of the analogy with the "mansion tax" was intended as a means of aiding a modern audience's understanding of that context, and was not a comment on current party politics. Although Trustees accepted that the complainant did not like the analogy, they considered it was a reasonable journalistic device to explain a historical situation and did not agree that its inclusion provided evidence of a breach of the Editorial Guidelines.

Trustees believed 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.

**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 coverage of reports that Ed Miliband wanted to “weaponise the NHS”.

The BBC Trust received two appeals from complainants who expressed dissatisfaction with the responses received at Stage 1. As the complaints related to the same element of output, the Trust Unit considered it appropriate to consolidate the appeals in accordance with paragraph 5.6 of the Editorial Complaints and Appeals Procedure.

### The complaints

Two complainants contacted BBC Audience Services and made the following points in relation to comments made by the BBC Political Editor Nick Robinson that he understood Ed Miliband wanted to “weaponise the NHS”:

1. The BBC’s news coverage had not adequately reflected the story that Ed Miliband intended to “weaponise the NHS”.
2. The BBC had not covered a story reported in the national press that the comment that Ed Miliband intended to “weaponise the NHS” had been made in a “secret meeting” between Labour Party officials and the BBC.
3. The BBC was believed to have a left-wing bias.
4. David Cameron had subsequently repeatedly cited Nick Robinson when he had referred to Ed Miliband’s intention to “weaponise the NHS” and the BBC had therefore allowed itself to be used as part of a political campaign – in contravention of the Editorial Guideline which stated: “...we must not campaign, or allow ourselves to be used to campaign”.

Audience Services’ responses made the following points to the complainants:

1. Decisions about which stories or elements of a story to cover were subjective ones that depend on a number of factors and that it was inevitable that not everyone would agree with those decisions.
2. The BBC had covered the comments by Nick Robinson in the Daily Politics, in Nick Robinson’s blog, on The Andrew Marr Show and online.
3. They considered the coverage given had been appropriate and impartial.
4. They stated that Nick Robinson had reported that “the Labour leader talked in private of ‘weaponising’ the NHS”.
5. Nick Robinson had considered this significant because it revealed the Labour Party’s pre-election strategy and was potentially a controversial stance to adopt.
6. They noted that neither the Labour Party nor Ed Miliband had contested that the phrase had been used.
7. They did not consider the BBC’s coverage was in breach of the Editorial Guidelines.

### Appeals to the BBC Trust

The complainants appealed on the substance of their complaints.

## The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) noted that Audience Services had ceased handling the complaints at Stage 1 and that the complaints 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 complainants had a reasonable prospect of success. The Adviser decided that the appeals did not have a reasonable prospect of success.

The Adviser noted that Audience Services in their replies had outlined some of the coverage of the reported comments. She noted that the comments had initially been made by the BBC's Political Editor Nick Robinson on the *Daily Politics* on 26 November 2014. He had said:

"What Labour are desperate for is to highlight the problems in the Health Service at this stage ... and a phrase the Labour leader uses in private is that he wants to, and I quote, 'weaponise the NHS' for politics."

In his blog of 1 December 2014, he had written:

"For months ministers have worried about the mounting evidence of an NHS under mounting strain.

"For months Labour have believed that evidence of the crisis they'd long predicted would soon emerge. Ed Miliband told his aides that it was time to 'weaponise' the NHS."

The Adviser noted that Audience Services had also referred to coverage of the issue on *The Andrew Marr Show* and online.

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

She noted that Audience Services had explained that decisions about which stories or elements of a story to cover were subjective and would vary depending on other factors - such as what other stories were in the news and the length of the news bulletins.

She considered Trustees would be likely to conclude that deciding how much coverage to give the story was a matter of the BBC's editorial judgement and that Audience Services had explained this to the complainant.

She also noted that, in terms of David Cameron referring to Nick Robinson during PMQs, Audience Services had explained that politicians routinely pick up on and then use elements of stories reported by journalists, which is what had happened in this case:

"Nick Robinson, like other political journalists, may on occasion report comments which have been made privately by senior politicians, relayed to him by his sources or given to him on an agreed basis. This is an accepted convention of informed political journalism. It is not the same as breaking a confidence (which would in any case jeopardise a journalist's sources) and there has been no complaint that this has happened.

"Such reporting, if sufficiently newsworthy, can in turn become the subject of debate and discussion and this instance is not unusual in this respect."

She noted that Audience Services had also stated:

"...neither Ed Miliband nor the Labour Party have denied that the term 'weaponise' is one that Mr Miliband has used in private nor claimed that it's a term he has only used in one meeting – private or otherwise."

She noted that one complainant considered that, because the Prime Minister had subsequently referred to the comments made by Nick Robinson, the BBC was in breach of the Editorial Guideline for Politics, Public Policy and Polls, which state:

"10.2.3

We must not campaign, or allow ourselves to be used to campaign."

However, she considered – as Audience Services had explained – that the Political Editor was operating within the normal bounds of reporting and that it was not unusual for information to be put into the public domain by a journalist and then subsequently be picked up by politicians. She did not consider that Trustees would be likely to conclude this amounted to campaigning by the BBC or that the BBC had allowed itself to be used to campaign.

The Adviser considered therefore that Trustees would be likely to conclude that the complaints had not raised issues which might amount to a breach of the BBC's editorial standards and that Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider the appeals had a reasonable prospect of success and did not propose to put them before Trustees.

The Adviser also noted that one complainant had made a separate complaint about the way his complaint had been handled, making the following points:

- He considered the response from Audience Services was slow, patronising and inadequate
- He was unhappy that he was not sent a copy of the text of his original complaint
- He was unhappy at the different reference numbers generated by each element of correspondence

However, on reading the correspondence, the Adviser considered the responses from Audience Services had been polite in tone and that when a delay had occurred the BBC had contacted the complainant to explain that delay and had apologised for it. She understood that the BBC received more than a million complaints and contacts each year and the system – which allocated a different reference number for each element of correspondence – was intended to ensure that complaints could be properly tracked and answered. She was sympathetic to the potential for confusion that might arise and would

draw the complainant's comments to the attention of Trustees as they were keen to ensure the complaints system worked efficiently in the interests of all licence fee payers.

The Adviser thought the complainant might be interested to know that complaints handling was a matter the Trust kept under close review. The Trust carried out a "mystery shopping" exercise to assess how complaints were answered at Stage 1 which was published in 2014 and can be found at this link:  
[http://www.bbc.co.uk/bbctrust/news/press\\_releases/2014/mystery\\_shopping\\_2014.html](http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html)

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

On 24 April 2015 one complainant requested that the Trustees review the decision not to proceed with his appeal. He wanted them to look at the substance of his complaint. In previous correspondence he had said that the NHS was a key issue in the election and that Andrew Marr had failed to get Mr Miliband to confirm he had used this phrase.

The complainant claimed that Ed Miliband had told of his plan to "weaponise the NHS" to a meeting of BBC executives. He argued that the BBC had chosen to "go big" on the story, but had chosen not to report that the comments were made in a meeting with BBC executives. The complainant argued that this element of the story was a matter of public interest. It was incumbent on the BBC to report it. The complainant argued that there is "a fearfulness about vigorously pursuing stories from inside the Corporation" that the licence fee payer should understand. He questioned whether there was bias because these facts were not reported. Was this a policy not to scrutinise the BBC or was it an oversight?

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

Trustees noted that under the Royal Charter decisions relating to the choice of news stories covered fell within the "editorial and creative output" of the BBC and were the sole responsibility of the BBC Executive.

The Trustees noted that this story was put in the public domain by the BBC. They also noted that Andrew Marr had raised the question with Mr Miliband although Mr Miliband had not confirmed or denied he had used the phrase.

Trustees did not see this as evidence of left-of-centre bias. They also noted that journalists in national news organisations were regularly briefed privately by politicians of major parties on their policies and plans. This also was not evidence of bias.

Trustees believed that the amount and nature of the coverage given to the story was a matter of editorial judgement and that decisions about which stories or elements of a story to cover were subjective and would vary according to a range of factors, such as the nature of the programme and what other stories were in the news that day.

Trustees believed it was, in general, a matter of editorial judgement for the BBC as to whether it would report the circumstances in which comments by a politician were made.

Trustees considered that if they were to take this case on appeal they would reach the view that Audience Services were correct to close the correspondence down as it did not concern a possible breach of the Editorial Guidelines.

With respect to the complainant's separate complaint about the way his complaint had been handled, the Trustees regretted that he had found the tone patronising and that a delay had occurred. However, the Committee felt that Audience Services had acted appropriately when it had contacted the complainant to explain that delay and apologise for it. The letters appeared to be polite in tone.

Trustees also noted the complainant's frustration at the BBC's reference numbering system but noted that the system was intended to ensure that complaints could be properly tracked and answered.

**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 Newsnight, BBC Two, 9 December 2014

### The complaint

On 9 December 2014, BBC Two's *Newsnight* carried an interview with Natasha Bolter, a prospective parliamentary candidate for UKIP. Ms Bolter had claimed that, during her screening process, UKIP's general secretary, Mr Roger Bird, had sexually harassed her. As a result, Mr Bird had been suspended from his post for what UKIP called "allegations of impropriety". Subsequently, Mr Bird had revealed text messages sent to him by Ms Bolter which he said proved their relationship had been consensual.

In a later development, it was reported by some media outlets that Oxford University had dismissed Ms Bolter's claim to have been a student there and that she might not have the teaching qualifications she claimed she had.

The complainant first contacted the BBC on 12 December 2014. He argued that coverage on *Newsnight* "hinted at bias against the UKIP political party". He also argued that while the BBC gave "copious coverage" to the allegations of sexual harassment, it had chosen not to report the later statement from Oxford University and the claims about Ms Bolter's teaching qualifications. The complainant argued that it did "not suit the BBC's agenda" to report these two subsequent stories.

Audience Services acknowledged that the complainant considered the output had failed to be impartial due to the omission of certain facts, and stated:

"...Our coverage of this story did question the veracity of Ms Bolter's claims and looked at the specifics of the relationship between her and Mr Bird. The interview with Ms Bolter on 'Newsnight' which you cite was preceded on the night by presenter Evan Davis reading out the texts released by Mr Bird earlier that day, before the recording of the interview.

"We then showed the texts while Evan read them out:

"I love u and miss u and think u r sort of perfect", "you are a really great mentor Bird" and "R u still cool with me leaving your suitcase here and coming home with u?"

"Evan then explained the context of the interview, texts and timing in his introduction:

'But Natasha Bolter herself has been thrust into the limelight today, which is never an easy place to be. As a trusted acquaintance of the journalist Tom Mangold, she agreed to give him an interview, for "Newsnight" and that was recorded this afternoon. A key question is of course, what she says about those text messages, but our interview was recorded before we had the actual wording of them. This evening she told Tom that they had exchanged several friendly and affectionate texts and emails. She said "None of them changes my story". But let's hear what she had to say to Tom Mangold, this afternoon.'

"We believe both sides of this story were reflected and reported in a fair and impartial manner, allowing our audience to make up their own minds."

The complainant replied saying that Audience Services' answer was incomplete, he believed deliberately, and that his concern was that "no outlet of the BBC seemingly reported the follow-up revelations to the story covered on *Newsnight*" and that these were important elements to the overall story: "At least one national newspaper called the woman a 'fantasist' because of the discrepancies."

BBC Audience Services said that "the central story at hand was the relationship between Ms Bolter and Mr Bird, which we focused on," and added, "We do not believe your complaint has raised a significant issue of general importance that might justify further investigation".

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

The complainant appealed to the BBC Trust. The complainant appealed on the substance of his complaint, that, "the evidence which emerged of Ms Bolter's claims about education and employment and was widely covered in other media effectively destroyed her credibility. However, the BBC failed to cover this part of the story in any of its subsequent reporting of the matter".

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

The Senior Editorial Complaints Adviser (the Adviser) noted 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 the complainant's allegation in his appeal to the Trust that the BBC's coverage "demonstrates political bias by the subtle means of omission of a particular story when it turns out not to be to the political taste of the news editorial department's collective consciousness".

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

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

She noted that *Newsnight* was a very well established news and current affairs programme and considered that its audience had a clear expectation that its output would include an in-depth consideration of the day's news and that the programme was noted for its coverage of political stories.

The Adviser noted the response from Audience Services, setting out the timing of the recording of the interview with Ms Bolter, the development of the story during the day, and how this was reflected in the programme through the script of the presenter, Evan Davis.

The Adviser noted that Ms Bolter's interviewer, Tom Mangold, put Mr Bird's position to her and asked her questions about the text messages between Mr Bird and Ms Bolter. She also noted that he challenged her story, asking: "So why did you continue meeting with him?"

The Adviser considered Trustees would be likely to conclude – as Audience Services had done – that the output met the requirement for due impartiality. She considered that Trustees would be likely to conclude that Audience Services had given reasoned and reasonable responses to the complaint and had acted appropriately in declining to correspond further regarding *Newsnight's* coverage of the story.

The Adviser noted that the complainant considered the matter extended beyond the coverage of the story that was given on *Newsnight*, to the lack of coverage generally by the BBC as the story continued to develop. In particular, he considered the BBC had failed – in a way that indicated an anti-UKIP bias – to report a statement from Oxford University that Ms Bolter had not been a student there and reports that she did not have the qualifications she claimed to have.

The Adviser noted that the BBC's Guidelines for Impartiality acknowledged:

“...the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC's impartiality...”

However, she noted and agreed with Audience Services' later response that, “the central story at hand was the relationship between Ms Bolter and Mr Bird”.

The Adviser accepted that the extra elements to the story some days later might have contributed to a broader picture of Ms Bolter's character. However, she noted that news priorities changed from day to day and are influenced by a wide range of factors (for example, what other stories are running at the time). She noted that decisions about what stories to cover are editorial judgements that rest with the BBC. She had no information that suggested the decision not to give further coverage to this story was anything other than a legitimate editorial decision. She did not think that the Trustees would believe that a decision not to keep reporting this story amounted to bias against UKIP or Mr Bird, or amounted to a breach of the Editorial Guidelines.

The Adviser 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 that the BBC had ignored the fact that Ms Bolter – “the accuser of a senior political party figure – whose accusations were widely covered and were the ruin of this man's career – was herself a ‘fantasist’”. He argued that it would be wrong to consider that the information that came to light was unimportant or not worth coverage in the editorial judgement of the BBC. The information was “consistent with the identification of public interest”.

The complainant argued that:

“...once the second set of facts was uncovered, it was incumbent upon the Corporation to correct its erroneous broadcasts that had been telling its audience that the woman was a graduate of Oxford and a qualified teacher. The BBC was misled, but at no time subsequently was any attempt made across the broadcast stream to correct this misinformation.”

The complainant asserted that these were not matters of judgement, but matters of fact, which should have been reported, as the BBC was the British people’s journal of record. He believed that this was an example where the BBC should have corrected or apologised, “where viewers and listeners have been unintentionally misled by false facts”.

The complainant also believed that it was unfortunate that this complaint could not be considered together with another complaint he had made about coverage of a different issue. He believed that the BBC Trust should consider the cumulative nature of his complaints and look at “editorial partiality by omission” in the “wider context”.

### **The Committee’s decision**

Trustees noted the complainant’s view that the BBC’s coverage “demonstrates political bias by the subtle means of omission of a particular story when it turns out not to be to the political taste of the news editorial department’s collective consciousness”.

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

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

The Trustees acknowledged the complainant’s view that the issue extended beyond the coverage of the story on *Newsnight*. The Committee noted his assertion that the BBC had not reported a statement from Oxford University that Ms Bolter had not been a student there, together with claims that she did not have the qualifications she professed.

The Trustees noted that the complainant was unaware of any BBC coverage of the subsequent stories about Ms Bolter. Trustees noted it was simple to do an online search of the BBC website but that to search broadcast coverage for a particular story would be extremely difficult and onerous to do. It was not proportionate (or necessary) to check whether this story had had further broadcast coverage.

The Trustees noted that the new information did not come to light until after the coverage on *Newsnight*, but they also considered that decisions about what stories to cover are editorial judgements that rest with the BBC. The Royal Charter draws 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. Decisions relating to the choice of news stories covered fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

Trustees noted that news priorities change from day to day, influenced by a wide range of factors (for example, what other stories are running at the time). The Committee accepted that in principle the new information might have given viewers a fuller picture of Ms Bolter. However, the Committee did not believe that a decision not to follow up the story subsequently would amount to bias or an intention to mislead by the BBC. In introducing the interview with Ms Bolter, the presenter had quoted from the latest information then available, namely the text messages released by Mr Bird after the interview had been recorded, and audiences had therefore been able to reach their own judgements about the credibility of Ms Bolter in the light of the responses she had given in the interview.

The BBC had reported the news of the day and been clear about the nature of the texts. It was not necessary for the BBC to issue a later correction or apology.

Trustees considered that if they were to take this case on appeal they would reach the view that the output met the requirement for due accuracy and impartiality and any failure to give further coverage to this story did not amount to bias. Consequently, the Committee felt that BBC Audience Services was correct to close the correspondence down as it did not concern a possible breach of the Editorial Guidelines.

Trustees noted that the complainant had been concerned because the BBC had replied in the first instance with generalities. He had wondered if this was deliberate. The Trustees' view was that it was the case that initial answers to complaints might not go into as much detail as a complainant would have wished, but noted that complainants were entitled to seek a further response if they found the initial one unsatisfactory. There was no evidence in this case that any deficiencies in the original reply had been intended.

**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 Procedure<sup>5</sup> 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.

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<sup>5</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2014/complaints\\_fr\\_work\\_ed\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf)

## BBC News at One, BBC One, 18 March 2015

The complainant asked the Editorial Standards Committee to review the decision of BBC Audience Services to close down the complaint at Stage 1b.

### The complaint

The complaint concerned a report by Jon Donnison about the destruction wrought by a cyclone on the island of Vanuatu. At one point the reporter stood within the remains of a school and from the debris he picked up a Bible and an exercise book to show some of the contents of the school which had been ruined; he then dropped them back to the ground.

The complainant made the following points:

- The Bible and the school book had been “flung” down. This showed a complete lack of sympathy for the disaster that had befallen the islanders and “a complete contempt for the sacred book”. This was a matter of human decency.
- In response to Audience Services’ first reply to him, the complainant said it did not address the point that the reporter had “behaved badly, insulting the islanders whose disaster he was reporting and insulting the whole Christian world”.

Audience Services made the following points after consulting senior editorial staff at BBC News:

- Jon Donnison’s report was highlighting the devastation caused by the cyclone, and this included a visit to the site of a ruined school that had been built just weeks before.
- They apologised if the complainant was offended by part of the report and sought to reassure him that that was certainly not the editorial team’s intention.

At Stage 1b, in response to a follow-up complaint, they said 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 made the following points in his appeal to the BBC Trust:

- He reiterated his concern that the reporter had acted in a disrespectful manner. In his view the reporter had “flung” a Bible and a book to the ground after picking it up from the wreckage of a school hit by a cyclone.
- He said that instead of addressing the issue, Audience Services had simply said they were sorry if he had been offended. He said this was an evasion and dismissive.
- He said that a proper reply would have been to say that the BBC was taking the matter up with the reporter concerned and that they would do their best to ensure that things would be done better in future.

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

Trustees acknowledged that the complainant felt his complaint should have led to some action being taken against the reporter for behaviour which he believed showed disrespect to the islanders. However, having viewed the TV news report concerned, they did not believe that there was evidence to suggest a breach of editorial standards. They did not consider that picking up items, which included a Bible, to illustrate Jon Donnison's comments on the destruction of what had been a newly built school, and then dropping them back to the ground as he continued his report, indicated disrespect. They were of the view that BBC News staff had exercised their editorial judgement appropriately in this instance. They noted that Audience Services had apologised for any offence caused. They acknowledged the complainant's view that Audience Services' apology was an "evasion" and dismissive, but they considered that Audience Services had responded in a reasoned and reasonable manner to the complaint, and it was appropriate for them to say they could not engage in further correspondence on the matter.

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

## Rwanda's Untold Story, BBC Two, 1 October 2014

The complainants asked the Editorial Standards Committee to review the BBC's decision not to consider the complaint because it was submitted after the deadline set in the Complaints Framework Procedure No 1: Editorial Complaints and Appeals Procedures.

### Background

The programme is a documentary about the civil war and genocide in Rwanda in the mid-1990s. While acknowledging the gravity of those events, it seeks to question some of the received wisdom about them.

### The complaint

The complainant organisation - acting through their lawyer - contacted the BBC on 16 January 2015 to notify the BBC of their intention to make a formal complaint about *Rwanda: The Untold Story* which was broadcast on BBC Two on 1 October 2014.

The complainants acknowledged the delay in contacting the BBC, citing several challenges they had faced in being able to engage the services of their lawyer. The complainants also observed: "we envisage the preparation of the complaint will take a substantial amount of time".

The complainants sent a second letter to Audience Services on 25 February 2015 requesting acknowledgement of the receipt of the first letter and renewing the intention to submit a formal complaint. The complainants also made a request for a substantial amount of information about the programme complained of to be made available to them.

The Head of Editorial Standards, BBC News replied to the complainants on 2 March 2015, identifying the complaint as editorial in nature and therefore one that did not require the detailed background information requested by the complainants to be provided. The Head of Editorial Standards observed that he considered the complaint to be inadmissible as it should have been made within 30 working days of the date on which the content was broadcast. He recognised that, exceptionally, the BBC Executive could choose to investigate an out of time complaint, but more compelling reasons than had been supplied so far would be required in order for this to happen. The Head of Editorial Standards also advised the complainants that the Editorial Complaints Unit (ECU) had arrived at a provisional ruling on the programme in reply to another complaint. The Head of Editorial Standards outlined his decision not to suspend consideration of the complaint in the manner requested by the complainant. He asked the complainants to inform him if the complaint was not editorial, in which case he would provide them with the relevant next steps.

The complainants replied to the Head of Editorial Standards on 9 March, citing the BBC Complaints Framework Procedure No 1: Editorial Complaints and Appeals Procedures. The complainants requested further guidance on the criteria to be adopted by the BBC when deciding whether or not to extend the time limit. The complainants also requested guidance on the "BBC's duty to disclose information to a prospective complainant, when the information sought is for the purposes of informing his or her complaint". The complainants confirmed that the complaint in preparation was editorial in nature.

The Head of Editorial Standards replied to the complainants on the same day. He noted that the onus was on the complainants to provide reasons for the delay and urged them

to provide this reasoning immediately if it was as compelling as the complainants suggested. The Head of Editorial Standards added that, should the BBC Executive decide not to consider the complaint, the complainants would have the right to request an appeal to the BBC Trust.

On 12 March 2015, the complainants emailed the Head of Editorial Standards, outlining the reasons for delay. The e-mail provided (in summary):

- Background information on the complainants – a fledgling organisation - represented by their lawyer.
- An appreciation of why the 30-day rule is necessary, together with an explanation as to why the complainants' case was exceptional. The reasons for delay included:
  - The complexity of the case – the complainants felt there were material inaccuracies in the broadcast and needed to conduct proper research and investigation in order to submit a convincing complaint.
  - Volume of material.
  - The need for professional advice. The complainants noted that the presentation of a properly prepared case is in the interests of the licence fee payer; that no claim would be made which could not be substantiated; and that securing professional services requires time.
- Comment on the seriousness of the complaint
- An understanding that the BBC had received other complaints about this programme, so it would be practicable and cost-effective to consider this case even though it was submitted out of time.

The complainants also commented on the conduct of the BBC. They expressed the view that the tone of the letter from the Head of Editorial Standards on 2 March 2015 “gave an impression of being obstructive and defensive”. The complainants felt the BBC’s response to the complainants’ “attempt to communicate a genuine grievance is contemptuous and disrespectful”. The complainants also renewed the request for background information to be provided. Noting that it took the BBC over six weeks to acknowledge their initial communication, the complainants suggested that an intention not to follow up a complaint because it was out of time should have been signalled in an early response and not several weeks later after having received the request for background information. The complainants concluded this response by suggesting an informal and confidential discussion as a next step.

After considering the reasoning provided by the complainant in favour of the BBC accepting a complaint which was out of time, the Head of Editorial Standards concluded that the complaint, which had yet to be formulated, remained inadmissible for the following reasons:

- The complainants' difficulty in engaging a lawyer's services was not sufficient cause to accept an out of time complaint, because the complainants could have lodged a complaint without representation earlier, as the BBC treats all complaints seriously, wherever they may originate.
- Complex complaints are successfully raised within the 30 day limit – he pointed to examples on the ECU’s website. The Head of Editorial Standards rejected the complainants’ contention that this case was exceptional.
- Noting that the programme has already been the subject of a lengthy investigation, it would not be a proportionate use of the licence fee to deal with a further complaint that was both late and open-ended, taking into account the complainants’ indication of its likely duplicate content.

- The complaints procedure was not designed to be put on hold while a complainant decides how to formulate their complaint.
- While it is reasonable to request professional advice, it is not essential to the lodging of a complaint.
- Despite the seriousness of the subject matter, the Head of Editorial Standards did not feel that exceptional circumstances applied in this instance and therefore there was no call for the procedure not to be observed.

Regarding the points relating to the conduct of the BBC, the Head of Editorial Standards regretted that the complainants considered the tone to be inappropriate but disagreed that the replies had been intended to be contemptuous and disrespectful. The Head of Editorial Standards also provided a fuller explanation as to why the BBC did not routinely supply the background material requested by a complainant.

The Head of Editorial Standards addressed the complainants' point that the BBC did not respond to their initial contact. He said it had been understood to be a holding letter, owing to the line:

“before we file any complaint and any accompanying materials , we will write to you with a request for further information, which we aim to do shortly”

Consequently, the Head of Editorial Standards explained, the decision had been made to wait for the follow-up letter. The Head of Editorial Standards apologised for this decision and said that in retrospect it would have been preferable to have acknowledged the initial letter. This notwithstanding, he added that it was reasonable to wait for the reasons for delay to be supplied before making a decision on the admissibility of the complaint, rather than including this in the first response as suggested by the complainant.

The Head of Editorial Standards referred the complainants to the BBC Trust should they wish to pursue their complaint.

The complainants responded to the Head of Editorial Standards on 27 March, again requesting that the BBC Executive review the time limit constraint. The main points included:

- Further background information on the complainants and the distress felt in connection with the subject, which had led the complainants to pursue a collective rather than an individual route;
- Acknowledgement of the acceptance by the Head of Editorial Standards that the organisation was unable to submit a collective complaint before they had done so, and information that several members of the organisation had submitted complaints to the BBC within the 30 day timeframe as individuals;
- The complaint in preparation was not a duplication of those already considered by the ECU;
- The need for compassion in an area such as this;
- The nature of the complaint was such that preparation required professional assistance;
- A request for an 'equality of arms'; the complainants noted that the resources of the BBC far outweighed those of the complainants;
- Due to an increasing level of detail, it was impossible within the 30 day timeframe for the complainants to outline their complaint and demonstrate that it did not duplicate previous complaints;

- A rejection of the argument that it would not be proportionate to pursue this complaint; that previous research could be utilised; elements which were considered proportionate could be considered; the complainants could contribute to the costs borne by the BBC;
- The complaint was in the process of being drafted – an outline was provided; and
- If the Executive was still not minded to admit the complaint, could the final decision be stayed until the complaint was submitted to the BBC.

The Head of Editorial Standards replied to the complainants to clarify the editorial complaints process. Responding to the outline of the pending complaint provided by the complainants, the Head of Editorial Standards noted:

The editorial complaints system deals with the actual content of a programme not with matters which go beyond it. It is there to judge whether the BBC's output has met its published editorial standards, rather than to settle historical disputes or pronounce upon the truth of conflicting accounts of any such events

The Head of Editorial Standards disagreed with the complainants' reference to an 'inequality of arms' in relation to the complaints process. He expressed his view that the process is an "easily accessible and independent procedure which reaches a verdict on the BBC's output irrespective of a complainant's status or resources". The Head of Editorial Standards stated that it would not be possible for the BBC to accept any contribution towards the costs of an investigation.

The Head of Editorial Standards then addressed what he felt was a misinterpretation of his position. He stated that he did not form a view as to whether or not the organisation was in a position to make a collective submission within the complaints deadline. He felt, however, that because the BBC treats all complaints seriously wherever they may originate, individuals could have complained to the BBC within the relevant timeframe even if the organisation was not in a position to do so. He added that, given individual members did contact the BBC, their complaints would already have been considered, which diminished the need for a collective complaint and for the time it would take to put such a complaint together.

The Head of Editorial Standards invited the complainant to request an appeal to the BBC Trust, if he wished to do so. He concluded by recognising the traumatic nature of the subject concerned and, while not wishing to appear lacking in compassion, he observed that this did not in itself provide cause for considering a complaint submitted out of time.

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

The complainants submitted notice of an appeal to the BBC Trust on 2 April 2015 following the decision of the Head of Editorial Standards, BBC News that the complaint was inadmissible.

In this letter, the complainants said that it wished to appeal "the decision not to admit its complaint on the ground that it was not lodged within 30 days of the relevant broadcast". They said that this was its "formal notice" of the appeal, and a skeleton argument and copies of correspondence would follow. They repeated an earlier request for provision of previous Trust decisions on the question of the 30 day time limit, and also asked for information about the Trust's policy on consolidating appeals, given there had been other appeals about the same programme.

The complainants received a response from the BBC Trust Complaints Adviser on the last

two points on 13 April. She explained that, given the structure of the Trust's records, it was not possible to search their files in such a way as to find previous Trust decisions on the question of the 30 day time limit. She said that the Editorial Standards Committee took each case on its merits and that it was the Trust's usual practice to consolidate appeals to conserve resources and allow Trustees to consider multiple complaints about the same issue.

On 17 April the complainants submitted a further letter to the Trust. It requested that its full correspondence with the BBC, in which "the issue of timing ha[d] been rehearsed in great detail", be read in conjunction with its appeal (see above). In addition, the complainant provided a skeleton argument containing the "key issues and [the complainants'] argument for admitting its complaint". They also requested an oral hearing of the complaint, because of what they considered to be the importance of the decision.

The points contained in the skeleton argument were as follows:

- The complainant organisation could not have made a complaint in time because: [i] they did not have the capacity to make collective decisions within the 30 day time period; [ii] the organisation was made up of volunteers who work full time so they were severely constrained by human and financial resources; and [iii] their members and leaders were based across the country, making meetings and discussions a challenge.
- Individual members of the organisation had complained to the BBC within 30 days of the broadcast. However, they did not pursue these complaints because they wanted the representative complaint of the organisation to be taken forward instead. The complainants argued a direct link between these complaints, and its own. They said the aim was to use the organisation's complaint as a thorough and professionally prepared complaint raising different points and new evidence on similar issues, as the BBC had appeared to brush off the initial complaints at the first stage. It was not a repetition of the earlier individual complaints, although there was some overlap.
- The subject was important and had affected, and continued to affect, the lives of many people. The BBC's rules should be construed with a sense of circumspection, taking into account the broad justice of the situation.
- It had been reasonable to seek professional advice [from a lawyer], but this had inevitably slowed the complaint down.
- The complaint was extremely serious.
- The complaint was unusually complex and involved significant preparation. The complaint had not been lodged in a simple form earlier, in order to save time and cost. The organisation had aimed to submit a detailed complaint and had hoped it would then be expedited by the BBC. A provisional outline of the complaint had been provided and work was underway on the full complaint.
- The complaint had not been fully answered by the existing response from the ECU.
- An extension of time would not offend any rule relating to proportionality, or steps could be taken to mitigate any adverse effect of an extension, such as an agreed timetable and management of costs/costs subsidised by the organisation. No disproportionate or duplicate work should be necessary.
- The circumstances set out above did disclose a "good reason" to extend the time limit.
- A refusal to admit a serious editorial complaint, so that its merits cannot be considered, was a Draconian step.  
It was practicable and cost-effective to investigate the complaint and adjudicate

- upon it fairly.
- An extension of time would not cause the BBC or the licence fee payer any prejudice, but the refusal to admit the complaint would amount to a denial of justice. This would breach the BBC's requirement to act fairly.

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

Trustees were provided with the complainants' correspondence with the BBC, the notice of appeal, and subsequent formal appeal to the BBC Trust. The Committee was also provided with the programme in question.

Trustees began by considering the complainants' request for an oral hearing. The Editorial Standards Committee noted that the editorial complaints and appeals procedure provides that the Trust does not normally hold oral hearings, although in exceptional circumstances, Trustees may decide to do so. In this instance, Trustees considered that they had sufficiently detailed information about the reasons why the complaint was submitted out of time, and of the complainants' arguments as to why an exception should be made to allow the complaint to proceed, in order to make a decision. Therefore, it was unnecessary to hold an oral hearing.

In relation to the complainants' appeal against the decision of the BBC Executive not to accept its complaint because it was out of time, Trustees considered each of the points in the skeleton argument in turn.

#### The organisation could not have made a complaint in time

Trustees noted the information provided in the skeleton argument to substantiate the argument that the complainant organisation could not have made a complaint in time. The Committee noted the complainants' argument that for several practical reasons, such as the geographical location of members, the organisation had faced challenges in presenting a complaint within the stipulated time frame. However, the Committee agreed with the approach taken by the BBC Executive, which was that - if the organisation was unable to decide to complain in time - individuals could have, and had, made separate complaints. Therefore, there was no good reason to accept the complainants' complaint many months out of time.

#### Link between individual complainants and the present appeal

The Trust considered that any complaints from individuals, as referred to by the complainants, were separate from the present appeal, and should not be considered as part of it. Nonetheless, the Committee did think that the fact that such complaints had been submitted to the BBC in time demonstrated that there were ways that the complainant organisation could have had its substantive complaint considered in time.

The Committee noted that the complainants had said that there was some overlap between the individual complaints and the current one, though the current complaint was not planned to be a repetition of the individual complaints. However, the Committee did not consider the fact that the new complaint would not be a straight repetition of the previous complaints to be a good enough reason to justify accepting it so far out of time.

#### The importance, seriousness and complexity of the subject

The Committee agreed, as had the BBC Executive, that this was a very important subject

that had affected the lives of many. However, it noted that complaints are frequently brought to the BBC about very serious subjects, such as disasters and wars, within the time limit stipulated in the BBC's complaints framework. The Committee wished to emphasise that the time limit is there for a reason - to facilitate investigation and quick resolution of identified issues, amongst other things. While the BBC will accept requests for extensions of time in exceptional circumstances, this is only where there is a good reason for the delay. While relevant, the seriousness of the subject is not by itself a good reason, because so many complaints about serious issues are brought in time.

The Committee went on to note the complainants' arguments about the complexity of the complaint and the amount of preparation it would take. However, the Committee considered that it would have been open to the complainant to submit the grounds for its complaint in time and then submit further evidence related to those grounds later in the complaints process. While new points cannot be raised after stage 1 of the complaints process, it is quite common for complainants to provide more detail on their existing points as their complaint progresses. The Committee did not consider that it would have been impossible for the complainant to set out its high-level grounds of complaint within 30 days of the broadcast - it was not clear to the Committee what would have prompted the complainants to complain in the first place, if the grounds of complaint had not been evident from the original broadcast. The Committee noted that the complainants had eventually provided the grounds of their complaint on 27 March 2015, but this was nearly 6 months after the programme had aired, when it might have been more difficult to investigate specific claims made about the programme. No compelling explanation had been provided as to why such grounds could not have been provided, and dealt with, by an individual member of the complainant organisation within the time frame set out in the BBC's complaints framework. The Committee also noted that the complainants, as at the date of its consideration of this appeal, had still not provided their substantive complaint, and there was evidence that there would be further delay in the complaint being submitted.

It was unclear to the Committee how the BBC and/or the complainants had saved time and cost (as argued by the complainant) by the complainants not lodging the complaint in a simple form earlier. Instead, Trustees felt that had a complaint, even in simple form, been submitted, it could have been considered alongside other complaints regarding the same output, enabling the BBC to investigate it more easily.

### Professional Advice

While the Committee agreed that it was perfectly reasonable for the complainants to seek professional advice in relation to their complaint, it considered that it was possible to seek professional advice and submit a complaint in time. The Committee did not consider that professional advice was normally necessary in the BBC complaints process, which had been designed to be easily navigable by non-lawyers. Therefore it did not consider that seeking professional advice could be a good or exceptional reason to submit a complaint significantly out of time.

### Complaint not fully answered by existing response from the ECU

The Committee noted that as the complainants had still not submitted their full complaint, it was impossible to know whether every point of its proposed complaint had been answered by the ECU's existing finding. The Committee thought the BBC Executive had been right to refer the complainants to the ECU's decision on similar complaints, in case it covered any of the same issues, or shed light on the complainants' points. However, the

Committee wished to stress that - if the Executive had been reasonable in declining to consider the complainants' complaint out of time - then the complainant did not have the right to have every aspect of its complaint considered.

The Committee considered - for the reasons stated above - that the BBC Executive had been reasonable in declining to consider the complaint, because no sufficiently good reasons had been provided for it to make an exception to the time limit.

#### Proportionality and practicability

The Committee noted the complainants' point that taking the complaint would not offend any rules of proportionality and practicability. The Committee considered that, while it might not always be disproportionate or impracticable to take a complaint out of time (for example if sufficiently good reasons had been raised for it to make an exception to the rule that complaints will not be considered out of time), it would certainly have been more proportionate to consider the complainants' complaint alongside other complaints of a similar nature about the same programme. This would have been possible if the complainants had submitted their complaint in time. In addition, it would have been much easier to investigate the complaint had it been submitted in time (for reasons relating to the gathering of evidence and the interviewing of relevant personnel, who might now have moved on). While there were undoubtedly difficulties and costs associated with considering a complaint late, the Committee wished to stress that the primary reason it was not upholding the complainants' appeal was because they had not advanced sufficient reasons for the delay in submitting it.

#### Draconian step

The Committee did not consider that the BBC Executive's refusal to consider the complaint had been a "Draconian step". It considered the BBC's time limits were there for a reason - to facilitate investigation and to prevent complaints being brought without good reason long after a piece of output is created. Deviation from the time limits requires a good reason. In this case, having given due weight to the complainants' arguments, the Committee considered no such good reason had been advanced. In addition, the Committee noted that members of the complainant organisation *had* brought complaints and had had them considered, and it was likely that some of the substantive elements of the complainant organisation's complaint had therefore been considered.

#### Prejudice to the licence fee payer/denial of justice

The Committee considered that any unnecessary expense or use of resources caused by the late submission of complaints or the reluctance of complainants to disclose the substance of their complaints in a timely manner prejudiced the licence fee payer, as it meant that such resource could not be used elsewhere. For that reason, it was the Committee's view that time limits should be enforced wherever reasonable. In this case, the Committee thought that the BBC Executive's refusal to investigate the complaint had been based on the fact that no sufficiently good reasons for the delay had been provided, and also partly because the complainants had repeatedly declined to set out exactly what their complaint was, but had rather repeatedly stated that a full complaint would follow. In such circumstances, the Committee did not think it was incumbent upon the BBC to have waited further for a complaint that was already out of time.

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