

Editorial Standards Findings

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

September, 8 October & 21 October 2015, issued December 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/2015/esc_tor.pdf

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

The Secret World of Lewis Carroll, BBC Two, 31 January 2015

Summary of finding

Two complainants contacted the BBC because they felt the programme dealt with them unfairly as contributors. They also considered that the programme had failed to be duly accurate and impartial.

The complaints focussed on a photograph of a girl that the programme considered could have been of Lorina Liddell (sister of Alice Liddell, the girl considered to have inspired Alice's Adventures in Wonderland) and taken by Lewis Carroll, which featured in the programme.

The Committee concluded that:

- regarding whether the programme had been unfair to the contributors by not informing them for several months about the photograph, the programme was to be celebratory and focus on Lewis Carroll's life and work. However, the complainants would have been aware that the programme's themes had developed since their initial correspondence with the BBC (which took place some months before broadcast) and that Lewis Carroll's relationship with children was being examined.
- the programme had made clear to the audience that the discovery of the image had been made after the contributors had been filmed and the segment about the photograph, lasting about ten minutes, came at the end of the programme in what was clearly presented as a coda to it. As a result, they did not believe that the programme had altered the immediate context in which the contributors had appeared.
- following newspaper coverage of the programme, the image of the girl was a prominent feature of the programme and its discovery had meant that the nature of the programme had changed significantly from the original commission.
- with reference to a late edit which the BBC had made in the programme to include the fact that one of the complainants, an acknowledged expert, said he had seen the image previously and did not believe it was by Lewis Carroll, the wording in the programme appropriately reflected the complainant's view of the photograph although it was not his preferred wording and was placed before the interviews with the paper conservationist and a forensic analyst. Viewers would have had enough information to be able to judge the relative expertise of those who had given a view on the authenticity of the photos.
- the BBC had made some effort at a late stage to inform the contributors of the programme's changes. However, given the significance and nature of the new material, the Trustees considered, on balance, that in order to comply with the guideline which says that "we should normally make contributors aware of significant changes to a programme or other content as it develops" the programme should have gone back to the contributors at an earlier stage to inform them about the new image and to give them adequate time to consider

whether they were content with their contributions to the programme. Trustees upheld this point on Fairness.

- the programme had been clear about what the experts featured had been able to discover about the image and the extent to which they could verify whether the photograph was of Lorina Liddell or taken by Lewis Carroll. As a result, the BBC had fulfilled the requirements of the due accuracy guidelines regarding any suggestion that the photograph might be one taken by Lewis Carroll.
- the programme had accurately reflected a range of views on the image. Given this, due impartiality had been achieved in the way the programme sought to attribute the photograph of the girl as being of Lorina Liddell and taken by Lewis Carroll as it was adequate and appropriate to the output, having taken account of the subject and nature of the content.
- regarding whether the programme had been inaccurate to suggest that the image of the girl had destroyed Lewis Carroll's relationship with the Liddell family, there was a consensus that there was a period of several months in 1863 when Lewis Carroll did not see the Liddell family, but there was no clear evidence as to what caused this break in relations and how serious a rift it was.
- Given this, the Trustees could see no evidence that the BBC had not reported these events with due accuracy and so considered that the editorial guidelines had not been breached on this point.

The complaint was partially upheld

The Papers, BBC News Channel, 8 November 2014

Summary of finding

The complainant contacted the BBC to complain that:

- A. Comments by a BBC presenter during a review of a newspaper article about Jewish donors withdrawing support from the Labour party were anti-Semitic; and
- B. The introduction to Jo Phillips, a former spin-doctor, in the same programme did not inform viewers of her partisan political background.

The Committee concluded that:

- A. A reference by the presenter to 'Jewish faces' was not anti-Semitic in the context of a discussion about prominent Jewish people (donors to the Labour party). The presenter had been struggling for a phrase to sum up the group of people they were discussing in the heat of the live discussion, and had come up with Jewish "faces". Trustees noted that the word "face" or "faces" was in common use as a synonym for a prominent person or people. Trustees considered it was clear that this was the meaning the presenter had intended the audience to take and that the potentially offensive meaning understood by the complainant, suggestive of a negative stereotype of Jewish facial features, would not have been intended; nor would the majority of the audience have interpreted it in that sense.

Trustees considered the presenter's further comment that the people being discussed would "be very much against the mansion tax presumably" was editorially justified. It was reasonable for the presenter to assume that a prominent Jewish donor would be a person of some means; and might be against the mansion tax, and this would have been understood by most of the audience to be a presumption about wealth, not religion. In the context of a discussion about the Labour Party's problems, and at a time when the topic was in the news, it was editorially justified to extend the discussion to the mansion tax. In addition, immediately prompted by one of his interviewees, the presenter had clarified that he had not intended to suggest that only Jewish people opposed the mansion tax.

The Committee therefore concluded that the guideline on Harm and Offence had not been breached either by the reference to "Jewish faces" or the speculation that prominent Jewish donors might be against the mansion tax.

- B. It was inaccurate for the presenter to introduce Jo Phillips as "our political adviser" the first time he introduced her, and ideally this should have been corrected at the time. However, Trustees considered that whilst an inaccuracy had occurred, this was mitigated by the way the spin doctor was subsequently, and repeatedly, identified as a "political commentator", by her evidently partial views, and by the fact that audiences to *The Papers* would mostly be familiar with the custom of having two guests of differing opinions to comment upon the morning's first editions. Taking these factors into account, Trustees determined that the broadcast had been duly accurate and that it had not breached the guidelines on impartiality.

The complaint was not upheld.

The Committee noted the seriousness of the issues the complaint had raised. Whilst they had not upheld the complaint, Trustees considered it had highlighted the potential for offence to be caused, however unintentionally.

Trustees considered programme makers had a responsibility to guard against such an impression. Whilst they acknowledged the very real challenges a presenter faces as the “ringmaster” in a live panel discussion such as this, it wished also to emphasise that the newspaper review slot nonetheless needs to be approached with all the care that live discussion on controversial issues between people with differing views requires in BBC programming.

This World: Rwanda's Untold Story, BBC Two, 1 October 2014, repeated on 3 October 2014

Summary of finding

A number of complainants contacted the BBC because they felt that the programme was biased and inaccurate and had constituted and fuelled denial of the Rwandan genocide.

The Committee concluded that:

- the programme did not constitute genocide denial but had explicitly set out to examine alternative perspectives on the generally understood version of events, and this was not done in a way that diminished the full horror of the genocide;
- the programme failed to achieve due accuracy in its discussion of the assassination of President Habyarimana in April 1994 by omitting reference to a forensics and ballistics study that would seem to contradict an earlier report discussed in the programme;
- an interview with a Tutsi survivor did not, in the context of the programme as a whole, lead it to present an account of the Interahamwe militia that failed to achieve either due accuracy or due impartiality;
- the programme had appropriately signposted the controversial conclusions of an academic study into the genocide death toll that featured in the programme; and
- the programme did not breach the accuracy and impartiality guidelines by calling into question the general understanding that the RPF stopped the killing and ended the genocide.

The complaint was partially upheld.

Although the Committee upheld on one issue in this particular appeal, Trustees considered that the failure to be duly accurate - arising from the programme's omission of the conclusions of a forensic and ballistic report into the shooting down of the former President's plane - had not undermined the main thrust of the programme. They considered that 'Rwanda's Untold Story' had performed a valuable public service by exploring credible alternative narratives to the widely accepted version of events surrounding one of the most disturbing and controversial conflicts in modern history, a conflict which had unquestionably involved genocide on a monumental scale.

Appeal Findings

The Secret World of Lewis Carroll, BBC Two, 31 January 2015

Background

This programme was scheduled to mark the 150th anniversary of the publication of Alice's Adventures in Wonderland and sought to explain the enduring appeal of the book. A substantial part of the programme explored the relationship between Lewis Carroll and Alice Liddell, the girl considered to have inspired Alice, and Lewis Carroll's relationship with children in general. The last segment of the programme considered whether a photograph of a naked girl was Alice's elder sister, Lorina Liddell, and whether the image had been taken by Lewis Carroll.

Complaints

This was a consolidated appeal by two complainants who believed that the programme dealt with them unfairly as contributors and who also considered that the BBC had failed to be duly accurate and impartial.

- Both complainants believed that the BBC deliberately withheld information from them for several months about the photograph of a naked girl that the programme suggested could have been of Lorina Liddell and taken by Lewis Carroll.
- Both complainants believed that the BBC failed to be accurate by presenting the photograph as one taken by Lewis Carroll.
- Both complainants believed the BBC failed to be impartial in the way it sought to suggest that the photograph was taken by Lewis Carroll.

One of the complainants stated that the programme had been inaccurate to suggest that the discovery of the image had destroyed Lewis Carroll's relationship with the Liddell family.

At Stages 1 and 2, the BBC responded to these complaints in the following way:

- In relation to the complainants believing that the BBC deceived them by deliberately withholding information from them, the BBC said it was perfectly reasonable for the programme makers to investigate such a discovery themselves before seeking further opinion on its provenance – which it said they subsequently attempted to do by contacting the complainants. It said that one of the complainant's assessments of the photograph was contained in the programme's commentary and it did not believe that it was essential to hear from other contributors.
- In relation to the complainants believing that the BBC had failed to be accurate by suggesting that the photograph was one taken by Lewis Carroll, the BBC said it had carried out research prior to broadcast to establish the image's provenance, showed two technical experts carrying out tests on the image, and reflected their findings that it may be attributable to Mr Carroll.

- In relation to the complainants believing that the BBC had failed to be impartial in the way it sought to attribute the photograph of the girl, the programme had made clear there was no direct evidence linking the photograph to Lewis Carroll and had contained a range of opinions on this issue.
- In relation to one of the complainants believing the BBC was inaccurate to suggest that the image of the girl had destroyed Lewis Carroll's relationship with the Liddell family, the BBC said it had reflected a consensus that there had been some form of rift in 1863 but that the exact cause of it was unknown.

Appeal to the Trust

The complainants appealed to the BBC Trust and made the following points in relation to fairness, accuracy and impartiality:

- Point A: The programme makers had deliberately withheld information from the complainants for several months about the photograph of a naked girl that the programme considered could have been of Lorina Liddell and taken by Lewis Carroll. One, Edward Wakeling, said the programme makers were well aware that he was an expert in Lewis Carroll's photography. He said that he had seen the photograph in 1993 and was able to show that it was not by Lewis Carroll and he was even more convinced now that it was not by him. He said he would not have taken part in the programme if he had known that this aspect was going to be included.
- Point B: The programme failed to be accurate, by suggesting that the photograph was one taken by Lewis Carroll. One of the complainants said that experts in the field of Mr Carroll's photography would state categorically that the image was not taken by him and nor did it depict Lorina Liddell. The other said the image's attribution was undated and anonymous, and what was known of its provenance was entirely French. Yet the complainant believed the programme made no attempt to investigate this.
- Point C: The programme failed to be impartial in the way it sought to attribute the photograph as being of Lorina Liddell and taken by Lewis Carroll. The complainants believed that the technical experts used to authenticate the image failed to find a convincing link to Lewis Carroll, but were then prompted by the programme to offer their personal hunches that the picture was of Lorina Liddell and taken by Lewis Carroll. However, the complainants said no informed contributor expressing opposing views about the image's provenance was filmed despite the controversial nature of the suggestion and the damage it had done to Lewis Carroll's reputation.
- Point D: The programme had been inaccurate to suggest that the image of the girl had destroyed Lewis Carroll's relationship with the Liddell family and that he was exiled from their home. One of the complainants said Mr Dodgson [Lewis Carroll's real name] had remained friendly with the Liddells throughout his life.

Applicable Editorial Guidelines

The relevant editorial guidelines relating to Fairness, Accuracy, and Impartiality are applicable to this case. The full guidelines are at 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 decisions, the Committee watched the programme and took account of all of the available evidence, including (but not limited to) a report by an Editorial Adviser and the subsequent submissions from two of the complainants.

Point A

The Committee began by considering whether the programme had been unfair to the contributors by not informing them for several months about a photograph of a naked girl that the programme considered could have been of Lorina Liddell and taken by Lewis Carroll.

The Trustees took note of the BBC Editorial Guidelines to do with Fairness, Contributors and Consent and, in particular, the guideline that states:

6.4.4 We should normally make contributors aware of significant changes to a programme or other content as it develops and prior to transmission, if such changes might reasonably be considered to have affected their original decision to participate, had it been known at the time. Depending on specific circumstances, such changes might include programme titles (for example, where they alter audience perception of the content or contributors), other significant contributors, significant changes to broadcast or publication date, or anything that materially alters the context in which the contribution will appear.

The Trustees noted that the programme was pitched and commissioned as a portrait of Lewis Carroll to coincide with the 150th anniversary of the publication of Alice's Adventures in Wonderland. It noted that the BBC had said that the broad idea of the programme was to be celebratory and focus on Lewis Carroll's life and work. The Trustees further noted documentation sent in by one of the complainants in which she had made a note of her initial telephone conversation with a researcher who told her that the BBC was planning to do a programme about Lewis Carroll and the enduring appeal of his most famous literary creation.

The Trustees noted that one of the complainants, Mr Wakeling – the editor of Lewis Carroll's diaries and author of a number of books on Lewis Carroll the photographer – was interviewed on 18 August 2014. The other complainant, who had also written on Lewis Carroll, was interviewed on 19 August 2014.

The Trustees then noted the BBC's assertion that the photograph was discovered by the programme makers a few days later on 22 August 2014. The Trustees noted that the BBC then sent a paper conservationist with the presenter on 12 September 2014 to carry out a series of forensic tests on the image at the museum in France where it was held. They noted that the BBC then interviewed a forensic imagery analyst about the photograph on 25 September 2014. The Trustees noted that the BBC said it then spent the next few months trying to establish enough about the image to merit its inclusion in the programme.

The Committee noted that the BBC decided not to inform the programme's contributors about their discovery because:

- The BBC said it was very aware of the extreme potential sensitivity of the image, and the fact that it was investigating the photograph could itself be newsworthy and so could prove damaging to the BBC if news of this investigation were to leak and the photograph was subsequently proven to be a fake.

- The BBC considered that there were sharp divisions between Lewis Carroll experts about the significance of his photography of children and so believed that this photograph was likely to create considerable controversy amongst them.

The Trustees observed that one of the complainants was contacted by the BBC on 19 November 2014 to say “a possible new lead” had come up but she did not discover what this new lead was until 19 January 2015.

The Trustees noted that the BBC sent out a copy of the programme to all its expert contributors in the week beginning 19 January 2015. None had asked for their contribution to be removed having viewed the final programme.

The Trustees considered that any programme was subject to change if new information emerged during its making and that this was part of the editorial process. They also noted that one of the complainants had been asked in his interview with the programme whether Lewis Carroll had any love interest in Alice Liddell as a young girl and had refuted this notion. Given this, the Trustees considered that the complainants would have been aware that the programme’s themes had developed since their initial correspondence with the BBC and that Lewis Carroll’s relationship with children was being examined.

The Trustees observed that the programme had generated a considerable amount of newspaper interest that had focussed on the image and what it might say about Lewis Carroll’s relationship with children.

The Trustees considered that, though it was dealt with at the end, the image of the naked girl was a prominent feature of the programme and its discovery had meant that the nature of the programme had changed significantly from the original commission.

The Trustees recognised that the BBC had made some effort at a late stage to inform the contributors of the programme’s changes. However, given the significance and nature of the new material, the Trustees considered, on balance, that in order to comply with the guideline which says that “we should normally make contributors aware of significant changes to a programme or other content as it develops ” (our emphasis) the programme should have gone back to the contributors at an earlier stage to inform them about the new image and to give them adequate time to consider whether they were content with their contributions to the programme.

Trustees then noted that Mr Wakeling, who was aware that the programme would conflict with his new definitive catalogue of Dodgson’s surviving photographs, notified the BBC on 26 January 2015 that he had seen the same image in 1993 and did not consider that it had been taken by Lewis Carroll. As a result of his contact with the BBC a late edit was made to the programme to include his view in commentary.

Mr Wakeling noted that the wording added to the commentary was not his preferred wording, that it was in voice-over and not included as an interview, and that it was placed before the experts interviewed by the programme which, in his view, made his statement seem irrelevant.

Trustees observed that the programme had made clear to the audience that the discovery of the image had been made after the contributors had been filmed and they noted that the segment about the photograph, lasting about ten minutes, came at the end of the programme in what was clearly presented as a coda to it. As a result, they did not believe

that the programme had altered the immediate context in which the contributors had appeared.

Trustees also noted that the BBC had made a late edit to the programme to include the fact that Mr Wakeling, an acknowledged expert, said he had seen the image in 1993 and did not believe it was by Lewis Carroll. Trustees agreed that the wording appropriately reflected Mr Wakeling's view of the photograph although it was not his preferred wording and was placed before the interviews with the paper conservationist and the forensic analyst. Trustees believed that viewers would have enough information to be able to judge the relative expertise of those who had given a view on the authenticity of the photos.

In conclusion Trustees agreed that the programme, as broadcast, had been fair to the contributors but that there had been unfairness in the making of the programme.

Finding on Point A: Upheld

Point B

The Trustees then considered whether the programme had failed to be accurate in suggesting that the photograph might be one taken by Lewis Carroll.

The Trustees noted that one of the complainants had put forward a number of reasons why he believed that the image was not taken by Lewis Carroll and why it did not depict Lorina Liddell.

The Trustees observed that the BBC had said it tried to establish the provenance of the image. Two forensic experts were shown in the programme carrying out a number of tests to assess the photograph. They noted that these sought to establish when the image might have been taken, whether the photograph had been developed using the same techniques as Lewis Carroll, and whether the girl in the photograph shared similar facial characteristics with other images of Lorina Liddell. Both had given a personal view when asked which went beyond the technical evidence but both had also explained that this was the case.

The Trustees then noted that, following these tests, the presenter concluded the programme by saying:

"We can't say for certain if this is a photograph of Lorina Liddell. But we have established that it is not a fake. It's a genuine photograph and it's from the exact period when Lorina Liddell herself would have been a young teenager.

"If true, this casts a further troubling light on the life of Lewis Carroll and also offers a possible explanation for that mysterious rift between him and the Liddell family."

Trustees noted that one of the complainants had challenged this wording, saying that Lorina was a young teenager in 1862-65 but that the photo was technically identical to "millions of photos taken worldwide during the ten years before she was a young teenager and then fifteen years after that" and so the word "exact" was incorrectly used. The complainant had pointed out that the technique was in use between 1852 and 1880 and so finding a connection between Carroll and this image for technical reasons was not

possible. Trustees accepted that the period when this photographic technique was in use was longer than the period in which Lorina was a young teenager but noted that it did not undermine the point that, from a technical point of view, the photo could have been taken at the time she was a young teenager. Trustees noted that the commentary went on to say:

“So this is where our investigations have taken us. Now of course we have not got any provenance directly linking Carroll with this photograph. But why would somebody bother to label it as Lorina Liddell? She was a pretty obscure figure at the time.

“The questions which hang over this photograph mirror the larger controversies about Lewis Carroll’s life.”

Given this, the Trustees considered that the programme had been clear about what the experts featured had been able to discover about the image and the extent to which they could verify whether the photograph was of Lorina Liddell or taken by Lewis Carroll. As a result, they believed the BBC had fulfilled the requirements of the due accuracy guidelines.

Finding on Point B: Not upheld

Point C

The Trustees then considered whether the programme failed to be impartial in the way it sought to attribute the photograph of the girl as being of Lorina Liddell and taken by Lewis Carroll.

The Trustees noted that the complainants believed that the technical experts used to authenticate the image failed to find a convincing link to Lewis Carroll, but were then prompted by the programme to offer their personal hunches that the picture was of Lorina Liddell and taken by Lewis Carroll.

The Trustees further noted that the complainants said no informed contributor expressing opposing views about the image’s provenance was filmed despite the controversial nature of the suggestion and the damage it had done to Lewis Carroll’s reputation.

The Trustees then observed that, when the programme introduced the image of the naked girl and its potential link to Lorina Liddell and Lewis Carroll, the presenter had made clear that it was not the first time it had been examined, stating:

“In 1993 the Carroll expert Edward Wakeling judged it to be inauthentic when he compared it to known Carroll photographs. But would subjecting the original to forensic tests suggest something different?”

Trustees were aware that a pre-transmission version of the programme had been sent to the media without the line about Mr Wakeling’s view, which was added later (but before broadcast) after he contacted the programme. Some inaccuracies had also been corrected before broadcast, having been pointed out by Mr Wakeling. Trustees had sympathy with the concern one of the complainants expressed that media coverage would not have included Mr Wakeling’s view as journalists would have been unaware of it from the programme they had seen. However, the BBC did from time to time change an

untransmitted programme between the time it went to the media and the time it went on air. The Trustees' role, in this case, was to consider broadcast output against the Editorial Guidelines not the version that had been sent to the media earlier.

The Trustees noted that the programme then showed a picture conservationist carrying out a number of tests on the image and that he explained to the presenter what each of them proved. They noted the following sequence:

Presenter: Overall, we've put this photograph through a number of different tests and you've given us your scientific opinion about it all. What's your gut instinct?

Conservator: My gut instinct is it's by Lewis Carroll.

Presenter: Why is that?

Conservator: Just everything about it really.

The Trustees then noted that a forensic image analyst was asked to compare the features of Lorina Liddell from two known photographs of her with those of the naked girl. They observed that he was shown carrying out a number of tests and giving his opinion on what these presented. At the end of this process, Trustees noted the following exchange:

Presenter: Overall what are you able to tell us about this photograph?

Forensic analyst: Well if I was doing a comparison such as this for a court case, I would say forensically speaking we would say that there is moderate support for the contention that the girl in the photograph is Lorina as shown in the other images. As this is not for a court case, I'm prepared to get off the fence a little bit and say that, in my opinion, I would say it is her.

The Trustees observed that the programme had then concluded by saying that it could not say for certain if the photograph was of Lorina Liddell and that it had no provenance directly linking Lewis Carroll with the photograph.

The Trustees considered that the subject was not one that should be deemed as controversial for the purposes of the guidelines as it was not a matter of significance in terms of current public debate.

The Trustees also believed that the programme had accurately reflected a range of views on the image. Given this, they concluded that due impartiality had been achieved as it was adequate and appropriate to the output, having taken account of the subject and nature of the content.

Finding on Point C: Not upheld

Point D

The Trustees then considered whether the programme had been inaccurate to suggest that the image of the girl had destroyed Lewis Carroll's relationship with the Liddell family and that he had been exiled from their home.

The Trustees noted that the programme highlighted an apparent rift between Lewis Carroll and the Liddell family lasting several months from June 1863. It pointed out that pages from Lewis Carroll's diaries during this period had also been removed, apparently by his nieces who inherited them.

The Trustees observed that the programme then speculated on the cause of the break in relations. They noted that one contributor suggested that it was because Lewis Carroll had grown too close to Alice, and her mother felt he was not a suitable match for her daughter and that the presenter then said a note written by Lewis Carroll's niece suggested that his being too close to either the Liddell's governess or Alice's elder sister, Lorina, could have been the cause.

The Trustees noted that the presenter then said:

"So the mystery of the rift remains unsolved. All we know for sure is that in June 1863 Carroll was exiled from the deanery and, when he was eventually invited back in December that year, his relationship with the family had become formal and distant."

The Trustees observed that two of the contributors – Morton Cohen, a biographer of Lewis Carroll, and Vanessa Tait, the great-granddaughter of Alice Liddell – were then shown saying that "everything changed" after he was asked back in December and that he and Alice "grew apart".

The Trustees then noted that the programme returned to the rift between the Liddell family and Lewis Carroll at the end of the programme, once it had investigated the image of the naked girl and suggested that it might be Lorina Liddell. The presenter said:

"We can't say for certain if this is a photograph of Lorina Liddell. But we have established that it is not a fake. It's a genuine photograph and it's from the exact period when Lorina Liddell herself would have been a young teenager.

If true, this casts a further troubling light on the life of Lewis Carroll and also offers a possible explanation for that mysterious rift between him and the Liddell family."

The Trustees noted that there was a consensus that there was a period of several months in 1863 when Lewis Carroll did not see the Liddell family, but there was no clear evidence as to what caused this break in relations and how serious a rift it was.

Given this, the Trustees could see no evidence that the BBC had not reported these events with due accuracy and so considered that the editorial guidelines had not been breached.

Finding on Point D: Not upheld

Overall finding: Partially upheld

The Papers, BBC News Channel, 8 November 2014

The complaint

This was an appeal on behalf of an organisation which alleged that a comment by a BBC presenter, Tim Wilcox, during a review of the papers was anti-Semitic. They also complained that the introduction to one of the guests failed to inform viewers of her partisan political background.

Background

The item which was the subject of this complaint was a discussion of a story from the *Independent on Sunday* headlined "Jewish donors drop 'toxic' Miliband".

The Papers is a long-established late night slot on the BBC News Channel looking ahead to the following day's newspaper headlines. The format is for the presenter to be joined by two guests who are usually journalists or commentators from different ends of the political spectrum. On this occasion the guests were Nigel Nelson, the Political Editor of the *Sunday People*, and the former Head of Media in the Liberal Democrat leader's office, Jo Phillips.

The main focus of the newspaper review that evening was a discussion amongst the panel about the ongoing negative headlines for Ed Miliband. One paper reported disquiet from within the Shadow Cabinet and another reported a YouGov poll showing a collapse in Labour support. The panel then turned to the article in the *Independent on Sunday* which suggested some of the party's Jewish donors were planning to withdraw their support because of the Labour leader's stance on Israel.

Appeal to the Trust

The complainant appealed to the BBC Trust, asking that it consider the following issues in relation to the panel's discussion of the article in the *Independent on Sunday*.

The first point concerned this question from the presenter:

"And a lot of these prominent er Jewish er er faces will be very much against the the mansion tax presumably aswell or will they?"

The complainant said this was anti-Semitic for the following reasons:

- the reference to "Jewish faces" was a "racial slight"
- the suggestion that Jews who are prominent are also wealthy was unjustified
- there was no evidence to support the suggestion that Jewish donors had withdrawn their support because they were wealthy and were against the mansion tax

The second point related to the introduction to one of the studio guests:

"Hello and welcome to our look ahead to what the papers will be bringing us in the next few hours. With me Nigel Nelson, of the *Sunday People*, Political Editor, and

Jo Phillips, our political adviser.”

The complainant said the programme had failed to make viewers aware of Ms Phillips’ partisan political background as a former adviser to the Liberal Democrats. This, said the complainant, would have misled viewers into thinking that she worked for the BBC and the views she expressed were the views of the BBC.

The Committee’s decision

The Committee considered the appeal against the editorial guidelines on Harm and Offence and Impartiality. The Guidelines are a statement of the BBC’s values and standards. They can be found at: <http://www.bbc.co.uk/editorialguidelines>

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

Point A – regarding the presenter’s question “A lot of these prominent Jewish faces will be very much against the mansion tax presumably as well or will they?”

The Committee considered whether the programme had breached the guidelines on Harm and Offence.

Trustees noted that the remark about prominent Jewish faces was made in the context of a wide-ranging discussion amongst the panel in which they had noted the range of ongoing negative headlines about Ed Miliband’s leadership and an apparent loss of support from his own MPs and shadow ministers.

The Committee noted the section in which the comment was made (the relevant sentence has been underlined):

PRESENTER:

Let’s pursue, let’s keep with the Ed Miliband theme. Jo just talk us through this

JO PHILLIPS, POLITICAL COMMENTATOR:

So this according again, I mean here’s another example of a headline that’s of “Jewish donors drop ‘toxic’ Miliband”. When you get to the inside pages of this story...

PRESENTER:

Which we do have...

JP:

Which we do have, which is a great luxury – “Jewish backers abandon Labour”. What you get is a lot of unnamed people erm, from the sort of the Jewish lobby and obviously you know they’ve been very supportive of the Labour Party and they are abandoning “toxic” Labour. But they’re not abandoning it because of Ed Miliband’s personal ratings, according to this. This is because of what Ed Miliband actually said erm in the summer, his aggressive condemnation of Israel’s attacks, erm disproportionate attacks, and incursion into Gaza. And he actually accused David Cameron of being sort of rather weak erm, and not, wrong in not condemning it earlier.

Now I think actually that was extremely principled and I think Ed Miliband does really well when he comes out and says that. And actually if you read this whole

story you sort of think well this bloke's being accused of being too cautious and too timid, here's something where he's absolutely, you know, prepared to take on people, prepared to risk losing donors. But of course the reality is they need money to fight an election...

PRESENTER:

Yeah, and...

JP:

And if they don't get it from here...

PRESENTER:

"And a lot of these prominent er Jewish er er faces will be very much against the the mansion tax presumably aswell or will they?"

JP:

Well who knows? But I mean...

NIGEL NELSON:

Yes they would be. I've no doubt. I'm sure they will be. I'm sure they will.

JP:

Yes I'm sure they would. But so is Alistair Darling...

NN:

But a lot of non Jewish rich people would be against the mansion tax

JP:

Yeah, exactly...

PRESENTER:

I wasn't suggesting otherwise. But Maureen Lipman for example is pictured here isn't she?

JP:

Well yes I mean she said she was not going to have anything to do with the Labour Party after five decades of support and again because of his stance on...

The Committee noted the grounds on which the complainant had argued that the content was anti-Semitic:

- the presenter used a "snide tone of voice" which was "clearly intended as a racial slight" when he referred to "Jewish faces"
- the remark that "prominent Jewish faces would be against the mansion tax" was clearly based on the classic anti-Semitic view of Jews being attached to money
- there is no evidence to support the suggestion that Jewish supporters of the Labour Party withdrew that support because they were wealthy and were against the mansion tax; it was not even mentioned in the article being discussed
- the suggestion that Jews who are prominent are also wealthy is without any foundation
- whether the presenter intended his remarks to be anti-Semitic or not, it does not alter the fact that the remarks were understood and received by many as being anti-Semitic

- the suggestion that Jews who are wealthy will not support Labour would result in some viewers accepting the lie because it was said on air by a BBC presenter
- given the alarming rise in anti-Semitism the BBC has a responsibility not to add fuel to the fire.

The Committee noted the clause from the guideline on Harm and Offence which stated that the BBC should apply “generally accepted standards” so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. Trustees noted that “generally accepted standards” were a matter of judgment and involved evaluating the content in the context in which it appeared, which would include a consideration of whether the inclusion of the particular content could be editorially justified and the harm or offence likely to be caused.

Trustees noted the clause from the guideline on Harm and Offence against which to test the content:

Portrayal – 5.4.38

We aim to reflect fully and fairly all of the United Kingdom’s people and cultures in our services. Content may reflect the prejudice and disadvantage which exist in societies worldwide but we should not perpetuate it. In some instances, references to disability, age, sexual orientation, faith, race, etc. may be relevant to portrayal. However, we should avoid careless or offensive stereotypical assumptions and people should only be described in such terms when editorially justified.

The Committee noted the points made by the Head of Editorial Standards, BBC News about the use of the phrase “Jewish faces” (speaking about the discussion in the context of the programme as a whole):

- the presenter used a range of phrases to describe the people discussed in the article [the Committee noted at least one other phrase in the programme - “some of the party’s donors”] – who had clearly been identified as Jewish donors to the Labour Party
- in one of his later questions [the Committee noted this was his first question about this article], the presenter used the phrase “Jewish faces” as a way of describing these well-known or high-profile donors
- it was not remotely the presenter’s intention to use the word “faces” as a racial or physical description, but simply as a commonly used synonym for famous people or prominent celebrities
- given the context, it is clear the remark did not play on an offensive stereotype - nor, even allowing for the understandable sensitivities involved, should it be perceived as such."

The Committee noted the Editorial Complaints Unit’s (ECU) comment at Stage 2 which had acknowledged that “Jewish faces” was perhaps “an odd choice of phrase”, but having noted the presenter’s hesitation, said it was clear the presenter was searching for the right word to talk about Jewish benefactors to the Labour Party.

The Committee considered the complainant’s assertion that the use of the term “Jewish faces” could not have been intended as anything other than a racial slight. Trustees acknowledged the long and well-documented history of negative representation of Jewish

people in cartoons which caricatured certain physical facial features and which is clearly anti-Semitic. They agreed that in certain contexts the phrase would undoubtedly be offensive. But they considered that was demonstrably not the case here. Trustees had watched the output carefully and it was clear the presenter had been struggling for a phrase to sum up the group of people they were discussing in the heat of the live discussion, and had come up with Jewish "faces".

Trustees considered that in this context it was a description of the group being discussed – i.e. prominent Jewish people. They disagreed with the complainant's view that it could only have been intended as "a racial slight", and they shared the BBC Executive's view that the word "face" or "faces" was in common use as a synonym for a prominent person or people: the common use of the phrase "famous faces" was not generally used as a reference to those individuals' actual faces but simply to the people themselves. Trustees considered it was clear that this was the meaning the presenter had intended the audience to take and that the potentially offensive meaning, suggestive of a negative stereotype of some Jewish facial features, would not have been intended; nor would the majority of the audience have interpreted it in that sense. Trustees did not detect the snide tone of voice with which the complainant said the phrase had been delivered.

The Committee then turned to the complainant's other concern, which was the presenter's suggestion that these prominent Jewish faces "will be very much against the mansion tax presumably ... or will they?"

The Committee noted the response from the Head of Editorial Standards, BBC News to the assertion that the discussion on mansion tax had no place in the review:

- it was important to remember the context of the discussion, i.e. that it was a review of a specific newspaper article which had been headlined "Jewish donors drop toxic Miliband"
- during the item, some potential factors behind the reported drop in donor support were discussed, including the Labour Party's policy on Israel and the Palestinian territories
- *The Papers* is a discursive programme, and the mansion tax was raised as an extension of that discussion, as another possible factor. It was entirely proper that the discussion took place. The tax had been in the news, with recent coverage of a prominent celebrity who had threatened to leave the country if Labour's policy was enacted.

The Committee noted the response of the Head of Editorial Standards, BBC News to the complainant's assertion that the discussion implied that prominent Jews were also wealthy:

- this conversation, based on the newspaper article, clearly focused on a small and specific group of people - prominent Jewish donors who had given significant amounts of funding in the past to the Labour Party
- the discussion about the mansion tax went on to reflect that it could be a potential issue for any wealthy donor, irrespective of their background.

Trustees acknowledged the negative racial stereotype which has historically associated Jews with wealth. They agreed that making such a connection without editorial

justification clearly had the capacity to cause offence and they understood why the complainant felt the wording had been inappropriate. However, on balance, they considered that on this occasion the unscripted question had been editorially justified and, heard in the context of the discussion, it would have been recognised by most of the audience as being so, for the following reasons:

- the discussion was about how wealthy Jewish donors were said to be withdrawing their financial support for Labour and it was clear that it was this group (i.e. wealthy donors) to whom the presenter was referring
- it was reasonable for the presenter to have made the assumption that a prominent Jewish donor would be a person of some means; suggesting that a lot of such people might be presumed to be against the mansion tax would have been understood by the audience to be a presumption about people because of their wealth, not because of their religion. To suggest that particular sub-group was wealthy was not a carelessly deployed racial stereotype, but an accurate description of the group
- in the context of a discussion about the Labour Party's problems it was editorially justified to extend the discussion to include possible opposition to the party's proposed mansion tax
- the topic was in the news: four days earlier there had been widespread media coverage of the announcement by Griff Rhys Jones that if Labour won the election he would be leaving Britain to avoid paying the mansion tax
- immediately prompted by one of his interviewees, the presenter clarified that he had not intended to suggest that only Jewish people opposed the mansion tax.

The Committee therefore concluded for all the reasons above that the guideline on Harm and Offence had not been breached either by the reference to "Jewish faces" or to the speculation that prominent Jewish donors might be against the mansion tax.

Nevertheless, Trustees noted the unfortunate proximity in the single sentence of a number of potentially offensive stereotypes. Whilst they had concluded that the BBC had demonstrated clear editorial purpose for the inclusion of the content, free of the negative connotations suggested by the complainant, Trustees reminded journalists and programme makers of the need for extra care and forethought when tackling sensitive subjects, so as to guard as far as possible against the risk of giving unintended offence.

Point B – regarding the manner of the presenter's introduction to Jo Phillips

The Committee considered whether the programme had breached the guidelines on Impartiality.

The Committee noted the complainant's view that the manner in which Jo Phillips was introduced, as "our political adviser", would have led viewers to think she worked for the BBC and that her views were the views of the BBC, whereas she was in fact a spin doctor with well-established ties to the Liberal Democrats. The Committee noted also the complainant's comment that her opinions went totally unchallenged.

The Committee noted the apology from the Head of Editorial Standards, BBC News who had accepted that the presenter's diction had not been very clear and that the phrase may have been heard as "our political adviser" by the majority of viewers.

The Committee noted also the Head of Editorial Standards' view that any confusion which might have arisen out of the "stumbled introduction" to Ms Phillips would have been countered by the description of her, on five occasions elsewhere in the broadcast, as "political commentator", once verbally and four times in on-screen captions.

The Committee noted the Head of Editorial Standards' comment that the format of the programme was long-established and that there would be no general expectation that guests would be neutral: Ms Phillips' viewpoint would have been apparent from her analysis of the newspapers, and her comments were discussed by both the presenter and her fellow guest in the discursive style appropriate to the programme.

Trustees had watched the output carefully and agreed with the complainant that the presenter clearly described Ms Phillips as "our political adviser" the first time he introduced her. That was inaccurate and ideally should have been corrected at the time. However, Trustees decided that whilst an inaccuracy had occurred, this was mitigated by the way she was subsequently, and repeatedly, identified as a "political commentator", by her evidently partial views, and by the fact that audiences to *The Papers* would mostly be familiar with the custom of having two guests of differing opinions to comment upon the morning's first editions. Taking these factors into account, Trustees determined that the broadcast had been duly accurate and that it had not breached the guidelines on impartiality. Nevertheless, Trustees reflected that programme makers should not automatically assume that terms like "political commentator" are clear to the audience. Where there is the option to do so, either in a caption or in the course of a discussion, presenters should err on the side of giving more information rather than less in helping viewers understand the viewpoint a contributor represents.

The complaint as a whole

Finally, Trustees reflected on the complaint as a whole. They noted the seriousness of the issues the complaint had raised. Whilst they had not upheld the complaint, Trustees considered it had highlighted the potential for offence to be caused, however unintentionally.

Trustees considered programme makers had a responsibility to guard against such an impression. Whilst they acknowledged the very real challenges a presenter faces as the "ringmaster" in a live panel discussion such as this, it wished also to emphasise that the newspaper review slot nonetheless needs to be approached with all the care that live discussion on controversial issues between people with differing views requires in BBC programming.

Finding: Not upheld

This World: Rwanda's Untold Story, BBC Two, 1 October 2014, repeated on 3 October 2014

Background

1. On 1 October 2014, BBC2 broadcast a documentary entitled 'Rwanda's Untold Story', which considered the causes, events and aftermath of the 1994 Rwandan genocide. The programme sought to examine the role of Rwanda's current President, Paul Kagame, who was the leader of the Tutsi-led Rwandan Patriotic Front (RPF) during the genocide and led the RPF to seize power in July 1994, when the killing stopped.
2. A number of complainants alleged that the programme was biased and inaccurate and had constituted and fuelled denial of the genocide. Following the rejection of their complaint by the Editorial Complaints Unit (ECU) at stage 2 of the BBC's complaints process, 45 complainants⁴ appealed to the Editorial Standards Committee (ESC) of the BBC Trust.

Outline of the complaint⁵

1. On 12 October 2014, a number of signatories wrote an open letter to the BBC's Director-General complaining that the programme was biased and inaccurate and had fuelled denial of the genocide. They argued among other things that:
 - (a) It was inappropriate for the documentary "to use current events to either negate or to diminish the genocide" and for it "to promote genocide denial". They quoted an academic study that describes genocide denial as the tenth and final stage of the crime of genocide;
 - (b) Rather than providing viewers with the 'untold story', as the title of the programme suggests, the documentary made "old claims" about the events of 1994 and recycled arguments used by those convicted of involvement in the genocide and their ongoing supporters;
 - (c) The programme allowed an interviewee to make an incorrect claim about the Interahamwe, a Hutu militia responsible for a large number of the killings during the genocide;
 - (d) The programme sought to "minimise the number of Tutsi murdered" and cited "false figures" provided by two academics who appeared on the programme;
 - (e) The programme incorrectly argued that the RPF perpetrated the assassination of the former Rwandan president, Juvénal Habyarimana, in April 1994—the event widely seen as the final trigger of the mass slaughter that followed—and ignored a report that posits a different theory about who was responsible;
 - (f) The film ignored the careful and deliberate planning of the Tutsi genocide by the Hutu Power movement and overlooked important aspects of the

⁴ A number of complainants' names were added or removed during the course of the complaints process.

⁵ This section is not a complete list of the exchanges between the complainants and the BBC throughout the complaints process.

story, including the systemic targeting of members of Rwanda's political opposition immediately after the president's murder; and

- (g) The programme "tries to raise doubts about whether or not the RPF stopped the genocide", thereby ignoring the testimony of eyewitnesses and subsequent academic research into the reasons why the killing stopped.
2. On 28 October 2014, the complainants passed their complaint to BBC Audience Services.
 3. On 17 November 2014, the complainants received a response from the BBC's Acting Head of Programmes: BBC News and Current Affairs. Among other points, he stated:
 - (a) "It cannot be the case that a programme made in a journalistic spirit of enquiry and responsibly handled amounts to genocide denial";
 - (b) The programme makers "were extremely aware of the sensitivities and highly charged nature of the issues involved";
 - (c) The purpose of the documentary was to "examine and question the conduct of the RPF, while ensuring the horror of the genocide against the Tutsis was not downplayed"—it "did not purport to put forward a new 'truth', but ... question whether there is an irrefutable consensus over what happened";
 - (d) This purpose was editorially justified and "clearly sign-posted" for audiences; and
 - (e) The BBC cannot be held responsible for interpretations placed on its content by third parties.
 4. The complainants were dissatisfied with this response, and on 26 November 2014 they wrote to the ECU, at stage 2 of the BBC's complaints process.
 5. After conducting an independent investigation of the complaint, the ECU issued its provisional finding on 6 February 2015. The ECU stated:
 - (a) The airing of alternative perspectives on the events of the Rwandan genocide did not come at the expense of a full account of the huge scale of the massacres, which the programme repeatedly made clear;
 - (b) The programme explicitly set out to challenge the general understanding about the genocide and gave the audience sufficient information to judge for itself the evidence of the strength presented;
 - (c) Regarding the interviewee who spoke about the Interahamwe, it was clear, in the particular context of the interview, that audiences would not have afforded much weight to a single remark about the composition of the militia;
 - (d) Regarding the quoted figures for the number of Tutsi deaths, the statistics were presented with appropriate caveats and balancing information that made clear that the academics' conclusions were (as the programme itself stated) "controversial";
 - (e) Regarding the omitted report into the assassination of the former President, that report did not reach any firm conclusions, and the position

of the Rwandan Government was in any event made clear in the documentary; and

- (f) Regarding the programme's account of the stopping of the genocide, the programme did not draw any definitive conclusions but merely explored questions concerning "the story the world knows".
6. The complainants responded to the ECU's provisional decision on 16 March 2015. They stated, among other points:
- (a) The programme belittled what it termed "the official history" of the genocide, referred to "[r]andom violence" rather than deliberate, coordinated killing orchestrated by the Hutu Power movement, insinuated that memorialisation of the genocide "concerns state propaganda" and did not ask a Tutsi interviewee to recount his own experiences. The complainants provided a report from a criminologist in support of their views that the programme constitutes genocide denial;
 - (b) The interview with the then-schoolgirl contained little detail and misled viewers as to the nature of the Interahamwe;
 - (c) The controversial nature of the academics' conclusions in relation to the number of Tutsi deaths was not sufficiently conveyed to audiences;
 - (d) The report on the death of the former President that was ignored by the programme is "the only known scientific investigation in to the assassination" and should have been mentioned, but instead the programme "relied on unverified witness testimony" and did not explain the possible ulterior motives of those interviewees; and
 - (e) It is clear from available evidence that the RPF was responsible for ending the massacres.
7. On 31 March 2015, the ECU finalised its provisional conclusions without amendment. They noted:
- (a) The programme referred to "the official version" of the genocide not to dismiss it but to consider what other accounts might exist, having regard to the Rwandan Government's track record of deporting or imprisoning those who do not agree with its narrative;
 - (b) The programme aired dissenting views but did not, as a whole, mislead viewers about what happened;
 - (c) The Tutsi interviewee showed no signs of having taken offence; and merely identifying links between the genocide and current politicians does not serve to diminish the killing;
 - (d) The fact that the programme did not explore certain aspects of the history of the genocide in a depth sufficient for the complainants does not mean that the programme was misleading;
 - (e) Regarding the interview about the Interahamwe, the programme as a whole made very clear that the Interahamwe were militias responsible for murdering Tutsi civilians;
 - (f) Regarding the missing report into the Habyarimana assassination, that report was produced as part of an ongoing court case and has not led to

any formal finding as to the responsibility for the murder, and the background to the eyewitnesses who were interviewed in this section of the programme was clearly explained to the audience;

- (g) Regarding the number of Tutsi deaths, the programme's discussion of the academics' work was, given the context of the programme and its approach, not materially misleading; and
- (h) Regarding the ending of the massacres, the purpose of this element of the programme was to question the extent to which the advancing RPF forces prioritised the cessation of the genocide over ultimate military victory—not who should claim credit for stopping the killing.

Summary of the complainants' appeal to the Trust

1. The complainants appealed to the BBC Trust on 21 April 2015. They referred to their previous correspondence at stages 1-2, asked questions about the production of the programme and added the following points:
 - (a) The programme "aids the post-genocide campaign of denial, seeking to minimise the crime and create confusion about what happened";
 - (b) The complainants' concerns had not been addressed by the ECU;
 - (c) The programme "relies on unverified witness testimony" and airs the "discredited" view of two US academics that more Hutu than Tutsi died in 1994; and
 - (d) It is "professionally unacceptable to put forward arguments previously used by people convicted of genocide in an international court and to allow historical facts about the genocide to be challenged without serious rebuttal".
2. For convenience, the complainants' grounds of appeal are categorised as follows:
 - (a) The allegation that the programme constitutes genocide denial ("Point A");
 - (b) The programme's coverage of the assassination, on 6 April 1994, of the Rwandan President Juvénal Habyarimana ("Point B");
 - (c) The programme's treatment of the nature and role of the Interahamwe ("Point C");
 - (d) The programme's examination of the number and ethnicity of those killed in the genocide ("Point D"); and
 - (e) The section of the programme dealing with the end of the massacres in July 1994 ("Point E").

Relevant Editorial Guidelines

The BBC's Editorial Guidelines are available at <http://www.bbc.co.uk/editorialguidelines/guidelines>. As explained below, the Guidelines applicable to this appeal are Impartiality, Accuracy and Offence.

The Committee's consideration of the appeal

Request for an oral hearing

3. In their correspondence at stage 3 of the complaints process, the complainants requested permission for some of them to attend the Committee's consideration of their appeal. They referred to the work of the independent editorial adviser who, in accordance with the BBC's complaints procedure, had drafted a paper for the Committee known as a Background and Considerations Note. Again in accordance with established procedure, the Note was provided to the complainants and the BBC so they could comment upon it before it was provided to the Trustees. The complainants' request to attend the determination of their appeal was considered at a Committee meeting on 8 October 2015.
4. Trustees began by noting that the complaints procedure applicable in relation to this appeal provides that oral hearings may be held "in exceptional circumstances and at the Trust's discretion".⁶
5. Trustees noted that the complainants had summarised their reasons for requesting to be present at the determination of their appeal in the following way:

"The reason we would like to attend the meeting (scheduled for October 22) is to ensure that the independent editorial adviser does not misrepresent our case without challenge. Our formal response to the Background and Consideration Note left no doubt that we have little faith in his/her ability to explain our complaint in an independent, fair or accurate manner... [A] refusal to allow us to attend will, we suggest, harm the legitimacy of any decision the BBC Trustees may make."
6. While Trustees acknowledged the strength of the complainants' concerns regarding the appeal paperwork, Trustees also noted that the complainants had already explained extensively, in writing, the "errors and inherent bias" they felt were present in the report. The complainants' comments had been provided in full to the Trustees. Accordingly, Trustees considered that they had enough information before them to understand and assess the complainants' reservations about the paperwork. In the circumstances, Trustees decided that it would not be proportionate to invite any of the complainants to make further submissions in person, because it was not necessary for the fair disposal of the appeal. Trustees also noted that the editorial adviser, though in attendance, was not part of the committee that decided whether or not to uphold the various aspects of the appeal.
7. Accordingly, Trustees concluded that the high threshold for granting an oral hearing was not met in this case.
8. Trustees proceeded to consider the substantive issues in the complainants' appeal at a Committee meeting on 21 October 2015.

Point A

9. Trustees considered the complaint that the programme amounted to, and has fuelled, genocide denial and treated what it termed 'the official story' in a dismissive and derogatory way. Trustees agreed that there were no Guidelines dealing specifically with alleged genocide denial and decided to consider Point A against the Guidelines on Impartiality, Accuracy and Harm & Offence.

⁶ BBC Complaints Framework No. 1: Editorial Complaints and Appeals Procedure (October 2014), available at http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf.

10. Trustees acknowledged the complainants' view, in support of which they had provided several academic works, that denial of genocide is the final stage of the crime of genocide and that the programme has abetted this final stage.
11. Trustees also noted the ECU's position in its finding that the term 'genocide denial' is "open to interpretation" and that it could judge the programme only against the BBC's Editorial Guidelines. In the ECU's view, the programme neither denies that a genocide was committed against the Tutsis nor asserts that a genocide was committed against the Hutus; and, despite airing alternative perspectives, made clear to viewers the true extent of the horrors of 1994. The ECU cited numerous references to genocide in the script in support of this proposition.
12. Trustees noted that the programme makers believed that the documentary's title, pre-title sequence and opening few minutes all served to signpost clearly to audiences that "the film would take a look at aspects of Rwanda's story that are not widely known or promulgated in the conventional narrative of the country's recent history." To the programme team, the documentary was "an examination of Paul Kagame, his record and his use of history in order to legitimise an undemocratic and repressive regime" and sought to question whether Kagame's international reputation as "the saviour of his country" and his receipt of large amounts of UK aid are deserved.
13. Trustees noted the complainants' objections to lines in the script that, they say, suggested that the BBC was "setting out to uncover the truth about the 1994 genocide of the Tutsi as though somehow this truth has been elusive". Trustees noted that the complainants disagree that the programme tells an 'untold story' and state that it instead recycles arguments of known genocide deniers.
14. Trustees also acknowledged the complainants' concern that the programme failed properly to explain "the meaning of the word genocide ... in the particular circumstances of Rwanda in 1994", such as the racist ideology of the Hutu Power movement, and had instead reduced the acts of genocide to incidents of "[r]andom violence".
15. Trustees noted that the complainants maintained that the programme "further emboldened" convicted génocidaires and their supporters. Trustees noted that the ECU had stated at stage 2 in response to this concern that the use to which the programme might be put by third parties was beyond the BBC's control and that, in any event, for the reasons given, "the film did not lend itself to misuse of the kind suggested by the complainants".
16. Trustees noted that the complainants felt that the programme had been dismissive of the evidence of the genocide when it featured a memorial site; that the programme insinuated that such memorialisation amounts to propaganda on the part of the current Rwandan government; and that the programme had been disrespectful to a Tutsi survivor who was interviewed but not asked about his own experiences. Trustees noted that the ECU had concluded that this segment of the programme did not understate the effect of the genocide against the Tutsis and the ECU found no evidence of offence being taken by the Tutsi interviewee.
17. With respect to Impartiality, Trustees discussed and agreed that the programme dealt with a controversial subject within the meaning of the Guidelines, noting that, quite aside from the inherent seriousness of the subject-matter, the story of the Rwandan genocide remains the subject of intense debate even to this day and that particular aspects of what happened remained unresolved. Trustees

therefore agreed that the programme was required to handle its subject-matter with due sensitivity.

18. Trustees first considered the signposting of the programme. Trustees noted that the opening few minutes of the programme stated that President Kagame is "regarded by many as the saviour of his country" and asked, "We think we know the story, but do we?" Trustees discussed the introductory section of the programme and decided that, in their view, the script had made clear to audiences that there is a general understanding of what happened during the Rwandan genocide—"the story the world knows", as portrayed by Hollywood—and that "some" people now questioned this version of events.
19. Trustees also discussed the introductory announcement to the programme immediately before it aired on BBC2 and agreed that this indicated that the documentary would explore an alternative perspective on the conventional narrative. For example, the continuity announcement for the original broadcast of the documentary on 1 October 2014 had stated, "Twenty years on from the genocide, a different side of the story is emerging in Rwanda" – before warning viewers that the programme contained potentially upsetting scenes. Further, the continuity announcement for the repeat broadcast on 3 October 2014 had stated that the programme would be "challenging the accepted version of events during the genocide in Rwanda". Trustees agreed that these signals reinforced the message given in the programme that there was an accepted version of events and that the programme would focus on a different take on those events.
20. From these indications, Trustees decided that the programme's audience would not have expected an exhaustive re-telling of the conventional account of what had happened but an exploration primarily of the opposing evidence and how it casts doubt on "[w]hat the world believes". Trustees noted that the programme had posed the question, "What is the truth about Rwanda?"—but it did not follow from this that the programme had indicated it would provide an indisputable answer to that question. Trustees therefore decided that the signposting of the programme had been adequate and agreed that it set the parameters for achieving due impartiality in accordance with the Guidelines.
21. Trustees next considered whether the programme had acknowledged that a range of views existed about the genocide and given due weight to those views, as required by the Guidelines. Trustees considered that the programme had made repeated references to the version of events that 'the world knows', supported by extensive footage, and, in the context of the programme as a whole, had reflected a suitable range of perspectives and appropriately characterised the traditionally understood narrative. In light of the stated intentions of the programme, Trustees were satisfied that the range of existing views about the genocide had been given due weight. Trustees noted that Paul Kagame had not taken up an invitation to take part in the programme.
22. Trustees considered the complainants' point that the documentary had used the term 'official history' to imply that the prevailing consensus was merely the story propounded by the Rwandan government, but they noted that the programme's overall focus was on the alternative narrative and were satisfied that, on the whole, the programme had not portrayed that alternative version as having disproved the 'official' account, but merely to have raised questions about it. Trustees noted that the complainants would have wished the programme to have referred in greater detail to particular aspects of the genocide, but Trustees

agreed with the programme makers that this was not required in light of the documentary's remit.

23. Trustees also considered whether there were good editorial reasons for exploring the alternative perspective. Trustees agreed that significant parts of what happened in 1994 remain unresolved, as demonstrated by the many stark differences between the complainants' views and those of the programme makers (not to mention other experts). Trustees also agreed that Rwanda's strict laws against genocide denial and Paul Kagame's reputation as the saviour of his country justified an examination of alternative points of view. Trustees therefore considered that it was editorially appropriate to explore perspectives that challenge the prevailing consensus.
24. Trustees did not see anything in the programme that suggested that the interview with the Tutsi survivor was disrespectful so as to cause offence to him or to viewers. Neither did Trustees consider that the inclusion of only one Tutsi interviewee evidenced bias in the programme. Further, they noted that the Guidelines did not require a mathematical equivalence in the number of contributors from each side of a debate or in the amount of airtime dedicated to them. Trustees agreed that due impartiality could be achieved even if a piece of content featured only one contributor from a particular perspective, particularly where his story is a powerful one. Trustees also rejected the complainants' view that the programme had been dismissive of the evidence at the genocide memorial site; on the contrary, Trustees agreed with the ECU that this section of the programme had made the horror of the genocide explicit: for example, the interviewee, who is the director of the museum shown in this section of the programme, expressly refers to the mummified bodies and describes the manner in which the victims died.
25. Trustees concluded that there was no breach of the Impartiality Guidelines with respect to Point A.
26. Trustees also assessed the programme against the applicable Accuracy Guidelines. Again, Trustees noted that the programme did not purport to present a compendious account of the Rwandan genocide and that the full scale and horror of the killings had been made clear and appropriately contextualised in the context of the programme. For instance, the killing was graphically illustrated when the programme featured a room of mummified Tutsi remains, described as "one of the rooms in which bodies of victims – many of them women and kids – were killed by machetes and clubs". Further, the programme had referred to the statistics of the number of the victims of the genocide and had conveyed the calculated efforts of Hutu extremists to "exterminate the Tutsis", by using the media to whip up hatred against the Tutsis and by secretly training militia and stockpiling arms.
27. Trustees agreed that the programme had dealt with the 1994 genocide with due accuracy and in a way that was adequate and appropriate having due regard to the nature of the content, signposting and likely audience expectation.
28. Trustees also rejected the complainants' argument that the programme was inaccurate because it repeated allegations rather than told an 'untrue' story. Trustees were satisfied that the programme had fulfilled the likely audience expectation by presenting evidence that called into question the established version of events.
29. Trustees concluded that there was no breach of the Accuracy Guidelines with respect to Point A.

30. Finally on Point A, Trustees considered the Guidelines on Harm & Offence. They agreed that the programme contained disturbing material, but also that this had been clearly signposted to viewers. Trustees were satisfied that the programme met generally accepted standards and demonstrated a clear editorial purpose, as outlined above. Trustees concluded that there was no breach of the Harm & Offence Guidelines with respect to Point A.

Finding: not upheld.

Point B

31. Trustees considered the complainants' next ground of appeal, which was that the programme had dealt with the assassination of President Habyarimana on 6 April 1994 in a materially misleading and biased way. The complainants' view is that this portion of the programme "promotes the defence case". Trustees assessed this aspect of the complaint against the Accuracy Guidelines and the Impartiality Guidelines.
32. Trustees noted the complaint that, while the programme had included the results of a 2006 investigation that had suggested the RPF were behind the shooting down of the President's plane, it had not referred to a later forensics and ballistics study, from 2012, which had suggested that members of Habyarimana's own government were responsible. On the other hand, Trustees considered the programme makers' opinion that to mention the 2012 findings would have required a discussion of "the strengths and weaknesses of many other aspects of the inquiry", for which there was no time given the remit of the programme.
33. Trustees also noted the complainants' view that the report referred to in the programme was discredited by the later study, because some of the arrest warrants issued by the first judge were subsequently suspended. However, Trustees also noted the programme makers' explanation that the 2006 and 2012 findings were part of the same investigation, which is ongoing and is yet to reach any formal conclusions, and that the 2012 ballistics report had been erroneously seized upon by journalists and others as the final word on the matter.
34. Trustees noted that the complainants described the 2012 report as "the only known scientific investigation into the assassination" and argued that it had proved that the missiles were fired from a fortified army barracks to which the RPF could not have had access. Conversely, Trustees noted the ECU's view at stage 2 of the complaints process that the 2012 report did not offer definitive proof as to who was responsible but merely sought to suggest the most likely version of events.
35. Trustees also noted the complainants' position that the documentary relied on unverified witness testimony, in the form of interviews with a former general of the RPF (who was indicted during the 2006 investigation) and a former bodyguard of Paul Kagame, to suggest that Kagame's camp was guilty. The complainants argue that the programme failed to explain the ex-general's opposition to the Kagame regime. They also argued that "the leading suspect", a minister in the Habyarimana government, was "missing from the story".
36. Trustees considered how the ECU had addressed these points in its decision, by taking the view that the programme did not offer proof of the culprits' identities but simply sought to challenge the "accepted story" that Hutu extremists were behind the attack; and that the position of Paul Kagame—that he has always denied responsibility for shooting down the plane—was made clear in the film. The ECU had also rejected the complaint that the political links of the ex-general were

not made clear and had said that the programme had stated that the witness was now living in exile under fear for his life after being accused of plotting a coup against Kagame.

37. Trustees also noted the complainants' view that the programme's account of the assassination omitted reference to or downplayed various aspects of the story, such as the erection of roadblocks throughout Kigali within hours of the President's death and the murder of Prime Minister Agathe Uwilingiyimana the following day. Trustees also noted the ECU's conclusion that the programme did not purport to provide an exhaustive account of the President's assassination and that the rapid assembly of roadblocks was referred to in the programme and appropriately contextualised.
38. Trustees noted that the 2006 and 2012 reports were part of the same investigation, albeit produced under the auspices of different judges. Trustees considered carefully the way in which the programme had referred to the 2006 findings and agreed that it had done so with due accuracy. However, Trustees went on to consider whether the programme's omission of the later report meant that its coverage of the evidence surrounding the assassination was not duly accurate.
39. Trustees considered the parties' submissions and rejected the complainants' characterisation of the 2012 report as proof that Paul Kagame did not orchestrate the killing. Trustees agreed that the ballistics report is part of an ongoing judicial inquiry, which has yet to make any formal determination. Nevertheless, Trustees agreed that the report was an important piece of evidence, not least because it points in a different direction from the 2006 findings and had received widespread media attention when it became public. Trustees noted the programme makers' submission that referencing the 2012 report would have required a detailed analysis of the merits of that evidence, but were of the view that the programme could appropriately have referenced the ballistics report with the caveat that the investigation to which it belongs is yet to conclude. Trustees agreed that, in the circumstances, the omission of any mention of the 2012 report was a breach of the Accuracy Guidelines.
40. With regard to the interviews with former members of Paul Kagame's staff, Trustees noted that Mr Kagame had been given the opportunity of countering their assertions but had declined to do so. Trustees considered the complainants' point that the witnesses' political agenda was not sufficiently explained in the programme, but agreed, having regard to the script, that the audience would have been likely to have inferred that the interviewees were now opponents of the Rwandan government. For instance, the script had described one interviewee as living "in hiding" and another as "living in exile, under tight security, in fear of his life", and yet another who has sought political asylum in the US. Trustees considered this part of the programme carefully and agreed that audiences would have been clear that these interviewees were expressing their personal opinions and that those opinions were expressed from a standpoint of being opponents of the current government.
41. Trustees also considered that this section of the programme sought to explore the available evidence as to who was responsible for the shooting down of the President's plane. Accordingly, Trustees agreed that the programme was not required by the Guidelines to discuss related events, such as the murder of the Prime Minister shortly afterwards.

42. Trustees went on to consider whether there was also a breach of the Impartiality Guidelines. Trustees noted that the circumstances of Habyarimana's murder remain mysterious more than 20 years on and that there was a large body of evidence, of varying degrees of reliability, as to who was responsible. However, Trustees reminded themselves that the programme's stated intention was to explore perspectives that challenged the accepted story. Trustees noted that the script had explained that it "quickly became part of the accepted story that Hutu extremists shot down the plane" but also that, "over the years, more and more evidence has come to light that questions that assumption". Trustees agreed that these indicators made clear to viewers that this section of the programme would primarily concern itself with the emerging evidence, and that whether this section and the programme achieved due impartiality had to be considered within these parameters. Trustees decided that the script had achieved due impartiality by informing viewers that Paul Kagame had declined to appear in the programme; that he had consistently denied involvement in the shooting down of the plane (supported by a clip of him responding negatively to the 2006 investigation); and that his government's own investigation had blamed Hutu extremists for the crime.
43. Trustees were therefore comfortable that the section and the programme had given due weight to the range of theories about what happened. While Trustees had found that the omission of the 2012 report constituted a breach of the Accuracy Guidelines, they were satisfied that the omission did not extend to a breach of the Impartiality Guidelines.

Finding: upheld with regard to Accuracy; not upheld with regard to Impartiality.

Point C

44. Trustees assessed the complaint that an interview with a witness to the events of 1994 had misrepresented the nature of the Interahamwe, the Hutu militia, in that the interviewee was allowed to state without challenge that only 10% of the Interahamwe committed massacres. Trustees considered this aspect of the complaint against the Accuracy and Impartiality Guidelines.
45. Trustees noted the complainants' contention that the Interahamwe were in fact organised death squads, specifically trained to kill Tutsi and indoctrinated with the racist ideology of the Hutu Power movement. The complainants had further observed that no dates or place names had been provided by the interviewee to support her assertion that many of the people killed by the advancing RPF were not guilty of genocide.
46. Trustees also noted the ECU's observation, in its finding, that the concept of 'the Interahamwe' was not fixed but had evolved over time. The ECU had also stated that it was clear in the documentary that the interviewee was speaking from her own experiences as a 12-year-old schoolgirl and that the 10% figure referred to members of the Interahamwe whom she came across personally and not the group as a whole; and that, in any event, the programme as a whole had made clear the scale of the slaughter of the Tutsis at the hands of the Interahamwe and others, such that audiences would not have been misled by a single comment from one interviewee. Finally, the ECU had found that the purpose of the relevant sequence of the programme was not to explore the culpability of the Interahamwe as much as the extent to which the RPF distinguished between the innocent and the guilty.

47. Trustees reviewed the interview in question carefully. They agreed that the programme had made clear to viewers that the witness was speaking from her own personal experiences as a young girl during the genocide and that, accordingly, the audience would have judged her recollections in that light. While Trustees felt that it was important for programmes to challenge and correct material errors made by contributors, they agreed that the programme had made the murderous nature of the Interahamwe abundantly and graphically clear—for example, the programme had recounted how the Interahamwe had set up roadblocks to separate out and slaughter the Tutsis. Accordingly, Trustees concluded that there was no breach of the Accuracy Guidelines in this regard.
48. Trustees also considered whether the interview failed to achieve due impartiality, by omitting an important perspective in relation to the Interahamwe. Trustees considered that the requirement under the Impartiality Guidelines was to achieve due impartiality and that, despite the interviewee's comment, the programme had made very clear elsewhere that the militia were trained killers and had murdered a great many people during the genocide. Trustees decided that the interviewee's recollections were not presented as established fact of general application; instead, it was clear she was speaking from her own personal recollection. Accordingly, Trustees found that there was no breach of Impartiality in relation to this element of the appeal.

Finding: not upheld.

Point D

49. Trustees then considered the next element of the appeal, which took issue with figures for the number of Tutsi deaths during the genocide, figures that had been proposed by two academics who appeared in the programme. In particular, the academics had contended in the programme that “[i]f one million people died in Rwanda in 1994 ..., there’s no way that the majority of them could be Tutsi”; that there had been 500,000 Tutsi in Rwanda before the genocide of April-June 1994 and 300,000 survivors; and that, therefore, only 200,000 of the genocide victims were Tutsi and that the remaining 800,000 must have been Hutu.
50. Trustees considered this head of appeal against the Guidelines on Accuracy and Impartiality.
51. Trustees noted that the complainants maintained that the academics’ conclusions were at odds with an established body of scholarship and were another example of the way in which the programme minimised the effects of the genocide against the Tutsi. The complainants instead quoted a “generally accepted” figure of 800,000 deaths and argued that “a large number of reports and enquiries” had found that “the overwhelming majority of [the] people killed were Tutsi”. Trustees also noted the complainants’ view that the academics who appeared in the programme had relied on figures from a 1991 government census and that the documentary had made no mention of the inherent unreliability of these statistics or the negative reception that the academics’ work had had from other scholars.
52. Trustees considered the programme team’s submission that the aim of this portion of the programme was to demonstrate the difficulties in calculating the number of victims and to suggest that a higher proportion of victims than is generally understood may have been Hutu. The programme makers believed they were editorially justified in exploring this area because of concerns that serious discussion in Rwanda of crimes committed against Hutus is being stifled by

Rwanda's genocide denial laws and the current government's hardline stance against those who question "its own particular narrative of the genocide".

53. The programme team also argued that the two "principal significant statistical evaluations of the genocide" are the work of the two academics and the analysis carried out by the Rwandan Government, both of which were cited in the programme, and that estimates of 800,000-1,000,000 Tutsi dead suffer from a number of significant shortcomings. According to the programme makers, Trustees noted, the programme fully explained the uncertainty surrounding the number and identity of those killed and confined itself to providing an alternative (and generally overlooked) perspective: that many Hutus also died during the genocide. The programme team cited several other academics who had suggested that a larger number of Hutus died than is generally thought.
54. Trustees noted the ECU's assessment that estimates of the number of victims of the genocide vary enormously and that the programme had appropriately characterised and caveated the two academics' work, for example by noting concerns about the reliability of the underlying population statistics and describing their conclusions as "controversial", such that viewers would not have been left with the impression that their findings were necessarily correct.
55. Trustees considered carefully the complainants' criticisms of the academics' work. While they noted the programme makers' submission that the figures for the number of Hutu deaths varied greatly, they also noted that the academics featured in the programme appeared to be unique in alleging that more Hutus than Tutsis died during the genocide. Trustees agreed that this did not necessarily mean that it was improper for the programme to have explored the academics' work. Trustees proceeded to assess whether the documentary had accurately reflected the radical nature of the academics' findings.
56. Trustees noted that the programme had described the academics' conclusions as "controversial"; the programme had referred to the underlying data as "not always reliable" and had suggested that estimates of the death toll "vary greatly"; the academics' methodology had been explored and critiqued; the academics had been challenged to explain the reasons behind their figures; and the programme had described the academics' conclusions as "completely the opposite of what the world believes happened". Trustees considered that the cumulative effect of this balancing information would have had a significant impact on the viewer. Trustees agreed that the programme had appropriately caveated the academics' findings, had acknowledged that their work was difficult to corroborate, and had duly balanced the relevant facts and opinions on the number and ethnicity of the victims of the genocide. Trustees also agreed that the programme's coverage of academic studies of the death toll was adequate and appropriate given the programme's signposted intention of exploring alternative possibilities.
57. Regarding Impartiality, Trustees had regard to the signposting in this section of the programme with regard to the broad range of estimates and agreed that the programme had given due weight to diverse perspectives on this subject.

Finding: not upheld.

Point E

58. Trustees considered the final aspect of the appeal, which is the complainants' argument that the programme is biased and misleading in questioning whether the RPF stopped the genocide. In particular, the complainants objected to the

statement from a former general in the RPF that Paul Kagame's focus during the genocide was on seizing power, and the two academics' finding that, in a large number of areas, the killings had already stopped by the time the RPF forces arrived.

59. Trustees considered this ground of appeal against the Accuracy and Impartiality Guidelines.
60. Trustees noted the complainants' view that the programme had ignored established research and witness testimony confirming that the RPF brought the massacres to an end, and had dismissed this body of evidence "as if fraudulent".
61. Trustees also noted the programme team's position, which was that the programme aimed to cast doubt on whether the RPF could truly claim credit for stopping the genocide and whether their main focus in mid-1994 was instead on military victory. The ECU noted at stage 2 that some of the complainants had asserted in their own writings that Paul Kagame did not want the country to stabilise until he had seized power. In short, the ECU stated that the programme had presented one possible interpretation of what had happened, had discussed the academics' methodology and did not present their concerns as established fact.
62. Trustees considered that it is unknowable whether the RPF stopped the genocide, but they reviewed the script and decided that the purpose of the relevant section of the programme was not to determine once and for all who ended the slaughter but to discuss how, first, "the story the world knows" is that Paul Kagame's forces saved their own people; and, second, former members of Paul Kagame's inner circle now "question this account and his role in it". The two American academics had analysed the data and had concluded that, in many locations, the Tutsi killings had largely stopped before the RPF's forces arrived on the scene.
63. Trustees acknowledged that the complainants disagreed with the academics' findings, but Trustees decided that the programme did not endorse their work as the truth but alleged only that there may be more to the story than is generally understood. Trustees did not agree with the complainants' assertion that the programme rejected existing testimony and evidence "as if fraudulent". Trustees had already found that the purpose of the programme was to question and challenge the world's understanding of the relevant events. Trustees could not see how this section of the programme breached the Accuracy Guidelines.
64. Trustees also tested this segment of the programme against the Impartiality Guidelines. Trustees noted that the programme acknowledged that, when the US academics interviewed survivors, the academics found that "the Government's version of events was repeated everywhere". Trustees agreed that there were good editorial reasons for exploring whether these eyewitness accounts could be supported by empirical evidence. Trustees agreed that this section of the programme was adequate and appropriate to the nature of the output, having regard to the likely audience expectation.

Finding: not upheld.

Overall finding: partially upheld

Requests to review the Trust Unit's decisions on appeals

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

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

Panorama: Who Will Win the Election? BBC One, 27 April 2015

The complaint concerned shots of Richard Bacon and Nate Silver travelling inside a caravan as it was towed along a public road. The complainant was concerned about the illegality and lack of safety involved in this practice. Following the Stage 1 response outlining the measures taken to ensure the safety of the programme team, he wrote:

"I do not doubt the professionalism of your crew, driver or health and safety team. My question is about the legality of the filming you showed on the programme and the consequent message that sends out."

The complainant made the following points:

- UK law states that it is illegal to carry people inside a moving trailer or caravan. It was irresponsible for the BBC to broadcast these sequences and sent out the wrong message to viewers.
- The BBC's Health and Safety department had failed in its duty, not only in relation to the safety of the presenters travelling illegally inside the caravan, but also in allowing the production team to contravene the Road Vehicles Regulations, 1986.
- He wanted the BBC to admit it had made a mistake. He said that if the BBC defended its position by suggesting that the production team "knew exactly what they were doing when they had clearly failed, then they can never learn from their mistakes and that will only serve to endanger performers and crew in the future".
- He felt that the BBC had responded as if its own internal risk assessment placed the corporation above the law.

The complaint went to Stage 2 of the complaints procedure and was investigated by the Editorial Complaints Unit (ECU). The ECU upheld the complaint, and made the following points:

- As also noted by Audience Services at Stage 1, considerable thought had been given by the programme's independent producers to the filming of the presenter and contributor in a moving caravan.

- The consultations held by the programme-makers with specialists in road traffic law had apparently led them to the erroneous conclusion that they were not contravening road traffic regulations.
- Having studied current legislation, the ECU concluded that the practice shown in the programme was in contravention of the law.
- The ECU recognised the measures taken by the programme-makers to ensure the safety of those involved, but noted that section 5.4.51 of the Harm and Offence Guidelines says that programme-makers should observe the law unless there is clear editorial justification for not doing so. The ECU did not believe there was sufficient editorial justification in this instance and upheld the complaint.

As a result of this decision this information was placed on the BBC's corrections and clarifications website:

Who Will Win the Election? Panorama, BBC1, 27 April 2015: Finding by the Editorial Complaints Unit

Complaint

The programme included shots of the presenter and a contributor in a moving caravan being towed on a public road. 11 viewers with an interest in caravanning complained this was unsafe and illegal.

Outcome

Although the independent production company concerned had sought expert advice on the matter, their belief that they had acted in compliance with traffic regulations was mistaken: carrying passengers in a moving trailer of the type used in the programme contravenes The Road Vehicles (Construction and Use) Regulations, 1986. The Editorial Guidelines say that programme makers should observe the law unless there is clear editorial justification for not doing so, and there was no such justification in this instance.

Upheld

Further action

The BBC's Head of Safety has written to the production company, reminding them of the need to ensure that filming does not involve breaches of road traffic laws and health and safety regulations.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of his complaint. He made the following points:

- Writing a letter to the production company was not a sufficient measure of response. It suggested the BBC was not responsible itself for breaking the law, which was clearly not the case. He said there would have been BBC producers and executives involved in the production who should share responsibility and be held to account.
- BBC Health and Safety had failed in its duty of responsibility by not ensuring that proper health and safety was observed.

Decision of the Trust Adviser

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

The Adviser acknowledged the complainant's concerns that the BBC had acted irresponsibly, without sufficient regard for health and safety, and in contravention of road traffic regulations by allowing passengers to travel in a caravan while it was being towed on a public road, and filming images of the passengers for inclusion in the programme.

The Adviser noted that the ECU had agreed that this action was in breach of the BBC Harm and Offence Guideline 5.4.51, and in contravention of UK road traffic regulations. The ECU had therefore made the decision to uphold the complaint.

She noted that the BBC website included a Corrections and Clarifications page which ensured that significant information about upheld complaints was put into the public domain. Information about the ECU finding was available at the following address: <http://www.bbc.co.uk/complaints/comp-reports/ecu/whowillwintheelection>

The Adviser acknowledged the complainant's view that the further action taken by the BBC following the ECU's decision to uphold the complaint was insufficient. She noted that the production company had a responsibility to follow compliance guidelines, but that responsibility for compliance of the programme rested ultimately with the BBC. She did not consider that, by writing a letter to the production company reminding them of the correct procedures, the BBC was absolving itself of its responsibilities; at issue was whether sending the letter was a sufficient measure of response to the ECU's decision to uphold the complaint.

Having reviewed the correspondence, the Adviser believed the ECU's investigation had correctly concluded that the production company had been wrong to believe that the practice of carrying passengers in a moving caravan did not contravene traffic regulations.

The Adviser considered that the BBC's decision to send a letter to the production company was based on the understanding that a mistake had been made and the BBC's belief that this mistake was not deliberate. The letter was a formal reminder to the production company of how it should proceed in future.

She noted that the finding had been published so that it was in the public domain. She considered Trustees would be likely to conclude that the BBC had taken appropriate action in that it had written to the production company and had also acknowledged the mistake and published its finding about the breach.

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

Request for review by Trustees

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

1. The BBC was unable or unwilling to recognise the seriousness of actions taken in the making of the programme and even though the original complaint was ultimately upheld, the BBC appeared to believe it could absolve itself of responsibility by writing a letter to a third party production company.
2. The BBC was being irresponsible by not accepting and admitting its obligations and responsibilities and by not holding to account those within the corporation who, by mistake or intent, condoned the breaking of UK law and exposed TV presenters to the risk of serious injury or worse. Everyone makes mistakes, even the BBC; however, if the corporation took a position of denial it could not learn from any such errors which would only serve to endanger both performers and crew in the future.
3. The BBC did not commission programmes by third parties without the involvement of BBC Producers overseeing content and production. Additionally the BBC's Health and Safety department was responsible for Health and Safety practice of all programmes made by or for the corporation.
4. He reiterated two key points for which he said the BBC must accept responsibility and hold to account those within the corporation responsible:

Breaking UK law for creative dramatic purposes. The law states that it is illegal to carry people inside a moving trailer or caravan under the Road Vehicles Regulations, 1986. This law could not be ignored to suit the BBC.

The BBC Health and Safety department clearly failed in its responsibilities and duty of care to the presenters who were put at serious risk, being allowed to travel illegally inside a moving caravan on public roads. Any defence suggesting the driver was trained and experienced was totally without foundation, based on the fact that the vehicle was driven on public roads and therefore additionally vulnerable to third party drivers making a mistake and crashing into the caravan, potentially putting the presenters at risk of serious injury or worse.

The Committee's decision

A panel of the Committee noted the points made by the BBC, the Adviser and the complainant.

Trustees agreed that if they took this matter on appeal they would be likely not to uphold this complaint given that:

- the complaint had been upheld by the ECU
- in explaining that the production company had been mistaken in its belief about the legality of the presenters travelling in a moving caravan, the BBC was not absolving itself of responsibility for compliance or for the health and safety of staff working on the programme but was merely explaining what had happened
- the "upheld" finding had been published so that it was in the public domain.

Trustees agreed that it was not appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

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

The One Show, BBC One, 6 May 2015

The complaint concerned an item on *The One Show* which challenged claims made by Mr David Noakes about the therapeutic benefits of taking GcMAF. The complainant considered that it was “one-sided, unfair and unreasonable to put out a programme on GcMAF which concentrates on David Noakes but makes no mention of the science”.

The complainant made the following points:

- The item was a one-sided piece of sensationalism; it was irresponsible to broadcast such an unbalanced piece on the subject of GcMAF.
- To make a one-sided attack on Mr Noakes without referring to medical literature relating to glycobiology and GcMAF was extremely unfair, particularly to people who have been taking GcMAF and were doing well on it.
- The interviewer, Dr Saleyha Ahsan, was very confrontational.
- The complainant was not made aware before attending the filming that this report was purely about the controversy over the claims made by Mr Noakes for First Immune GcMAF. Had she known this, she would not have contributed to the programme.

The complaint went to Stage 2 of the complaints process and was not upheld. The Editorial Complaints Unit (ECU) made the following points:

- The ECU understood that Immuno Biotech Ltd was responsible for organising the group of contributors who attended the filming session with Dr Ahsan. The programme-makers told the ECU that they had made clear to Immuno Biotech Ltd that they intended to take “a robust look at the claims” and they wanted to speak to users to find out a) why they used it and b) their reactions to criticisms of the company. The ECU also understood that it was made clear by the programme-makers that people should not be invited to attend who were in a vulnerable state or who were unaware of the recent criticism of Immuno Biotech Ltd or First Immune GcMAF.
- Documentation in the form of a telephone transcript and emails was provided to the ECU as evidence of the precise terms of the group discussion set out to Immuno Biotech Ltd and those who took part in the discussion. The ECU said these documents did not support the complainant’s assertion that those who attended were misled or were unable to give informed consent to taking part in the filmed discussion. The programme-makers told the ECU that all attendees were given a detailed briefing about the nature of the discussion by a BBC producer before filming began. Potential contributors were given the opportunity not to take part, and the ECU’s understanding was that some contributors took advantage of that option.
- The ECU requested the complainant to provide any evidence that either she, or other contributors, were misled about the subjects to be covered in the discussion.
- The programme-makers were entitled to focus their report on the activities of Immuno Biotech Ltd and Mr Noakes. The choice of which subjects to report, and the manner in which to report them, was a matter of legitimate editorial discretion

unless an omission of information led to a seriously misleading impression or a lack of due impartiality, which the ECU did not consider to be the case in this instance. The ECU noted that the focus of the report was clearly on Mr Noakes and the product sold by Immuno Biotech Ltd.

- The ECU noted the complainant's assertion that there were people taking GcMAF who were "doing well on it". The ECU believed that point came across during the discussion; however, GcMAF was an unregulated and unlicensed treatment and no clinical trials had been conducted to enable any informed judgement to be made about its efficacy.
- The ECU noted the points made by the UK health watchdog, the MHRA, and Guernsey's Chief Pharmacist following the decision to ban GcMAF's importation to Guernsey. The ECU believed there was a clear public interest in drawing attention to the fact that Immuno Biotech Ltd had produced a product which the MHRA said posed "a significant risk to people's health".
- The ECU also thought there was a clear public interest in challenging the claims made by Mr Noakes for GcMAF's efficacy when those claims had not been independently peer-reviewed or subjected to clinical trials. The ECU believed that Mr Noakes was given an appropriate opportunity to respond to the allegations put to him and was satisfied that the report met the requirements for due accuracy.

The ECU did not uphold the complaint.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust against the ECU's decision and raised the following points on appeal:

- The programme was one-sided and unfair; it was unreasonable to focus on GcMAF and David Noakes but not refer to the science behind it.
- She had no financial involvement with Mr Noakes or Immuno Biotech Ltd, but had been fighting for years to bring information about glycobiology to the wider public so that more people could benefit from GcMAF's health potential.
- Focusing the report on attacking David Noakes and making little of the two hours of testimonies recorded in Guernsey at the same time, at which the complainant was present, demonstrated bias by the BBC.

The Trust Adviser's decision

The Trust Adviser (the Adviser) watched the relevant output and read the correspondence that had passed between the complainant and the BBC. She acknowledged the complainant felt strongly that glycobiology offered significant health benefits which merited media coverage and that she had sought to give the programme-makers more information about this during the course of the filming for *The One Show*. However, the Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser considered the complainant's allegations that the report lacked balance and was biased. The Adviser noted that all BBC output was required to meet standards of "due impartiality". According to the Editorial Guidelines, this meant that the impartiality "must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation".

The Adviser noted that the two filmed sequences shown in *The One Show* began with a picture of Mr Noakes, and the presenter stated:

"This is a picture of David Noakes, now he claims to be behind a wonder drug that can cure autism, Parkinson's disease, HIV and cancer. Yet his work is unproven, unregulated and unlicensed. Dr Saleyha Ahsan has been to Guernsey to confront him..."

The Adviser noted that the filmed reports set out the lack of regulation around GcMAF; the lack of peer-reviewed research into the value of GcMAF; the concerns that thousands of vials of GcMAF had been produced in a laboratory that did not meet sterile conditions and had been closed by the health regulator; claims for GcMAF made for it by David Noakes – including his assertion that GcMAF could "fully cure" 80 percent of patients with stage 4 cancer – and criticisms from charities about GcMAF.

The films also included an acknowledgement that there were no reports of anyone having been contaminated from taking the product and an interview with Mr Noakes about the products and the claims he had made for it. The first film included a section which featured around a dozen users of GcMAF. Dr Ahsan stated that they were among more than 200 people on Guernsey who had been supplied with the product free of charge. The patients made the following comments:

Patient one:

I have one kidney left which is being attacked by tumours. I'm not saying that my cancer's cured, but I certainly think it's being delayed.

Patient two:

I've been diagnosed with stage three breast cancer. Every time I took the GcMAF I could, it was like, that day, I knew I felt better.

Dr Ahsan:

It's all to do with using a product that is unchecked and untested, that's the question.

Contributor three:

If you're diagnosed as being terminally ill, and there's no other treatment available, then do you really care where GcMAF is being produced? It's my only hope.

Dr Ahsan:

These people belong to a supporters' group for GcMAF and they wanted to speak out publicly in support of it. But I'm deeply concerned that they're injecting themselves with an unproven and unregulated medicine.

The Adviser considered audiences would have been aware that the focus of the report was GcMAF and the claims made for it by David Noakes, rather than a more general

exploration of the science of glycobiology. She considered Trustees would consider that it was in the public interest to investigate claims that a drug promised remarkable health benefits, when those claims were not supported by proper evidence. She also considered Trustees would be likely to conclude the output met the requirement for both due accuracy and due impartiality and that there was no requirement for the programme to have included a greater exploration of the science behind glycobiology as part of the investigation.

The Adviser noted that the programme-makers had stated, in the BBC's stage 1 response of 1 June 2015, that "the focus of this report was not glycobiology". They also stated that "it was made clear to the contributors in the Channel Islands that this film was about the controversy over the claims made by David Noakes for First Immune GcMAF, and not about the medical debate around GcMAF". This point had been repeated in the stage 1b response and in the stage 2 response.

The Adviser acknowledged the complainant's view that this had not been made clear to her at the time of the filming and that, had she known, she would not have spent two hours attending the discussion, as her intention had been "to explain to everyone about the science of glycobiology".

The Adviser regretted if there had been any confusion; however, she noted that, during the ECU investigation into her complaint, the Complaints Director had seen copies of emails with people who took part in the group discussion, and he concluded that these did not support the complainant's assertion that those who attended were misled. She also noted the programme-makers' statement that those who attended the discussion were briefed by a BBC producer before filming began. She noted that the Complaints Director had asked the complainant to provide some evidence that either she, or other contributors, were misled about the subjects to be covered in the discussion, but that no evidence had been submitted and this aspect of the complaint had not been included in the appeal.

The Adviser noted that the BBC's choice of programme subjects and the manner in which they were reported was a matter of legitimate editorial discretion. She noted that the Complaints Director had explained the clear public interest in focusing a report on Mr Noakes and the product sold by Immuno Biotech Ltd. The Adviser acknowledged the complainant's view that it was "unreasonable to put out a programme on GcMAF which concentrated on David Noakes but made no mention of the science". However, she considered that there was no editorial requirement for the programme-makers to widen the scope of their One Show report to look at the science of glycobiology.

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

Request for review by Trustees

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

- The BBC had not taken on board her view that *The One Show* report on GcMAF was biased. She said that the BBC highlighted only one side of the story, thus

giving the Health Authority more ammunition to justify its actions, and people were suffering as they no longer had access to GcMAF as a result.

- The MHRA had made no attempt to inform the public of what was found or not found in the GcMAF that they seized in their raid. There had been no mention of a single person being harmed by this glyco-protein.
- There were reasons why a natural protein was not put through the regulatory process: for instance, the huge financial implications and the fact that, in the end, it probably could not be patented. In the meantime people died when they could be helped with this glyco-protein. The BBC should look at the science.
- The BBC were out of order by turning this issue into an attack on David Noakes when he was trying to get news of what was possibly a huge medical breakthrough before the public; a medical breakthrough which the Pharmaceutical Industry would not want people to know about as it would be cheap and harm their profits.

The Committee's decision

A panel of the Committee noted the points made by the BBC, the Adviser and the complainant.

Trustees were aware that this was a distressing issue to those who were seriously ill and were using GcMAF in the hope it would help them.

Nonetheless, Trustees agreed that if they took this matter on appeal they were not likely to uphold a breach of the Editorial Guidelines given that:

- the films included an interview with Mr Noakes about the products and the claims he had made for it.
- it was made clear during the programme that some people taking GcMAF felt they were doing well on it.
- it was acknowledged that there were no reports of anyone having been contaminated from taking the product.
- GcMAF was an unregulated and unlicensed treatment.
- no clinical trials had been conducted.
- the MHRA said it posed "a significant risk to people's health".
- it was in the public interest to challenge the claims made for GcMAF's efficacy.
- Mr Noakes was given an appropriate opportunity to respond.
- it was not necessary to examine the science of glycobiology to comply with the Guidelines. This was a matter of editorial discretion and the Royal Charter reserved the editorial direction of the BBC for the Executive Board. It was not a matter for the Trust.

Trustees concluded that it was not appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

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

Today, Radio 4, 14 April 2015

The complaint

The complaint concerned an item on the *Today* programme in which the BBC's Middle East Editor discussed how the minority Christian populations in a number of countries across the Middle East had been affected by the conflict and instability of recent years as a result of the rise of Islamic extremism. The live two-way included the following comment by the Middle East Editor:

"Palestinian Christians as well feel threatened, not just of course from extreme Islam, but they also feel threatened by what the Israeli government might be doing."

The complainant asked what evidence there was to support the comment about the Israeli government. He said Israel was the only Middle Eastern country where the Christian population was rising and that there had been no actions by the Israeli government against Christians in Israel.

The complaint was answered at Stage 1 by BBC Audience Services and Stage 2 by the Editorial Complaints Unit (ECU). The ECU's response included the following points:

- The number of Christians in the Occupied Territories had fallen dramatically. While the causes for this were debated, it was not contentious to suggest that the ongoing conflict and difficulties of life in the territories – economic and otherwise – could have been a factor. The actions of the Israeli government – e.g. the separation barrier and security checkpoints – had had an impact on the lives of people who lived there.
- The Institute for Middle East Understanding reported that difficulties included the freedom to worship at certain places.
- The ECU response referred to information from the US State Department report of 2006 and information from Kairos, which it noted spoke on behalf of Palestinian Christians, and the group Sabeel, to support their conclusion.
- There was evidence to suggest that Palestinian Christians did feel threatened – albeit not only by the Israeli state.
- It was arguable that the Palestinian Christians felt threatened as a result of being Palestinian rather than as a result of their faith and that while that might have been further considered, there was no requirement for further analysis and audiences would not have been misled.

The ECU did not uphold the complaint.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 19 July 2015 against the decision of the ECU.

Decision of the Trust Adviser

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

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

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

The Adviser also noted the section of the Impartiality Guidelines related to professional judgement:

“4.4.13

Presenters, reporters and correspondents are the public face and voice of the BBC - they can have a significant impact on perceptions of whether due impartiality has been achieved. 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. They may provide professional judgements, rooted in evidence, but may not express personal views in BBC output, including online, on such matters.”

The Adviser noted the context for the comment that was the subject of the complaint. The sequence began with the presenter explaining that when IS captured Mosul, many of the city’s residents fled, including a significant number from its minority inhabitants. She said that many of Mosul’s Christian residents had been part of the exodus, and 100,000 of them were now living in Erbil in Iraqi Kurdistan. Cardinal Vincent Nichols, Head of the Catholic Church in England and Wales, had just returned from Erbil and took part in a live interview. He described the situation faced by the Christians who had fled Mosul and were now in Erbil, the kind of support they were getting and their hopes for a possible future return to their homes. He was finally asked about his own views about action and air-strikes against IS.

The sequence continued with a live two-way with the Middle East Editor, Jeremy Bowen. The two-way began with the following question:

“...Jeremy, listening to Cardinal Nichols, it’s a reminder that although we may see the fight against IS and the position in the Middle East at the moment, often through sectarian, in sectarian terms, and through that sort of prism, this has been traditionally a religiously diverse part of the world...”

The Middle East Editor went on to outline that in Syria and Iraq there had historically been a “delicate mosaic” of different faiths. However, the invasion of Iraq in 2003 and the unrest in Syria from 2011 had significantly affected it. He stated that the events had been a catastrophe for Iraq’s Christians and that more than half of them had fled the country following the invasion and subsequent rising of IS. He said:

“...if you talk to Christian communities in other parts of the Middle East, as I often do, a lot of them will look to that example of Iraq and say, ‘we do not want to be like Iraq’ and now they’re also saying, of course, ‘we don’t want to be like what’s been happening in Syria’ too...”

He went on to discuss the points made by the Cardinal about the possibility of the uprooted Christian communities returning to their homes and considered it was likely that

a significant proportion of the Christians who had left their homes had done so permanently. The exchange continued:

Presenter

Perhaps we've only just really woken up to the reality of what's been happening to minority communities in this part of the world because of all the headlines and the attention that's been grabbed by Islamic State. From what you're saying, this is a much longer phenomenon.

Middle East Editor

Well Christians have been leaving the Middle East for an awfully long time, there are well-established groups of émigré Middle Eastern Christians in all sorts of countries, in South America for example, one region of the world. But, what has changed, the rise of extreme Islam, which of course has resulted in the killing of many Muslims, has also resulted, over the last 10 years or so, in a lot of Christian communities being dislocated. And it has become particularly acute since the rise of Islamic State. And it's not just Islamic State either: Christians in Egypt feel very threatened there by different kinds of religious extremism; there is still a large community of Christians in Egypt. Also Lebanon: they're pretty well established in Lebanon, and strong; but they again feel pressure. Palestinian Christians as well feel threatened, not just of course from extreme Islam, but they also feel threatened by what the Israeli government might be doing. So all round the place, when you look at it, it's difficult."

The Adviser noted that the comment about the Israeli government was the final exchange in a live three-minute interview with the Middle East Editor. She noted that the interview had begun by considering the plight of Christian communities in Iraq and Syria and had become broader to consider the longer-term concerns of Christian groups across the Middle East and that a number of different countries were referred to in very broad terms.

The Adviser considered that it was clear that the Middle East Editor was referring to Palestinian Christians, i.e. those living in the Occupied Territories, and not those living in Israel. She therefore considered the complainant's reference to the rising Christian population in Israel was not directly relevant.

The Adviser noted the following points from the ECU finding at Stage 2:

- the number of Christians in the Occupied Territories had fallen dramatically in recent times
- Kairos, a group which claims to represent Christian Palestinians, campaigns against the Israeli occupation
- there have been a number of well-documented attacks on Christian places of worship in the West Bank as reported by the Institute for Middle East Understanding
- although the causes of the population fall of Palestinian Christians are contested, the hardship of life in the territories, which would include the impact of the actions of the Israeli government (e.g. the separation barrier, security checkpoints), may have played a significant part.

The Adviser noted the following from the ECU finding:

"I would accept that it might be argued that the threat felt by Palestinian Christians has to do with their status as Palestinians rather than their faith and to that extent I think more analysis would have been welcome. However the context is significant - this was a very brief mention of the Palestinians in a piece about a much wider issue and I don't believe that audiences would be inclined to conclude from such a fleeting reference that Israel had sought to persecute Christians."

The Adviser noted the complainant's assertion that "it would be a fairer comment" had the Middle East Editor stated that he was referring to Palestinian Christians in the West Bank, and if he had explicitly stated that Palestinian Christians were threatened also by the activities of the Palestinian Authority. She noted too the complainant's assertion that none of the evidence referred to by the ECU was presented in the item in question.

The Adviser considered the complainant's assertion that the comment was "biased by omission". She considered, however, that it was a matter of editorial judgement what to include in any item: the concept of "due accuracy" and "due impartiality" was an acknowledgement that the detail which audiences might expect on a given occasion would depend on the nature and type of content.

The Adviser considered that in referencing the Israeli government in relation to why Palestinian Christians might feel threatened, the Middle East Editor was acknowledging an additional dimension of concern which was specific to Christians in the Occupied Territories.

She noted that specialist correspondents were entitled to exercise their "professional judgements, rooted in evidence" and noted that the Middle East Editor had stated that he often spoke to Christians from across the Middle East.

Having considered the wider context in which the comment was made, the Adviser considered that the comment about the Israeli government did not require further clarification in order that the content might be considered duly accurate and duly impartial.

The Adviser decided therefore that the complaint would not have a reasonable prospect of success on appeal for the following reasons:

- the complainant's concern that the comment suggested that Christians living in Israel were under threat was without foundation: it was stated in clear, precise language as required by the guidelines, that the reference was to Palestinian Christians, i.e. those living in the occupied territories
- there is well-sourced evidence, cited in the ECU finding, to support the assertion that Palestinian Christians feel threatened by the actions of the Israeli government
- whilst this might have been primarily because they were Palestinians rather than because of their faith, the audience would be likely to have understood that and did not require it to be stated explicitly
- the comment by the Middle East Editor acknowledged also the threat Palestinian Christians felt from extreme Islam
- this was a single sentence at the end of a broad discussion about a number of countries in the Middle East in which Christians feel under threat; the audience would not have expected nor required any greater detail on the specific nature of the threat felt by Christians living in the Occupied Territories.

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

Request for review by Trustees

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

He said that:

- the *Today* programme was a news programme and “must be very careful about including opinion”.
- the Middle East Editor had chosen to include an item where one person suggested that Christians are worried about possible actions that might be taken by the Israeli government that might adversely affect them
- no rebuttal was made that nothing in Israel's actions in the past, nor indicated in the future, supported the statement.

The Committee's decision

A panel of the Committee noted the points made by the BBC, the Adviser and the complainant.

Trustees agreed that if they took this matter on appeal they were not likely to uphold a breach of the Editorial Guidelines given that:

- it was clear that the Middle East Editor was referring to Palestinians living in the Occupied Territories rather than in the state of Israel
- the BBC had produced a range of evidence to support the contention that Palestinian Christians felt threatened by both extreme Islam and the actions of the Israeli government
- the sentence said that Palestinian Christians felt “threatened by what the Israeli government might be doing” and it was not contentious to suggest that the ongoing conflict and the difficulties of life in the territories, under Israeli occupation, had had an impact on the lives of the people who lived there
- the Middle East Editor's analysis was a “professional judgement” based on his conversations with Christian communities in the Middle East. This was not evidence of bias by the Middle East Editor
- this was one sentence in a live two-way (an interview with a BBC expert by a BBC presenter)
- no other view was required to achieve due impartiality appropriate to the output
- there was no evidence that the Middle East Editor was biased against Israel.

Trustees concluded that it was not appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

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

Appeals against the decisions of BBC Audience Services and BBC News 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 Procedure⁷ 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.

⁷http://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 Victoria Derbyshire, BBC News Channel, 21 April 2015

The complainant alleged that on the *Victoria Derbyshire* programme, 12 April 2015, comments made by the BBC's Chief Political Correspondent Norman Smith were biased against David Cameron. In a subsidiary complaint, he alleged that Andrew Marr had displayed bias towards Ed Miliband in an interview on *The Andrew Marr Show*, 26 April 2015.

The complainant made the following points:

- The BBC's Chief Political Correspondent Norman Smith demonstrated left-wing bias by suggesting that the Prime Minister could be blamed for the potential break-up of the Union by stoking English dissent over the SNP having too much power in UK government.
- The complainant alleged it was Ed Miliband rather than David Cameron who was "stoking up English dissent".
- He said Mr Smith had said "some senior Tories" had complained about the Prime Minister, but he thought it was just one. He asked who else had complained about "the correct warning about the SNP supporting a minority Labour government even though the SNP seeks a break-up of the Union".
- Mr Smith had ended by suggesting "the basic charge against David Cameron" was that he was "jeopardising the Union to boost his prospects of getting re-elected". The complainant asked why Mr Smith had not provided a counter to that suggestion in the interests of balance.
- He also mentioned an interview Andrew Marr had conducted with Ed Miliband on a recent edition of *The Andrew Marr Show*, saying that Mr Marr had "let Miliband off lightly" during questioning about the economy and public spending. He said Mr Marr had not challenged "Miliband's lie that the financial crisis caused the deficit" and had put words into his mouth by saying "because you are not going to borrow more".

BBC Audience Services made the following points:

- On the day that Sir John Major was due to deliver a speech warning of the consequences of returning a minority Labour government supported by the SNP, Mr Smith spoke in his report about an apparent mounting backlash from some senior Tories.
- Mr Smith referred to Michael Forsyth, Alistair Darling and Sir David Steel all warning David Cameron of the possible consequences of focussing on a minority Labour government supported to an extent by the SNP.
- Mr Smith did not put forward his own political views – he was relaying what other politicians were saying.

- They suggested that the complainant look again at the report which could be found on the iPlayer and gave him the link and time into the programme.
- In response to the complainant's query about other politicians who had expressed concerns about the SNP, they cited Lord Forsyth and Lord Tebbit. They said a number of other Conservative politicians had also reportedly expressed the same concerns, though not all of them would wish to go on record.
- The BBC's Chief Political Correspondent, was "absolutely committed to reporting without political bias".
- The BBC aimed to give airtime to as many viewpoints as possible. Audiences could then make up their own minds from an informed position.
- With regard to the complainant's subsidiary complaint about *The Andrew Marr Show*, they referred to a transcript of the interview available at <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/26041504.pdf>
- They said that Andrew Marr challenged Ed Miliband throughout this interview, and it was Mr Marr who introduced the question of current and capital spending.

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. He made the following points:

- Norman Smith did not mention any of the history surrounding the West Lothian question and Labour's policy towards it. Labour had stayed silent about it because Labour was hoping to gain a return to power with the help of Scottish and Welsh MPs and nationalist MPs from Wales and Scotland. Mr Smith did not mention in his report the "underlying narrative of the leader of the Labour party who had destroyed any form of working relationship with Scottish Labour, never listened to them, and completely undermined their chance of survival by not taking the above stand earlier".
- By 30 April 2015 no-one trusted Ed Miliband, especially as he had never supported the principal of English votes for English laws. Had he done so, the criticism made against David Cameron would have been rendered futile. By not mentioning this, Norman Smith showed bias and a lack of balance.
- With regard to his subsidiary complaint about *The Andrew Marr Show*, he said that Mr Marr hardly challenged Ed Miliband at all and at the end of the interview he put words into Mr Miliband's mouth by saying "because you are not going to borrow more." By putting words in his mouth, he said Mr Marr was effectively giving the impression that he agreed with him and supported Mr Miliband's position, and that was "blatant bias".

Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood that BBC Audience Services had ceased handling the complaint at Stage 1 and it had not gone to Stage 2. 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 Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

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

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

The context of the interview was the Correspondent's regular review of the General Election Campaign with comment on "the stories of the morning". At the time of this particular report, the SNP was very much in the news because of its rapid rise to prominence during the campaign, with increasing potential to influence the outcome of the General Election. This was particularly topical on the day of the broadcast because, as explained by Audience Services in their response of 23 April 2015, Sir John Major "was to make a speech in which he would warn that a minority Labour government supported by the SNP would lead to political and economic and constitutional instability".

The report at the centre of the complaint is transcribed below:

NORMAN SMITH:

Yesterday was all about Scotland and today is all about Scotland, because the Tories are determined to keep pounding away on this idea that there is a real danger that the SNP may have a role in propping up a future Labour government and that will mean some of their policies will be imposed on people in England. We're going to hear more of that from Sir John Major who's going to be making a speech saying it will lead to political instability, economic instability, constitutional instability too.

But here's the thing - there is a backlash building it seems from - well, some senior Tories too - who are saying that if you keep going on about the SNP and what a threat they are, you actually talk up their prospects and the danger is you put rocket boosters under the SNP, you strengthen them, and you actually put at risk the future of the Union and that is what we've heard from Michael Forsyth, former Scottish Secretary under John Major, he is saying, "Look, be very, very careful David Cameron about doing this because there is a real risk that you are going to jeopardise the Union, and interestingly we've heard from a whole succession of senior Scottish politicians this morning - let's think, we've heard from Alistair Darling, the man who led the No campaign in the recent Referendum - obviously a Labour Chancellor; we've heard from David Steel, former Liberal Democrat leader, former Presiding Officer in the Scottish parliament, all saying the same thing to David Cameron: "Be careful, be very very careful about this strategy because at the end of the day you risk giving the SNP so much oxygen of publicity that they do so well that they're in a much better position to pursue the case for independence.

More than that, and this was an interesting point I thought, they're talking about the danger that you actually fuel resentment in England - in other words people in England think, "Hang on a sec, we don't like this" and you kind of begin to lay the seeds of English nationalism and that drives the two countries apart, so a fascinating debate, but the basic charge being made against David Cameron is that he is jeopardising the Union to boost his prospects of getting re-elected.

VICTORIA DERBYSHIRE:

It really is interesting and I wonder, would anyone have predicted six months ago that Scotland, the SNP, would dominate this General Election Campaign?

NORMAN SMITH:

Do you know, it's bizarre. Yesterday when we were up at the SNP Manifesto and one of the SNP activists said to me "Have you ever been at an SNP Manifesto Launch before?" and I had to say, er no, because bluntly it hasn't been that important before, but now it's absolutely critical, and it's extraordinary the way Nicola Sturgeon is now a household name - everyone knows who she is, everyone seems to have a view on her. You know, they have catapulted themselves from being really sort of bit part players at Westminster to shaping this contest and what I find striking is, we are now talking, not just about the role they might have after the Election when they may or may not prop up a Labour government, we are now talking about their influence on this campaign itself. They are shaping the terms of trade of this campaign as we've seen in this row with the Tories saying no, we're going to keep battering away about the danger from the SNP, while Labour and everyone else are saying, no, no, stop doing that, you are derailing, undermining the Union, so it's a unique Election in that sense, that Scotland has got such a critical role.

The Adviser acknowledged that the complainant felt that the Correspondent should have included in his report "the underlying narrative of the leader of the Labour Party who had destroyed any form of working relationship with Scottish Labour, never listened to them, and completely undermined their chances of survival by not taking the above stand earlier".

The Adviser noted that it was not possible to cover every aspect of political background to a particular issue during news reports. In her view it was not necessary to refer to the matters raised by the complainant in order to achieve due impartiality. She considered that, in this piece, Norman Smith was using his political expertise to inform his reporting on the strategies being advocated by senior politicians in response to the prospect of the SNP gaining an increasing amount of power to influence British policies following the Election. He spoke of a mounting political "backlash" to the Conservative Party strategy of warning about the dangers posed to British politics by the SNP, because a number of people felt that the Conservative strategy might ultimately serve to achieve the opposite effect of what the Party was aiming for, by undermining the Union. Mr Smith referred to some Conservative politicians who also shared those concerns. The Adviser considered that Mr Smith was using his political expertise to provide comprehensive reporting on this issue.

The Adviser noted that Audience Services had explained that Mr Smith was not putting forward his own personal views, but was "simply relaying what Forsyth, Darling and Steel were saying". Having reviewed the output, the Adviser agreed with this view and did not consider she had seen evidence of bias in the report.

With regard to the element of the complaint concerning *The Andrew Marr Show*, the Adviser noted that Audience Services had responded to the allegation that Mr Marr had not challenged Mr Miliband sufficiently. They stated:

“Andrew Marr challenged Ed Miliband throughout their interview. In fact it was Andrew who introduced the question of current and capital spending when he asked: ‘Let me come to the crucial point if I may which is that you have distinguished between current spending and capital spending, so you’ve allowed yourself leeway to spend, to borrow and spend billions of pounds on new infrastructure projects, new roads, new hospitals, new schools, new railway systems’ and cited the Institute of Fiscal Studies and Chris Leslie MP to back his point.”

The Adviser noted the point raised by the complainant in his appeal that Mr Marr had “put words into Miliband’s mouth by saying ‘because you are not going to borrow more’”.

The Adviser noted the wording of the interview in this section of the programme:

ED MILIBAND:

What I am saying is the deficit didn’t cause the financial crisis, the financial crisis caused the deficit, that’s why President Obama is dealing with the deficit too. It wasn’t because Labour invested in schools and hospitals in the UK, and look the question for now is getting that deficit down and balancing the books and that’s what we’re going to do.

ANDREW MARR:

OK. Now is it not the case that you are in effect saying you did borrow a lot the last time, that has been your instinct and you are saying to British people here’s the credit card, I’d like the pin number back.

ED MILIBAND:

No.

ANDREW MARR:

That is not what you are saying?

ED MILIBAND:

No.

ANDREW MARR:

Because you are not going to borrow more. Let’s turn to your rental policies which you did, virtually every single economist says it may be a nice idea, may be a kind idea to people renting in private accommodation but it just doesn’t work. Rent controls are the single thing that all economists agree never works.

The Adviser did not consider that the sentence “Because you are not going to borrow more” was evidence that Mr Marr was conducting the interview in a biased way. She noted that Mr Miliband had said previously “...look the question for now is getting that deficit down and balancing the books and that’s what we’re going to do”. She considered that it would have been reasonable to infer that Mr Miliband was thereby stating a disinclination to borrow more, and she considered it reasonable for Mr Marr to refer back to that statement. In doing so, in her view, he was clarifying Mr Miliband’s answer to the

audience. She did not agree that the response gave the impression that Mr Marr agreed and supported the politician's position.

Taking this into account 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 it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees.

Request for review by Trustees

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

Norman Smith's report during the *Victoria Derbyshire* programme:

- Mr Cameron was warning about Mr Miliband becoming PM on the back of the SNP. How was it threatening the Union by warning voters of this? The BBC gave the impression that such a warning was anti-Union whereas in fact it was pro-Union.
- Devolution offers Scotland quasi-independence but such a position jeopardises the Union if Scottish MPs can still vote on English affairs in the absence of English devolution. Silence on English Votes for English laws, on English devolution, and on the breakdown between Scottish Labour and Miliband was not mentioned, which was not only biased but added to the potential conflagration of the Union.

The Andrew Marr Show:

- Ed Miliband persistently said they planned to balance the current account only. Total budget covers current and capital spending budget, and thus to ONLY balance the former meant that there would be a budget deficit based on what was spent on the capital budget, and therefore borrowing would inexorably rise annually. Mr Marr did not challenge this.
- The increase in debt from 2001 to 2008 was engineered to ensure Mr Brown became PM – and so the statement “the financial crisis caused the deficit” should have been challenged by Mr Marr.
- Mr Marr gave the impression he empathised with Mr Miliband by summarising and saying “Because you are not going to borrow more” so giving the impression to viewers that the BBC supports Labour.
- Ed Miliband was allowed to provide a fraudulent message regarding Labour's promises of cutting borrowing and Andrew Marr verbally rubber-stamped this message himself. The complainant felt the Trust Adviser did not understand the fraudulent nature of this message.

The Committee's decision

A panel of the Committee noted the points made by the BBC, the Adviser and the complainant.

Trustees noted that the appeal related to complaints about two programmes:

- *Victoria Derbyshire*, BBC News Channel, 21 April 2015
- *The Andrew Marr Show*, BBC One, 26 April 2015

The Trustees noted that the issue in front of them was whether the decision by BBC Audience Services to decline to enter into further correspondence was correct on the basis that the Editorial Guidelines had not been breached.

Trustees agreed that if they took this matter on appeal they would be likely not to uphold this complaint given that:

- with regard to the *Victoria Derbyshire* interview
 - audiences would have recognised that Norman Smith was not putting forward his own personal views, but was relaying what was being said by Mr Darling, Mr Steel and Mr Forsyth and by some others in the Conservative Party
 - it was not possible to cover every aspect of political background to a particular issue during news reports
 - it was not necessary to refer to the matters raised by the complainant in order to achieve due impartiality
- with regard to *The Andrew Marr Show*
 - Andrew Marr had challenged Mr Miliband: “you are in effect saying you did borrow a lot the last time, that has been your instinct and you are saying to British people here’s the credit card, I’d like the PIN number back”
 - it was not possible to challenge every point nor was it necessary to do so to achieve due impartiality and due accuracy
 - towards the end of the interview, when he plainly wanted to move on to another topic, Andrew Marr had in effect finished Mr Miliband’s sentence for him, based on the assurances Mr Miliband had already given that a Labour government would not increase borrowing. Audiences would have recognised that this did not constitute the voicing of an opinion by Andrew Marr or the BBC
- and in general
 - the BBC had provided a reasoned and reasonable response to the complainant’s concerns.

Trustees did not consider that it would be proportionate, appropriate or cost-effective to take this matter on appeal.

The panel of 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 rebroadcast of an archive edition of *Top of the Pops* on BBC Four, 23 July 2015

The complaint concerned BBC Four's transmission of an archive edition of *Top of the Pops* which had first been broadcast on 18 September 1980. The programme included an appearance by Jonathan King. It said that he had been living in New York and had brought back to the UK a new puzzle that had become a craze in the US. He was seen in the programme demonstrating the puzzle – a Rubik's Cube. The complainant said that, having subsequently been convicted of child sex offences, Jonathan King should not have been featured in the rebroadcast output. He sought information about who had made the decision to rebroadcast it and also queried why his email appeared to have been blocked when he attempted to respond to Audience Services.

Audience Services made the following points in their two responses:

- Decisions about including individuals in output were made on a case-by-case basis, taking into account any potential sensitivity surrounding the person, as well as the nature of their contribution to the item and its context, to minimise the risk of inadvertently causing offence.
- In this case, in the context of this being an archive programme from the 1980s, they did not feel that it was inappropriate to show Jonathan King demonstrating a new fad, the Rubik's Cube.
- They appreciated that the complainant disagreed with the decision to broadcast this and had passed his feedback to the programme team.
- The decision to broadcast *Top of the Pops* re-runs was taken after consideration by a number of senior BBC staff.
- The complainant's email had not been blocked, but the reply he had been sent came from an account which did not accept return emails and this had been made clear in the response.

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.

Trust Unit's decision

The Trust Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She noted that BBC Audience Services had ceased handling this complaint at Stage 1 and had not offered the complainant the opportunity to seek a further, more detailed, response at Stage 2. 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. She decided that it did not.

The Adviser appreciated that the complainant did not feel that it was appropriate for the BBC to transmit archive footage of Jonathan King given his conviction for child sex offences. She noted too that Audience Services had accepted that this kind of decision was sensitive and had explained that the BBC considered the nature and context of the contribution when considering whether archive material should be rebroadcast. In this instance, they considered it was reasonable to rebroadcast the archive programme.

The BBC's Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" is specifically defined in the Charter (Article 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards which the Adviser considered did not apply in this case.

The Adviser considered that Trustees would be likely to conclude this was an editorial judgement that rested with the BBC and that Audience Services had given a reasonable explanation of its policies in this area.

Taking this into account the Adviser considered 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 therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees.

Request for review by Trustees

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

The Committee's decision

A panel of the Committee noted the points made by the BBC, the Adviser and the complainant.

The Trustees noted that the issue in front of them was whether the decision by BBC Audience Services to decline to enter into further correspondence was correct on the basis that the Editorial Guidelines had not been breached.

The Trustees agreed that if they took this matter on appeal they would be likely not to uphold this complaint given that

- this was an editorial judgement that rested with the BBC Executive, as the Royal Charter set out that the editorial direction of the BBC was a matter for the Executive and not for the Trust
- Trustees did not consider that, if they entertained the appeal in detail, they were likely to find that the broadcast, in its context, had breached generally accepted standards

- Audience Services had given a reasonable explanation of the BBC's policies when making decisions of this kind including explaining that decisions of this nature were sensitive and were made on a case-by-case basis.

Trustees did not consider that it would be proportionate, appropriate or cost-effective to take this matter on appeal.

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

Complaints closed at Stage 1b and complainants subject to the Expedited Complaints Procedure (October 2015)

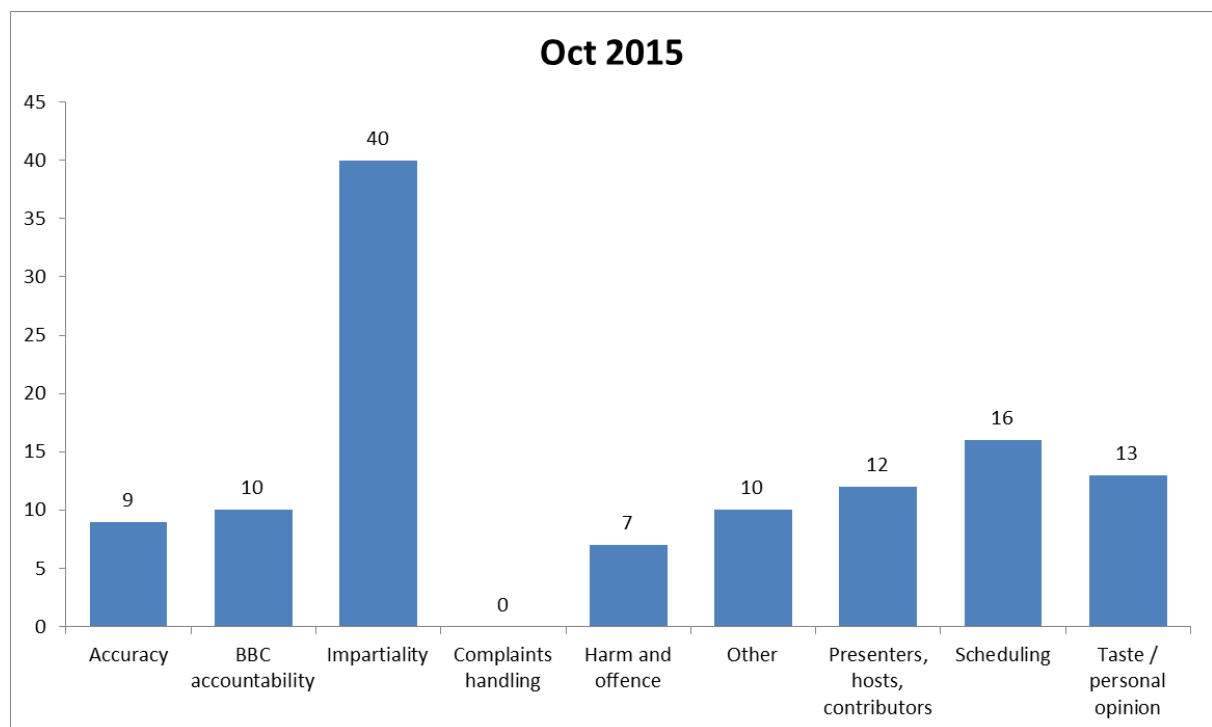
Complaints closed at Stage 1b

The BBC Trust published a revised complaints framework and associated complaints procedures in June 2012. Previously the editorial and general complaints procedures allowed for two responses at Stage 1 (“1a” and “1b”) before escalation to Stage 2; the new procedures put in place the right for the BBC to end correspondence on trivial, misconceived, hypothetical, repetitious or otherwise vexatious complaints at the “1b” point so that resources could be focussed on dealing with substantive complaints more quickly.

The Trust committed to asking BBC Audience Services for records of the complainants to whom this procedure was applied, and the subjects covered, and to reporting on these.

October 2015

117 complaints were closed down at Stage 1b in October



Issues included: this month 'Impartiality' included a high number of detailed complaints alleging bias in reports from the party conferences, complaints about reports of aspects of Jeremy Corbyn's leadership of the Labour Party, and complaints alleging both pro-/anti-Palestinian and Israeli bias in some reports of attacks and killings in the Middle-East; 'BBC accountability' included complaints about the cost or benefit of news presenters reporting live from location; 'Accuracy' complaints included the alleged misuse of the word 'emphatic', and in sports coverage of the generic word 'Rugby' to mean 'Rugby Union'; 'Scheduling' complaints included not enough coverage of Pope Francis' UN environment speech, that Formula 1 results were announced in news bulletins without warning before the highlights programme, insufficient coverage of the contract changes being proposed for junior doctors, lack of live concerts in Radio 3's new Sunday evening schedule, programmes not starting at correct times; 'Taste/personal opinion' complaints included background music and strong accents making drama dialogue indecipherable, quality of trails on 6Music, detailed views about *Casualty's* recent plotlines, insufficient staged opera provided on TV; 'Presenters, hosts, contributors' category included a variety of views about presenters' styles and backgrounds, that overly-colloquial presentation was ungrammatical or difficult to hear, complaints about behaviour or comments made during *Strictly Come Dancing*, and views that different questions should have been asked of some contributors.

Expedited Complaints Procedure

The complaints framework also contains provision for dealing with complainants who persistently and repeatedly make complaints of a vexatious or other nature. This Expedited Complaints Procedure may be used at any stage of the BBC's complaints procedures. Complainants are generally subject to this procedure for a period of up to two years.

Correspondence from complainants who are subject to the Expedited Complaints Procedure must be read but does not require acknowledgement. A complaint which raises an issue of breach of any relevant Guidelines or Policies should be investigated in accordance with the usual procedure.

The BBC Executive and the BBC Trust may use this expedited complaints procedure only where a complainant has a history of persistently or repeatedly making complaints which:

- (a) Are trivial, misconceived, hypothetical, repetitious or otherwise vexatious
- (b) Fail to raise an issue of breach of any relevant Guidelines or Policies
- (c) Use gratuitously abusive or offensive language
- (d) Are shown in investigation to have no reasonable prospect of success or
- (e) After rejection of the complaint at an earlier stage, are persistently and repeatedly appealed unsuccessfully at the next stage

Complainants subject to the Expedited Complaints Procedure at Stage 1 – October 2015

No complainants were subject to the Expedited Complaints Procedure at Stage 1 during October 2015.