

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

December 2015 & January 2016, issued March 2016

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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](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 procedure<sup>1</sup> explains that:

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

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

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

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

In deciding whether an appeal qualifies for consideration, the Committee may also decide to take only part of the appeal, and consider only some of the issues raised.

Where an appeal or part of an appeal qualifies for consideration, the Committee will aim to provide the complainant with its final decision within 80 working days of accepting the request for an appeal.

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

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

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

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

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

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

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

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

# Summary of findings

## Breakfast Show, Three Counties Radio, 3 November 2015

### Summary

BBC Three Counties Radio's Breakfast Show of 3 November 2015 reported on the case of a former prison worker who was taking a case to an employment tribunal. He had volunteered as a preacher at the prison and, during a service in a unit for sex offenders, had quoted Bible verses which referred to homosexuality among a list of sins. A complaint was made that this was homophobic and he resigned after being informed that he would face disciplinary action.

The Breakfast Programme included live interviews with a representative from Christian Concern – the legal group that was representing the former worker – and, later in the same broadcast, with the former worker himself. Complaints were made to the BBC that the interviews had not been impartial.

The Executive informed the Trust they considered there had been a serious breach of the Editorial Guidelines and provided a written report.

Trustees considered the interviews in question and the written report. They appreciated there was a clear editorial justification for addressing the subject and for robustly challenging the interviewees. They also noted a range of views were expressed and that considerable time was given to the story. However, they agreed that the presenter did not show due impartiality in the conduct of two of the interviews and that their tone was unduly confrontational.

This breach of impartiality followed occasions when other local radio presenters, while endeavouring to engage with audiences, had voiced personal opinions, in breach of the Editorial Guidelines. Trustees noted that the Executive was also concerned about this and had produced a face-to-face training programme for presenters and their programme teams that would be rolled out across the BBC's local radio services in the first quarter of 2016.

Trustees considered that it was of the greatest importance to the BBC that its output reflected the widest range of opinion and did not stifle debate. They believed that the BBC's local radio output had a critical role to play in terms of enabling the widest possible public debate and that local radio presenters had considerable leeway to be provocative to engage audiences. However, they considered that where presenters appeared to defend a particular stand on an issue in an inappropriately combative manner the effect was not to broaden debate but was likely to be the opposite – as potential callers might be less likely to contact a radio station if they felt they would not receive a fair hearing.

**The Committee considered this was a serious breach of the Editorial Guidelines for Impartiality.**

# Serious editorial breaches

## Breakfast Show, Three Counties Radio, 3 November 2015

### Background

For the past three years, BBC Three Counties Radio's Breakfast Show had been presented by Iain Lee. He was well known to his audience and had established himself as a presenter who encouraged audience engagement and who displayed a robust interviewing style and a willingness to address controversial subjects.

On 3 November, the story leading the station's news bulletins was that of a former worker at Littlehey Prison (NAME A) who was claiming constructive dismissal at an employment tribunal. He had been disciplined after citing verses from the Bible which listed homosexuality among a list of sins.

The first interview was with a solicitor from the Christian Legal Centre (NAME B), which was representing the former worker. In the interview, the presenter asked her: *"Do you support bigotry?"* before continuing: *"yes, homophobia is bigotry... I guess you don't know what the definition of bigotry is – and considering you're from a legal centre, that's a little bit worrying"*. He later asked: *"What do the gays have to do to be forgiven by your ever-so-loving God?"* When the interviewee referred to the meaning of *"homophobia"* he replied: *"...don't try and do the cute answers with me"*. When she commented that, like him, she was also a sinner, he stated:

*Can I tell you, [NAME B] ..., I am absolutely nothing like you, absolutely nothing like you, 'cos I don't think I'm a bigot... You've chosen not to question [a literal interpretation of the bible] because you're a bigot. People like you break my heart because you're doing Christianity and religion a real disservice...*

One exchange included the following:

Interviewee: *... this is about [NAME A]'s case, and [NAME A] should not have got a final written warning...*

Presenter: *...yes he should, yes he should...*

Interviewee: *... for preaching the Bible in a Christian service.*

Presenter: *...Yes he should, because what he's preaching is hatred.*

An hour later, the preacher/former prison worker was interviewed. The presenter stated: *"We don't like hate preachers of any religion, do we, or any creed, and it is hateful, what you said. ...I find the view that being gay is sinful, I find that view completely repugnant and disgraceful."*

The presenter repeatedly interrupted the interviewee. When the interviewee commented: *"...I love [homosexual people], God loves the homosexual..."*, the interviewer stated: *"...Yes, but in that horrible, patronising, superior way that Christians have – and it's not all Christians because some are enlightened. ...you say you don't hate people, but it's that kind of superior, patronising way that Christians - and quite often born again Christians - have when they think they are better than other people – that's hateful."*

*"...I find what you're saying so obnoxious. ...what you're preaching is hate. ...I find what you're saying poisonous, it's poisonous and it's hateful. ...let me finish before you spout your hatred."*

At one point, the interviewee said *"Bless you, friend"* and the presenter stated: *"Don't patronise me, buddy, don't patronise me... God you're obnoxious. ...Please stop calling me 'friend', ... because we're not friends and – I couldn't be friends with someone so hateful".*

The programme also included an interview with a representative of the Lesbian and Gay Christian Movement, which in part overlapped with that of Rev [NAME A] and, an hour later, with Dr Alan Wilson, the Bishop of Buckingham. The interview with the Bishop included a discussion about different people's interpretation of the bible.

On Monday, 10 November, the following apology was published on the BBC's Corrections and Clarifications page.

Iain Lee, BBC Three Counties Radio (broadcast 3 November 2015)

In interviews with the Reverend [NAME A] and a solicitor [NAME B] about their understanding of biblical teaching on homosexuality, Iain Lee described comments by Rev [NAME A] as 'obnoxious' and 'poisonous' and called [NAME B] 'bigoted.' While the programme is well-known for its combative style, the BBC fully accepts that the language the presenter used, and the tone in which he conducted these interviews, was at several points inappropriate. The BBC – and Iain Lee himself – wish to apologise for any offence that may have been caused.<sup>4</sup>

The following day, the presenter read out the following apology on the Breakfast Show:

*Last week I interviewed the Reverend [NAME A] and solicitor [NAME B] about their understanding of biblical teaching on homosexuality. I want to make it clear that I apologise for any offence that may have been caused over the way I conducted the interviews.*

## **Executive Response**

The BBC Executive noted that Iain Lee was a talented presenter who had fronted the Breakfast Show for three years and was known for tackling controversial subjects in an unflinching manner. They noted that the editorial staff at the station had invested heavily in building his success and that he had won a number of awards including the Nick Clarke interviewing award and a Sony Gold award during his time at the station.

They noted that, generally, the programme had an on-air producer and a studio broadcast assistant. Programme content was prepared by a team of two broadcast journalists and the programme team (presenter, producer and broadcast assistant). Day-to-day editorial supervision - including programme preparation, broadcast and programme review - was the responsibility of the station's Assistant Editor.

In terms of the output on 3 November the BBC Executive made the following points:

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<sup>4</sup> Iain Lee has stated that he continues to stand by both interviews in terms of their content and tone. He has informed us that the only part of the output that he felt was inappropriate was his comment that referred to some Christians behaving in a "horrible, patronising, superior way" which he wished to apologise for.

- The previous day, the production team set up interviews with the legal representative, with the individual taking the employment tribunal case and with the Chief Executive of the Lesbian and Gay Christian Movement.
- On the morning of the broadcasts, there was no discussion with the presenter about potential risks before going on air – despite the potentially difficult and sensitive subject matter. It should have been anticipated that guidance would have been useful.
- The interview with the legal representative began shortly after 6am and the presenter adopted his normal, challenging, approach.
- The interview included personal attacks on the interviewee and on her beliefs. Language used was inappropriate and the interviewee was not given appropriate opportunity to air her views.
- There was an opportunity after the first interview for the production team to discuss with the presenter the tone and content of the forthcoming interviews, but this opportunity was not taken.
- The interview with the former prison worker also included personal attack and a failure to allow the interviewee to set out his views.
- Listeners would have felt the presenter had expressed his own views – rather than challenging his guests and exploring their positions.
- The section was concluded with the interviewee from the Lesbian and Gay Christian Movement – she was not subject to the same degree of challenge as the two previous interviewees and this also compromised impartiality as the presenter had challenged the previous interviewees so energetically.
- The station received three complaints over the next two days, the Assistant Editor responded to these, acknowledging there had been issues with the output which were being addressed with the programme team.
- An on air apology was broadcast on 11 November and the presenter left the station on 16 November.
- Either the Editor or Assistant Editor would normally be involved in preparation for the next day's output, however on 2 November both figures had been away from the station so that neither attended key editorial meetings.
- The Assistant Editor had advised, prior to transmission, on whether there were legal issues relating to the interviews. He had not offered specific advice about the way they should be conducted as he did not consider they raised any significant risk.
- On the morning of the transmission, the Editor was away from the station and the Assistant Editor did not hear the first live interview. In future, the station would ensure that a senior figure was always available to supervise Breakfast commissioning decisions by attending the daily commissioning meetings.
- The programme producer would receive refresher training in editorial standards and talent management.
- A number of incidents at different local radio stations had highlighted the risks involved in presenters finding ways to engage audience interest in phone-ins and debates. Teams needed to engage listeners without causing unnecessary offence or leaving presenters appearing less than impartial. A training programme would be rolled out to all Local Radio phone-in teams in the first quarter of 2016.

- The training programme was being developed by the BBC Academy, it would be delivered by Editors and would focus on risks and lessons learnt from recent incidents.

## Trustees' Finding in Full

Trustees noted the relevant sections of the Editorial Guidelines were those for Impartiality. In particular they noted the Impartiality Guidelines:

*4.4.4 - Listening to and engaging with audiences is central to the BBC's output, from radio phone-ins to user generated content online. But responses should not be given a wider significance than they merit and we should take care not to misrepresent the relative weight of opinions expressed. We should also be prepared to apply appropriate scrutiny to audience opinions and ensure that the debate does not appear closed to members of the audience who support a minority view when they have not already made contact.*

*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. ...*

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

*Consequently, we will sometimes need to report on, or interview, people whose views may cause serious offence to many in our audiences. On such occasions, referral should be made to a senior editorial figure who may wish to consult Editorial Policy. The potential for offence must be weighed against the public interest and any risk to the BBC's impartiality. Coverage should acknowledge the possibility of offence, and be appropriately robust, but it should also be fair and dispassionate.*

*The public expression by staff and presenters of personal offence or indignation risks jeopardising the BBC's impartiality.*

Trustees acknowledged the vital role played by the BBC's local radio stations in engaging with audiences and in raising and discussing a wide range of issues that were important to listeners. They appreciated that this was of great value as it allowed a wide range of opinions to be aired by the BBC and also helped to cement the relationship between audiences and the BBC. They noted the considerable challenge in presenting live output and in ensuring that a reasonable balance was struck between robustly challenging an interviewee while also conducting an interview in an appropriate manner.

Trustees appreciated there was a clear editorial justification for addressing the subject and for robustly challenging the interviewees. They also noted a range of views were

expressed during the programme and that considerable time was given to the story. However, they considered that the subject matter on 3 November 2015 was particularly sensitive and that listeners would be likely to have strong – and conflicting – views on the subject. They noted too that the case raised was before an Employment Tribunal and that this placed a greater onus on the BBC as the laws of Contempt of Court applied to Tribunals. They considered that in both interviews, the interviewees were not treated with respect but instead faced significant personal criticism and challenge and that, overall, the tone of the interviews was inappropriate.

Trustees noted that interviewers could reasonably deploy a range of techniques – including posing as a Devil’s advocate, repeatedly returning to one point where an interviewee did not address an issue and interrupting an interviewee who did not address the question put to them. They considered these approaches were part of the ‘grammar’ of interviewing, were widely understood by audiences and did not indicate a failure to be impartial on the part of the presenter. However, on this occasion, they noted the presenter had referred to his own opinions about the matter in a way that was unequivocal. For instance, when interviewing the representative of the Christian Legal Centre, he stated that the prison had been right to take formal disciplinary action against its employee.

The Trustees acknowledged that the presenter regretted that he might have appeared to be opposed to Christianity, or religion generally, when this was not the case. They noted that in particular he regretted the comment he had made about some Christians being “patronising” and “superior”. However, Trustees considered that the presenter should have been able to robustly and properly challenge the interviewees without recourse to personal attack and without taking a personal position on it. They noted that a final interviewee from the Gay and Lesbian Christian Movement was able to challenge the views of the two previous interviewees in a manner that was measured and productive.

Trustees had been concerned to note that there had been recent occasions when other local radio stations had broadcast output that had included the presenter’s own views on a particular subject. They noted that these included the broadcast of comments by a presenter that were potentially offensive and which exceeded the expectations of the audience. They considered that it was of the greatest importance to the BBC that its output reflected the widest range of opinion and did not stifle debate. They believed that the BBC’s local radio output had a critical role to play in terms of enabling the widest possible public debate and that local radio presenters had considerable leeway to be provocative to engage audiences. However, they considered that where presenters appeared to defend a particular stand on an issue in an inappropriately combative manner the effect was not to broaden debate but was likely to be the opposite – as potential callers might be less likely to contact a radio station if they felt they would not receive a fair hearing.

They noted the BBC Executive had stated that new training would take place across local radio to increase understanding of this subject by production teams and presenters. They considered this was an appropriate way of learning from the recent breaches of Editorial Guidelines and ought to strengthen the BBC’s output.

**They considered this output was in breach of the Guidelines for Impartiality.**

# 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.

## More or Less, World Service, 3 March 2012

### The complaint

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold complaints arising out of an edition of the BBC Radio 4 programme *More or Less* broadcast on the World Service on 3 March 2012, and published soon afterwards as an online article. The programme and article gave a brief overview of issues arising from the "\$1-a-day-statistic" used in global poverty discussions, in particular exploring the fact that this statistic was "a lot more complicated, and controversial, than it at first appears".

The complaint at Stage 1a made on 27 May 2012 comprised several objections claiming breaches of either the accuracy or impartiality sections of the Editorial Guidelines:

- (a) in terms of accuracy, that terms used in the programme were either incorrect (such as the reference to "basket of essential goods" rather than "basket of goods and services") or were misleading in the particular context (such as the use of the term "consumption", which was likely to be misunderstood by listeners/readers, given its particular economic meaning)
- (b) in terms of impartiality, that the presenter was biased, given his background, and/or that the programme gave too much weight to particular economic concepts promoted by the World Bank and others. To that end, the programme demonstrated "systematic bias" overall.

The editor responded on 8 November 2012 largely rejecting the complaint. Noting that the format and limitations of the programme meant material was necessarily simplified, the editor explained this was necessary "to explain to a non-expert audience the history of dollar-a-day and to raise some of the problems surrounding it". In his view, the complainant's criticisms appeared to arise largely from the fact that, although the programme tackled some issues relating to the dollar-a-day statistic, it "did not focus on the problems with dollar-a-day that you feel are most important..." Notwithstanding these conclusions, the editor amended the online article by removing the word "essential" in the description of the phrase "basket of goods", in recognition of one of the complaints.

The complainant next made a Stage 2 complaint to the ECU, rather than renewing his complaint for a further response at Stage 1: the absence of a Stage 1b process was not identified by the ECU. The Stage 2 complaint was first filed on 6 December 2012 but was not received by the ECU until 31 August 2013. The complainant summarised his complaint to the ECU as claiming “bias, factual error and/or other breaches of BBC editorial guidelines over an extended period in coverage of global poverty”. He also requested an “investigation into the handling of all my related complaints and complaint-handling complaints”.

The ECU gave a provisional response on 7 January 2014 but this misunderstood the complaint as relating to an edition of a different programme. The provisional ECU conclusion at this point was that the complaint should be rejected on the basis that the Editorial Guidelines had not been breached. The ECU noted that only “due accuracy” was required, concluding that, although there appeared to be no factual errors in the complaint (where his points could be verified), his points “seem ... to apply a more exacting standard of accuracy than would be expected in items intended for a non-specialist audience”.

In response (1 February 2014) the complainant attempted to expand his complaint, first, to include objections to the programme discussed by the ECU, and second, arguing that his complaint “was in fact about several editions of *More or Less*, and a documentary series”. Briefly, he claimed that the ECU’s provisional response failed to take into account the proper context of the programme and particular factual errors, failed to address his complaints of “systematic bias”, and failed to properly explain aspects of its reasoning.

The ECU’s finding was issued on 3 June 2014. This acknowledged the error in the provisional response but nonetheless rejected the complaint for the reason already given. The ECU also concluded that the complaint was materially limited to the *More or Less* edition of 3 March 2012 and the accompanying online article; much of the other content had been broadcast or published a long time ago and “we don’t undertake to investigate complaints made more than 30 working days after the material complained of was broadcast or published online except where there’s an issue of unfairness to the complainant or infringement of the complainant’s privacy...”

The complainant responded on 27 June 2014 requesting information to assist with an appeal to the Trust on this and other complaints. The ECU did not substantively respond to this request until summer 2015, when it replied as follows:

“...With hindsight, I realise that the step I should properly have taken, at some point subsequent to your email of 28 May 2014, was to make clear that I regarded our correspondence in relation to your original complaint as being concluded with my letter of 3 June [2014] finalising my finding, and that I could consider no complaints about other items unless they had been lodged within the timeframe prescribed in the BBC’s editorial complaints procedure and had been through the first stage of that procedure. Other than the original complaint, I’ve found no complaints in our previous correspondence which meet those criteria, and there is therefore no basis on which I could to [sic] respond to them. It occurs to me that my failure to make this clear until now may have left you in doubt as to whether it was appropriate to appeal to the BBC Trust in connection with your original complaint, and I apologise if that’s the case.”

## Appeal to the BBC Trust

The complainant submitted an appeal to the Trust on 18 August 2015, including references to many external resources and claiming to be directed against particular editions of various programmes, including the specific *More or Less* programme at issue, as well as “[a]ll complaints which the [ECU] has refused to answer”. It essentially repeated the original complaints as to accuracy and impartiality.

### The Trust Adviser’s decision

The Trust Adviser (the Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and she did not consider that the appeal had a reasonable prospect of success, and accordingly concluded it would not be appropriate, proportionate, or cost-effective for any element of the complaint to proceed to appeal.

In relation to the *More or Less* complaint the Adviser’s specific conclusion was that, for similar reasons as given by the ECU at Stage 2, the complaint should be dismissed as the programme was duly accurate. As regards the purported complaints about other BBC content, the Adviser made the following points:

- (a) at least one of the complaints had already been dealt with by the Trust in a separate appeal in June 2015
- (b) the complaint was out of time in relation to these complaints generally and there was no good reason to consider these exceptionally now
- (c) the Adviser separately considered a complaint about the ECU’s decision not to respond further to a complaint about the *Don’t Panic* broadcast of 7 November 2013 and decided that the Trust would be likely to conclude that the complaints “involved a level of detail which would be inappropriate for material addressed to a non-expert audience in a programme which attempted to convey complex information in a simple way” and that the decisions about what to include were editorial ones that rested with the Executive.

### Request for review by Trustees

The complainant lodged appeals for review of the above decision (22 October 2015) and a handling complaint appeal (14 October 2015). In summary: the substantive complaint repeated objections to the *More or Less* programme of early March 2012 and other, ostensibly related, programmes, claiming breaches of the accuracy and impartiality sections of the Editorial Guidelines

the handling complaint raised objections about how various of the complainant’s complaints about global poverty discussions across different BBC content had been dealt with by the BBC Executive and the Trust, claiming “an accumulation of problems causing a lack of due accuracy” and “cumulative error and/or omission causing a lack of impartiality”: in other words, the handling complaint is also largely focussed on the issues of accuracy and impartiality described in the substantive complaint, the main difference being the introduction of the argument that, even if accuracy or impartiality failings are minor in any one instance of BBC conduct, when considered cumulatively they amount overall to breaches of the Editorial Guidelines. The complainant also argued that various

of his complaints had not progressed through stage 1 or 2, and that the BBC (and/or the Trust) had erred in [not] considering particular complaints out of time.

## **The Panel's decision**

### ***Substantive application***

The Panel considered the points made by the complainant and the information he supplied in support. Trustees considered the test to be applied was whether the appeal raised a matter of substance (Framework Agreement between the BBC and the Secretary of State for Culture Media and Sport, [89](4)(b)), taking account of whether taking the appeal would be appropriate, proportionate, and cost-effective in light of the importance of the appeal and its chances of success.

The Panel decided that this appeal did not raise a matter of substance. They noted, in particular, that BBC complaints framework Procedure no.1: Editorial Complaints and Appeals Procedures advises at footnote 18: "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". Trustees considered that the appeal was directed largely towards issues of accuracy which were of minor importance in the overall context of the programme. For example, the "basket of essential goods" issue was of relatively minor importance here, but the arguments were technical and complex, both generally and in light of the way the complainant had articulated them. Indeed, the application for review itself pointed out that some of the complaints were "quite technical" and "would seem to need a more thorough investigation" requiring at least a "basic understanding of the controversies, and methodology documents".

The same process of reasoning applied in relation to the complaints about impartiality. Although these complaints appeared not to have been directly considered by the BBC Executive or the Trust Unit, Trustees concluded that these complaints – e.g. the allegation that the presenter was biased, and that too much weight was given to particular economic ideas, including those supported by the World Bank and other organisations – raise no issue of substance. There was no evidence of bias on the part of the presenter, and while the programme presented certain views in relation to economic ideas (articulated by the World Bank and others), this was both necessary in the context of a brief programme and (therefore) justifiable as an editorial decision of those making the programme. Moreover, the fact that the programme expressly acknowledged and outlined particular disagreements over the key economic concept it discussed (the dollar-a-day statistic) was positive evidence of the application of due impartiality (see Editorial Guidelines, [4.4.2]).

### ***Handling complaint***

The handling aspect of this complaint raised objections in relation to various decisions (or failures to make decisions) on the part of both the BBC Executive and the Trust Unit. Noting that the relevant BBC guidelines (BBC complaints framework Procedure no.7: Complaints about Handling and Complaints about the Trust, Trustees or the Trust Unit), indicate that the Trust would normally consider handling complaints about BBC Executive decisions only after these have been considered by the Executive (see [2.4] and [2.7] of Procedure no.7), Trustees thought it was unclear the extent to which the various complaints had gone through the process contemplated in those procedures.

Trustees agreed, however, that it was open to them to determine the handling appeal here on an overall basis, given that Procedure no.7 itself contemplates discretion on the part of the BBC Executive and Trust here (see [1.1]). In particular, they considered it would not be cost-effective to consider each handling complaint separately in these circumstances.

Following that approach, Trustees declined to accept the handling complaints on the grounds that they did not raise a matter of substance. Trustees were satisfied that:

there was no substance to the complainant's allegations of bias / a conflict of interest on the part of the ECU, a claim based on the fact that the ECU had considered previous complaints by the complainant. It is clear, for instance, that the relevant Procedure contemplates at, e.g., [2.1] that handling complaints be made in the first instance to the BBC Department considering the particular substantive complaint said to have been mishandled

the handling complaint largely repeated the same substantive complaints about accuracy and impartiality breaches, which should properly be presented as a substantive appeal and, for the reasons given above, did not raise an issue of substance in any event (even when considered on a "cumulative" basis);

the complainant also appeared to have delayed without good reason in complaining about many of these handling issues, and late handling complaints will be considered only where, "exceptionally", there is a good reason for the delay (Procedure no.7, [2.2] and [3.2]). No such good reason appeared in the documentation.

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 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 Procedure<sup>5</sup> explains that:

At all stages of this Procedure, your complaint may not be investigated if it:

fails to raise an issue of breach of the Editorial Guidelines; or

is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In all of the following cases the complainants had appealed on the substance of their complaints but as BBC Audience Services had ceased handling the complaints at Stage 1 the point put to the Trustees was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

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

The Committee was provided with the complainant's correspondence with the BBC, the complaint's appeal/s to the Trust, the response/s from the Trust Unit and the complainant's request/s to review that decision. The Committee was also provided, where appropriate, with the relevant broadcast or published content.

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

# Decision of BBC Audience Services not to respond further to a complaint about a health related-documentary aired on BBC One, in 2015

## Background

The complaint concerned a health documentary which was broadcast on BBC One in 2015.

## Complaint

The complainant made a number of allegations regarding the external activities of the programme's presenter, which the complainant believed had brought the BBC into disrepute. These allegations were set out in detail in the complainant's correspondence.

The complainant asserted that the presenter's external activities breached editorial guideline 15.4.5 which states that "the external activities of BBC editorial staff [...] should not bring the BBC into disrepute" because:

- The presenter had breached the law by posting photographs of armed conflict online.
- The presenter did not display an appropriate level of concern for those caught up in armed conflict.
- The presenter had links to two charities that the complainant believed to be disreputable.

BBC Audience Services made the following points in response to the complainant:

- The presenter was a practising doctor, and was already part of the presenting team for another health series.
- The documentary in question was commissioned by BBC Science, alongside another documentary, for BBC One. It was felt appropriate for both programmes to have a presenter with medical expertise, and in both cases a presenter from the health series was selected.
- A primary consideration in selecting this presenter was the presenter's particular interest in the subject, having previously presented related items for the health series. Furthermore, the presenter was prepared to undergo medical tests on camera, the results of which would give the audience insights into the body.
- In the event, the presenter delivered the programme content with the mix of authority and personal engagement that was required to make the subject accessible to a non-specialist audience.
- No criminal charges had been brought against the presenter in relation to the publication of photographs online, and no judgments had been issued against her. Any such proceedings would be taken into account when considering a presenter's suitability for a role.

- The presenter's role as a presenter did not break any Editorial Guidelines on Impartiality or Conflicts of Interest, and there were no grounds to exclude the presenter from BBC programmes.

The complainant wrote to the BBC Trust following a further response from Audience Services which stated that 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.

### **The Trust Adviser's decision**

The Trust Adviser (the Adviser) understood that BBC Audience Services had ceased handing this complaint at Stage 1 and had not offered him the opportunity to seek a further response at stage 2 and so 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 it did not for the following reasons:

- She noted that the complainant had made no complaint of a breach of editorial standards arising from the content of the output in question. Instead, he had made allegations that were not directly related to the output. He had also sought to revive a complaint that had previously been considered by the ESC.
- In her view, decisions about the choice of presenter concerned the direction of the BBC's editorial and creative output, and were therefore not a matter for the Trust, unless they gave rise to a potential breach of the Editorial Guidelines.
- The Adviser also noted the allegation that the presenter's external activities had breached Editorial Guideline 15.4.5 and brought the BBC into disrepute, however:
  - the photographs that were the subject of complaint were no longer publicly available online and, in any event, the presenter had not been charged, prosecuted or convicted in connection with the publication of any of those photographs. Until the legality had been determined in a court of law the allegation that the presenter had breached humanitarian law was unproven.
  - the charity had not been charged, prosecuted or convicted in connection with any alleged illegal activity, and there was no evidence that, when working as a doctor for the charity, the presenter had engaged in any illegal activity.
  - the presenter did not have a high media profile and had parallel careers in medicine and drama, so was unlikely to be closely associated with the BBC in the public mind. Furthermore, viewers of health programmes such as the documentary at issue would be likely to associate the presenter primarily with previous appearances on health programmes, and would be unlikely to be aware of, or concerned with, the presenter's interests outside work.
  - the Adviser believed Trustees would be likely to conclude that the presenter's lawful personal activities (including online activity, charitable work and political affiliations) had no significant bearing on the public's perception of the BBC and did not give rise to any potential breach of the

Editorial Guidelines. The Adviser also believed that Trustees would be likely to conclude that the content of the fictional work written by the presenter was not relevant to this appeal, and that the complainant had not provided any credible evidence of the presenter's alleged lack of concern for the physical and psychological wellbeing of those caught up in armed conflict.

- Overall, Trustees would be likely to decide there was no evidence that the presenter had undermined the public's perception of the impartiality, integrity or independence of BBC output or, through any external activities, had brought the BBC into disrepute.

On this basis, the Adviser replied to the complainant and said that in her view the appeals did not have a reasonable prospect of success and it was not appropriate, proportionate or cost-effective to proceed with the appeal.

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

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

- The photographs had been available for some years up to September 2015
- The Adviser's decision said that the allegation that the presenter had breached humanitarian law was unproven yet later took the clear view that the publication was legal
- He referred to a memorandum provided by a human rights lawyer he had submitted which he said the Adviser had not viewed
- The Adviser had said that there was no evidence that the charity had engaged in illegal activity but the complainant referred to a complaint he had submitted to the Charity Commission which was being investigated and he had submitted additional photos
- The other arguments by the Adviser (regarding the presenter's lack of a high media profile; that viewers would associate the presenter with previous appearances rather than any outside work; that the presenter's lawful personal activities had no significant bearing on the public's perception of the BBC and did not give rise to any potential breach of the Editorial Guidelines), all seemed beside the point.
- He considered he had advanced evidence that supported his allegation that the presenter had breached international humanitarian law and that such an action did threaten to undermine the public's perception of the impartiality, integrity or independence of BBC output.

### **The Panel's decision**

A panel of the Committee noted the points made by the complainant, the BBC and the Adviser and all of the documentation provided in support of his complaint, including the memorandum provided by a human rights lawyer.

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 not be likely to uphold the complaint given that:

The presenter had not been charged, prosecuted or convicted in connection with the publication of any of the photographs or in regard to work for the charity

- The charity concerned had not been charged, prosecuted or convicted in relation to illegal activity. Trustees did not consider that the fact of a complaint submitted to the Charities Commission by the complainant himself sufficient evidence, especially in the absence of any adverse finding by the Commission (which was the appropriate body to investigate such matters).
- There was no evidence to suggest that the external activities of the presenter had brought the BBC into disrepute or could undermine the public's perception of the impartiality, integrity or independence of BBC output.
- The complainant had received a reasoned and reasonable response to his complaint.

**The Panel 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 Late Night Woman's Hour, BBC Radio 4

The complaint concerned the content of Late Night Woman's Hour which the complainant considered inappropriate for broadcast.

The complainant made the following points:

- on three recent occasions he had to switch off the programme because of the "appalling nature of the so-called debates which were vile and not appropriate for broadcasting on any station."
- he supposed that the programme was aimed solely at women and he found this audience selectivity extremely disturbing for a national radio station
- he did not consider that pre-broadcast information signposting the programme's content was acceptable. He found the content offensive and inappropriate for any time of day or night.

Audience Services made the following points:

- Late Night Woman's Hour was billed as featuring mischievous and unbridled conversation between studio guests on a range of subjects, such as identity, shame in the 21st century and the demise of transgressive culture in society
- the complainant had not mentioned specific topics that he felt were aimed only at women but the programme was not gender-exclusive and nearly half the audience was male. Subjects covered affected society as a whole
- they acknowledged that some programmes would not appeal to some people and that was the nature of broadcasting to a diverse audience with different expectations
- Late Night Woman's Hour was only being broadcast for a limited run of four weeks and the schedules would return to normal once the series ended.

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

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

- he believed the programmes breached editorial guidelines on 'Generally Accepted Standards' of Harm and Offence
- he did not see what editorial purpose the programmes had other than titillation as they bordered on the pornographic
- the language in the programmes was not editorially justified
- he did not think the audience was treated with respect.

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) carefully reviewed the correspondence that had passed between the complainant and the BBC. The Adviser understood that BBC Audience

Services had decided not to correspond further with the complainant after stage 1 and had not offered him 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 it did not.

The Adviser noted that all BBC output was required to meet the standards set out in the Editorial Guidelines. These are publicly available and can be found in full through this link: [www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines).

She noted that the introduction to the section on Harm and Offence stated:

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

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

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

The Adviser noted that audiences did not have a right not to be offended (which would be an impossible requirement) but that the BBC had to balance its right to transmit content with the need not to cause "unjustifiable offence". In reaching this balance, the BBC had to bear in mind whether there was editorial justification for transmitting potentially offensive output. The BBC was also required to consider what sign-posting there was and what audience expectations of output would be.

The Adviser acknowledged that the complainant found the content of Late Night Woman's Hour offensive and believed it to be in breach of BBC Editorial Standards. However, she noted that he had not referred to any specific content and therefore she could not address his concerns in detail.

The Adviser noted that Audience Services had referred to signposting of the content of Late Night Woman's Hour, and stated that it was: "... billed as featuring mischievous and unbridled conversation between studio guests on a range of subjects, such as identity, shame in the 21st century and the demise of transgressive culture in society." She also noted the following generic information about the series on Woman's Hour's online pages:

Late Night Woman's Hour - Lauren Laverne and Jane Garvey are taking Woman's Hour Late Night for a special four week run. Starting on the 13 August on Thursdays and

Fridays, live at 11 pm they'll be joined by a group of guests for intimate, frank and funny conversation about lust, lies, dating, drinking, fandom, fantasy and identity.

She noted that the complainant had stated that he had been unaware of the signposting: "My personal listening is to tune in when I am so inclined and will almost certainly NOT have listened to a puff for the programme beforehand."

The Adviser regretted that the complainant had missed relevant signposts and so not been aware of the style and content of the programme. The Adviser noted the programme differed significantly to regular Woman's Hour broadcasts, but considered Trustees would be likely to conclude this had been signposted to audiences – not least through the programme's name. Based on the information supplied by the complainant, she had not seen information that she considered would lead Trustees to conclude that there had been a breach of Editorial Standards.

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board in terms of decisions about the BBC's editorial and creative output. Decisions about the content of Late Night Woman's Hour were made by the programme editors and the Trust would only become involved if there was evidence to suggest a possible breach of Editorial Standards, which the Adviser did not believe Trustees would consider to be the case in this instance.

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 said that:

- Mediawatch-UK had advised him that programmes must meet with 'generally accepted standards' and his legal rights were being over-ridden in the quest for ratings.
- He asked how the BBC calculated that "nearly half the audience was male?" He asked how that was relevant to his complaint.
- In their "signposting" the BBC had apparently said, "identity shame in the 21st century and the demise of transgressive culture in society" were part of the so-called debate. He asked what that meant and suggested it was designed to obscure the nature of the programme.
- He had been told again that "Late Night Woman's Hour was only being broadcast for a limited run of four weeks and the schedules would return to normal once the series ended." He said that now appeared to be factually incorrect, and considered it might be duplicitous in light of the decision to broadcast another programme.
- He did not believe that the BBC had set out to, "avoid unjustifiable offence." He believed the editorial team were pushing the barriers to see just how far they could go down the path of "aural pornography" ..

- He asked for what reason would he have accessed Woman's Hour's online pages. He asked how this could be used as a justification of the "signposting" for the abusive Late Night Woman's Hour material?
- He did not agree that the name of the programme 'Late Night Woman's Hour' gave a clue as to the content of the programme.

### **The Panel's decision**

Trustees acknowledged the points made by the complainant, the BBC and the Adviser.

Trustees noted that the issue in front of them was whether the decision by Audience Services not to correspond further with the complainant was correct.

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

- The BBC had to balance its right to transmit "innovative and challenging" content with the need to avoid "unjustifiable offence".
- Trustees believed they would be likely to conclude that there was editorial justification for broadcasting content with the potential for causing offence to some viewers in Late Night Woman's Hour, and they considered there was adequate signposting in place for the protection of the audience, though they acknowledged that the complainant strongly disagreed with this view.
- The Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board in terms of decisions about the BBC's editorial and creative output. Decisions about the content of Late Night Woman's Hour were made by the programme editors and the Trust would only become involved if there was evidence to suggest a possible breach of Editorial Standards, which Trustees did not believe to be the case in this instance.

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