

# Editorial Standards Findings

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

February 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  
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London W1W 5QZ

# Summary of findings

## Panorama: GM Food - Cultivating Fear, BBC One, 8 June 2015

Two complainants contacted the BBC to complain that an edition of *Panorama* about the new generation of GM foods misled the audience by making a claim of success for a GM aubergine crop which is not supported by the evidence.

The Committee concluded that:

- when stating that “this season more than 90 per cent of the GM trial plots have been successful”, it would have been preferable had the programme explicitly stated that the 90 per cent success referred to the crop’s ability to resist a particular caterpillar, rather than to the success of the crop overall.
- the audience would not have been misled on a material fact (i.e. the success of the crop overall) because the purpose of the trials had been clearly stated elsewhere in the commentary, prior to the statistic being cited: the aim of the farm trials was to test the ability of the GM aubergine crop to resist the caterpillar and thus to reduce the use of harmful pesticides.
- the audience would not have been misled even if they had taken the statistic to refer to the success of the crop overall. The indication from data gathered by the Bangladesh Agricultural Research Institute and seen by Cornell University (the source of the 90% statistic) is that failure for other reasons amounted to no more than ten per cent of the trial sites.
- the programme was duly accurate in reporting data which was neither peer-reviewed nor published.
- in considering the programme’s decision not to include interviews with farmers for whom the crop had failed, Trustees decided the issue to determine was whether what was broadcast, what was omitted and the way information was presented demonstrated that *Panorama* had done all it could to ensure due accuracy and due impartiality.
- while *Panorama* had presented the trials of the GM aubergine crop as an unqualified success despite some farmers who had participated in the trial having expressed to *Panorama* their concerns, the view that the trial had been a widespread failure was not sustainable on the basis of the available evidence.
- the programme took sufficient steps, in the circumstances, to investigate the allegations. Having reached that view, the Committee did not consider that any of the material gathered by *Panorama* during its investigation of those allegations required to be reflected in order for the programme to achieve due accuracy and due impartiality.
- the programme met the requirements of 3.2.1 of the Accuracy guideline in that it did all it could to ensure due accuracy and also the requirement of 4.4.1 of the Impartiality guideline, in that it was fair and open-minded when examining the evidence and weighing material facts.

- that the programme met the requirements of 3.1 and 3.2 of the Accuracy guideline in how it reflected safety concerns about the GM aubergine crop: a comment that there was “nothing scary” about the crop was clearly attributed and the audience had been provided with the contributor’s credentials; it was well-sourced and based on sound evidence, and relevant opinions from those offering an alternative view were also reflected.
- in deciding whether a scientist from Cornell University had a conflict of interest which should have been shared with the audience (regarding connections with biotechnology), the relevant point was that the audience understood that the statistic in the programme was provided by Cornell University, who had been identified as stakeholders, monitoring the trials on behalf of USAID. Trustees did not consider information relating to the scientist’s previous employment or research constituted relevant facts which needed to be shared with the audience. Trustees decided therefore that the programme met the requirement for due accuracy and due impartiality in this regard.
- the programme had achieved due accuracy and due impartiality in the way it reflected the role of Monsanto (an agricultural company). In accurately stating Monsanto’s direct interest in the project and in reflecting the reporter’s professional judgement that the exercise could sway the public argument over GM, *Panorama* gave the audience sufficient information to reach an informed view on the issue.

The complaint was not upheld

## The Stephen Nolan Show, BBC Radio 5 Live, 3 April 2015, and more generally

The complainant contacted the BBC to complain that the selection of the paper reviewers on *The Stephen Nolan Show* on Radio 5 live on 3 April 2015 (and more generally) was not impartial in the run up to the General Election 2015.

The Committee concluded that:

- the paper review of 3 April and the paper reviews across the Election Period met the requirements of the BBC's Editorial Guidelines (and where applicable Election Guidelines) on Impartiality.
- there was a sufficient range of views across the political spectrum for the Guidelines to have been met in the run up to the election, when the parties were to be treated as separate entities.
- as the BBC had reached the (correct) opinion that this complaint from a member of the public did not amount to a breach of the guidelines it was appropriate to answer the complaint within the usual time-frame. Trustees did not uphold on the complaints handling aspect of this appeal.

The complaint was not upheld.

Trustees were made aware that this appeal had taken longer than it should have done to reach them. This was due to administrative errors within the Trust Unit. The Committee apologised to the complainant for this regrettable delay.

# Appeal Findings

## Panorama: GM Food - Cultivating Fear, BBC One, 8 June 2015

### Background

This edition of *Panorama* was broadcast in June 2015 and discussed a new generation of genetically modified (GM) foods that had been persuading governments and former critics that the technology could be a force for good. The programme reported that by changing the genetic structure of a staple food crop – in this case the aubergine – farmers could hope to get a higher yield with the use of less pesticide, thus bringing food security and health benefits to the developing world. *Panorama* posed the question of whether those who oppose GM might be doing more harm than good and sought to examine the evidential base for their safety concerns.

### Appeal to the Trust

The complainants raised concerns about a section of the programme that showcased farm trials in Bangladesh of a GM version of aubergine. They made the following assertions:

- the output was inaccurate and biased because it misled viewers by making a claim of success for the GM crop, known as Bt brinjal, which was not supported by evidence and which was contradicted by the experience of a considerable number of farmers, some of whom *Panorama* spoke to but chose not to feature in the programme.
- the scientist said by *Panorama* to have been one of its sources for validating the success of the trial had conflicts of interest which should have been disclosed to the audience.
- the programme failed to make clear Monsanto's links to the project.

### The programme

*Panorama* filmed in a number of locations in the UK and spoke to a range of voices about health concerns and government policy in relation to GM foods. The heart of the programme was a case study from Bangladesh:

- it showed how genetic modification appeared to be protecting a staple food crop – the aubergine - from the fruit and shoot boring caterpillar
- 108 Bangladeshi farmers were trialling a genetically modified version of the fruit which had been designed to resist the caterpillar and therefore to enable the crop to be grown with what the reporter said was “nearly no pesticide”.
- *Panorama* visited one of the trial farms and was shown the Bt brinjal growing in the fields. The farmer, Hafizur Rahman, told *Panorama* he was very happy with the crop. When Mr Rahman had previously grown the non-GM aubergine he had sprayed chemicals onto his fields twice a week, primarily to combat the caterpillar.
- *Panorama* was accompanied on the visit to Mr Rahman's farm by the author and environmental campaigner, Mark Lynas. The commentary said that Mr Lynas had fought against GM for two decades, but in 2013 he had a change of heart and was now the spokesman for the scientists in the United States who were monitoring the trial.

- the commentary noted that:
  - the trial was backed by USAID money and America's Cornell University.
  - the seed had been given for free by the Bangladesh government and farmers could keep them for the following year's crop.
  - after a false start the previous year, more than 90 per cent of the GM trial plots had been successful; the statistic was sourced to Cornell University.
- on an organic farm elsewhere in Bangladesh *Panorama* spoke to an anti-GM activist who was not convinced of the benefits the GM crop would bring and spoke of her concerns that if the plant was toxic to the caterpillar it would be to humans too.
- in an interview with the Bangladesh Agriculture Minister the reporter explored the issue of whether the project was "truly free and independent of big agri-tech" or whether it was "in the pocket of Monsanto".
- the reporter put to Mark Lynas that it felt to him very much like the project was "part of a corporate push to make GM acceptable".

### **Applicable Editorial Guidelines**

The editorial guidelines on Accuracy and Impartiality are applicable to this complaint. The full guidelines are at [www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines)

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

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) a report from an Independent Editorial Adviser and subsequent comments from *Panorama* and from one of the complainants.

### **Point (A) - The statement in the programme claiming a 90 per cent success rate was not properly sourced and was misleading**

The Committee noted the clauses from the Accuracy guideline most relevant to their consideration

- We must do all we can to ensure due accuracy in all our output.
- All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation. Claims allegations, material facts and other content that cannot be corroborated should normally be attributed.
- In all our content we must check and verify information, facts and documents, where required to achieve due accuracy. If we have been unable to verify material sufficiently, we should say so and attribute the information.

The Committee noted that the complaint on this point related to a script line in the commentary:

"After a false start last year, this season more than 90 per cent of the GM trial plots have been successful."

Source: Cornell University [on-screen caption]

The Committee noted the complainants' points:

- *Panorama* failed to qualify the claim by clarifying that it only referred to the crop's resistance to a single trait (the fruit and shoot boring caterpillar) and did not take account of other problems which affected the yield.
- the audience would have taken it to have meant the overall success of the crop.
- neither Cornell University nor the government agency running the trials, the Bangladesh Agricultural Research Institute (BARI), had provided documentation for the claim.

The Committee noted the ways in which the programme sought to achieve due accuracy. Firstly, the Committee considered whether it was made clear in the programme what constituted success in this context. It noted how the programme signposted its focus in the opening section of the Bangladesh segment in which it was stated that 108 farmers in Bangladesh were taking part in a government trial to grow a genetically modified variety of aubergine:

"The aim of BT Brinjal is to cut pesticide use and boost the yield. Hafizur used to spray chemicals twice a week to protect his crop. It's expensive and bad for the farmer..."

"In Bangladesh, farmers use pesticides on aubergines more frequently than on any other crop. They're battling the fruit and shoot boring caterpillar."

The Committee noted that the statement in the commentary that "this season more than 90 per cent of the GM trial plots have been successful" followed directly after the statement from a contributor, Mark Lynas, that the genetic modification was "a way of protecting a crop against an insect pest".

The Committee noted that there had been a clear attribution in an on-screen caption to Cornell University as the source of the 90 per cent success statistic. It noted too that 30 seconds earlier it was stated in the commentary that "the trial is backed by USAID money and America's Cornell University".

The Committee noted the submissions by the programme citing the underlying research it had undertaken to evidence the 90 per cent success figure:

- on 22 March 2015 the Bangladesh Agricultural Research Institute (BARI), the government agency running the trials, issued a rejoinder to an article which had been published earlier that month in a Bangladeshi newspaper.
- the article alleged that the trials had not been successful and that the caterpillar had been observed in the Bt brinjal crop in at least one participating farm.
- the statement from BARI said that "no shoot and fruit borer is seen in the BARI Bt brinjal varieties".
- BARI also said that a total of 12 farmers' plots out of 108 participating in the trial were affected in different degrees by bacterial wilt and other insect and pest.
- *Panorama*, having been made aware of the newspaper article whilst preparing the programme, visited a number of farms identified to it by the journalist concerned and had not seen any evidence of the fruit and shoot boring caterpillar in any of the trial fields.

- neither did the farm visits provide evidence to support the article's claims of widespread crop failure overall.
- prior to broadcast the Panorama producer asked Cornell University for further information "to make sure we're being accurate. We don't want to underplay or exaggerate the benefits".
- Dr Frank Shotkoski of Cornell University said in a response:  
"Of the 108 farmers, more than 94% produced crops that performed very well."

The Committee noted the programme's acknowledgement that it went to air with data that was as yet unpublished but that:

- properly evaluated and peer reviewed findings from research projects take time to be drawn up, checked and published.
- "it was useful for viewers to have this information before publication ... to give some idea of the effectiveness of Bt brinjal".

The Committee noted that Dr Shotkoski responded to an invitation from the Independent Editorial Adviser to provide further clarification for this appeal:

Question:

Did the 90 per cent plus success claim in the programme refer only to the resistance of the crop from the fruit and shoot boring caterpillar or to the performance of the crop overall?

Answer:

- it relates to both resistance of the crop to the fruit and shoot borer and the successful cultivation of the crop.
- Bt brinjal is greater than 99 per cent able to resist the fruit and shoot borer. Greater than 90 per cent of the crops were successful in producing marketable brinjal.
- less than one per cent of the brinjal fruits were damaged by the fruit and shoot borer and less than 10 per cent of the fields were damaged/destroyed due to mismanagement leading to loss of the crop to bacterial wilt.

The Committee considered whether there had been a failure to achieve due accuracy in not clarifying what it meant by a 90 per cent success. The Committee noted from correspondence that the programme intended the statistic to be interpreted as referring to the crop's ability to resist the caterpillar. The Committee considered that it would have been preferable had the programme explicitly stated this when it cited the statistic, but it decided the audience would not have been misled on a material fact because:

- the purpose of the trials had been clearly stated elsewhere in the commentary, prior to the statistic being cited: the aim of the farm trials was to test the ability of Bt brinjal to resist the fruit and shoot boring caterpillar and thus to reduce the use of harmful pesticides.
- even if the audience had taken the statistic to refer to the success of the crop overall, the indication from data gathered by BARI and seen by Cornell University is that failure for other reasons amounted to no more than ten per cent of the trial sites.

The Committee considered its view on whether there had been a failure of due accuracy in reporting data which was neither peer-reviewed nor published. The Committee decided that

- the statistic was clearly sourced to Cornell University.
- the commentary had stated a few seconds previously that Cornell were monitoring the trials on behalf of USAID.
- Cornell University is a highly credible source and it was not necessary to also state that the data had not yet been peer-reviewed or published in order to achieve due accuracy.
- having clearly attributed the data to Cornell and having explained the University's role in the project, the audience would have had sufficient information to judge how much weight to place on the information.

In reaching its decision on this point overall, the Committee took into account underlying research conducted by *Panorama* prior to broadcast to check and verify information, in particular:

- the producer's request to Cornell for further information "to make sure we're being accurate. We don't want to underplay or exaggerate the benefits".
- the programme's independent visits to a number of trial sites to see the crops growing in the field.

Trustees decided therefore that the programme was duly accurate in this regard.

#### **Finding on Point (A): Not upheld**

#### **Point (B) - The programme visited farms and interviewed farmers where the crop had failed but did not include the interviews in the programme**

The Committee noted the clauses from the Accuracy guideline most relevant to their consideration:

- Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should also be weighed to get at the truth.
- The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences' trust in our content.
- In all our content we must check and verify information, facts and documents, where required to achieve due accuracy.

The Committee noted the clauses from the Impartiality guideline most relevant to their consideration:

- We must be fair and open-minded when examining the evidence and weighing material facts. We must give due weight to the many and diverse areas of an argument.

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

The Committee noted the complainants' contention that the Bt brinjal trial was effectively a failure and that the programme chose to ignore evidence available to it because of what one complainant said was a "pre-conceived agenda" to show the trial in a good light.

The Committee noted the detail of the complainants' assertions:

- there was evidence in an article published by the United News of Bangladesh (UNB) "that the crop suffered widespread failure, falling victim to bacterial wilt, dying off prematurely, and yielding fruit that proved unattractive in the marketplace".
- the UNB report published details of farms where it said the Bt brinjal had failed and said it had evidence of infestation by the fruit and shoot boring caterpillar in at least one field.
- one of the complainants had contacted the UNB journalist following the *Panorama* programme who had told her that 32 of the 40 farmers he had spoken to had experienced serious problems: some crops had failed altogether; one farmer had said he had harvested less than half the amount of the Bt brinjal he would have from a non-Bt brinjal field of the same size.
- farmers had also complained to UNB that their GM aubergines were not selling or were commanding lower prices than usual because people disliked the look, the texture, the taste and the shorter shelf life.
- the UNB reporter told the complainant that he was contacted by *Panorama* in April 2015 and that he had shared with the producer the contact details of eleven farmers who had had negative experiences with the Bt brinjal crop.
- the complainant who had contacted the UNB journalist said:

"none of these farmers' experiences featured in the programme, even though they appear to be fundamental to a balanced and accurate coverage of the Bt brinjal issue. Instead the programme asserted that 90% of farmers' Bt brinjal crops were successful this year."

- the Bt brinjal crop which was showcased in the programme failed shortly after *Panorama* had filmed: the UNB reporter had visited the farm on 20 June and Mr Rahman had told him that he had stopped taking care of his Bt brinjal "about one and a half to two months ago" because the plants had been slowly dying out.
- the complainant said given that fact, the BBC should have followed the GM crop through a complete growing season.

The Committee noted that further detail on the point appeared in an article which had been published on the GM Watch website.

The Committee also noted that a complainant had submitted an article critiquing the *Panorama* programme and written by Farida Akhter, an anti-GM activist whose concerns about the potential toxicity of GM crops were reflected in the programme. The Committee noted that:

- Ms Akhter had not complained directly to the BBC.

- the substantive points made by her in the GM Watch article, as they related to issues already raised by the complainants, had been or would be considered during the consideration of this appeal.
- the BBC Trust was not able to consider new points at the appeal stage to which the BBC Executive had not previously been given the opportunity to respond.

The Committee noted, as initially discussed in the previous point, that whilst the programme was being prepared, BARI, the Bangladesh government agency which was running the trial of the Bt brinjal, published a detailed rebuttal of the initial UNB allegations:

- BARI said the UNB report was “totally partial and worthless”.
- in a statement to the media BARI acknowledged there had been problems and some crops had failed, but that it could not be held liable for problems suffered as a result of the “wrong cultivation process”.
- 12 out of the 108 trial fields had suffered problems. These were not due to the fruit and shoot boring caterpillar, but to bacterial wilt and other insects and pests.
- no shoot and fruit borer was seen in the BARI Bt brinjal varieties. The non-Bt brinjal varieties had severe infection of shoot and fruit borer.

The Committee noted the programme had confirmed that it spoke to the UNB journalist after being made aware of the article and that:

- the team had visited a number of the farms he identified.
- based on what they saw and what they heard from the people they spoke to, they decided that the claims in the UNB article were not well-founded and did not need to be reflected.

The Committee noted the programme’s detailed response:

“We were aware of the reports of crop failure and went to some trouble to check them out before and after filming. On the ground we could find no evidence to support these accounts. In some cases they were contradicted on visiting trial sites. As a result they were not mentioned in the programme.

“Crop trials, on a scientific model, are designed to establish whether the properties found in the laboratory transfer to the field.

“*Panorama* was keen to see in this case whether the plants were able to deter boring insects and whether pesticide use was being reduced, as these were the potential advantages of this piece of technology. The question about crop health was germane but not central. But it was not ignored when the programme was researched and recorded.

“The producer spoke to three of the farmers from the five Bt brinjal farms he saw ... Mohammed Mannaf had cleared the Bt brinjal crops entirely from his field on the advice of BARI. He said that his crops had had problems with the roots and indicated there had been a disease with the crop. He was interested in compensation from BARI, but none had been forthcoming by that point.

“The producer also spoke to two further farmers, whose fields were still growing Bt brinjal. These farmers’ main concern was that the colour and texture of the brinjal was different from local varieties, which meant that local wholesalers and

customers were more suspicious. They said that because the product was new they weren't able to sell it for as high a price as they would have liked. Their father, Mohammed Lal Chand, who was quoted in [the UNB] report as saying that the fruiting of the brinjal crops was 'nowhere near the satisfactory level', told the producer that fruit from one of the varieties of brinjal 'are good and will sell'. He said the variety will be profitable and 'will benefit the farmer'. He said that in the past farmers had to spray lots of pesticides which caused medical problems.

"It does appear that some of the Bt brinjal crop which does not closely resemble traditional varieties was less welcome in Pouli [a town visited by the team] by some shoppers or marketeers who like what they know. However, there is also evidence that higher quantities of fruit may have flooded local markets suppressing prices offered to farmers. However when the team visited another part of Bangladesh, several hundred kilometres away, they did not hear this complaint when they interviewed a local farmer there.

"Market resistance, possibly short term, needs to be considered against the aim of reducing levels of pesticide use...

"In our judgment incidence of wilt in a few locations was not commensurate with claims of 'widespread crop failure'."

The Committee noted that *Panorama* had shared with the Adviser:

- the producer's notes of his off-camera conversations with farmers whose details it had obtained from the journalist who wrote the UNB article.
- transcripts and rushes of interviews and filming, none of which were in the programme.

The Committee noted that evidence gathered by the programme provided a mixed picture:

- the reduction in the use of pesticides was welcomed by the farmers *Panorama* spoke to.
- three of the six people *Panorama* spoke to unequivocally stated that the Bt brinjal was not selling well.
- this was partly because of suspicion of GM and partly because of the look, taste and texture which was different from what customers were used to.
- one farmer said his Bt brinjal was selling for less than half what he would generally get for the non-GM brinjal he had previously grown.
- another farmer expressed disappointment at the yield and marketability but noted that one variety of Bt brinjal he was growing was profitable: his father supported his view and said that variety would sell well.
- another farmer who had not done well thus far was optimistic. He said "the plants look good. As you can see they are impressive".

The Committee noted that the programme had asked Dr Shotkoski at Cornell University in an email prior to broadcast about the problems that had been reported. He had recently returned from a visit to some of the trial sites:

DR SHOTKOSKI:

The farms that did not perform well had problems with disease, mostly bacterial

wilt. The infections were due to improper irrigation of the crop.

PRODUCER:

Have all the crops shown themselves to be resistant to fruit and shoot borer?

DR SHOTKOSKI:

We have yet to find a single Bt brinjal fruit infested with eggplant fruit and shoot borer. The technology has been providing very good protection.

PRODUCER:

As you will have seen, there were articles that some fields failed and there was a suggestion that one field of crops wasn't resistant to fruit and shoot borer. Is this correct or is it something they [BARI] know about?

DR SHOTKOSKI:

I've seen these reports and I visited the fields described by these reporters. The information provided by these writers is incorrect. I can only assume that they were observing destruction of the non-GM refuge plants growing in the borders. The non-GM border plants are planted in close proximity to the Bt brinjal for an insect resistance management practice to help preserve the effectiveness of the technology. We expect these refuge plants to sustain heavy insect damage.

PRODUCER:

Have any farmers had crops fail?

DR SHOTKOSKI:

A few Bt brinjal crops failed due to severe bacterial wilt infection.

PRODUCER:

If so, how many and do BARI know what caused the crop to fail?

DR SHOTKOSKI:

These infections were the result of improper crop management (flood irrigation). Farmers were advised on proper crop management, but a few farmers didn't comply with our recommendations.

The programme noted that *Panorama* had been made aware that a complainant in her appeal to the Trust was claiming that the farmer who appeared in the programme had abandoned his Bt brinjal crop shortly after filming. The Committee noted that:

- *Panorama* asked a member of staff from the BBC Dhaka bureau, who had accompanied the *Panorama* team during filming, to contact the farmer.
- *Panorama* provided the email of 3 December it received from the Dhaka bureau:

I just had a chat with Hafizur [Hafizur Raman, Farmer]. he said he is still harvesting the same crop this year and h[i]s crop never [f]ailed after [o]ur filming was over.

The Committee noted that the Adviser asked Dr Shotkoski whether in his view, as one complainant contended, the programme had been broadcast too early in the growing season to reach meaningful conclusions about the trial's success:

DR SHOTKOSKI:

Airing the program in June was great timing. Most of the farmers had finished harvesting the brinjal by that time. The few farmers that continued to harvest beyond the airing of the program were able to be visited by those interested in seeing the crop.

The Committee noted Dr Shotkoski's responses regarding sales figures for the Bt brinjal:

ADVISER:

Do you have any data on the sales figures for the Bt brinjal: i.e. whether the GM fruits sold at a similar price to the non-GM in the marketplace? You will be aware of the claim that much of it was unsellable/it lost freshness too quickly/people didn't like it and therefore where it did sell it was sold at a much lower price than the non-Bt brinjal.

DR SHOTKOSKI:

That [the crop was unsellable] is complete fiction. The Bt brinjal fruits were in excellent condition and sold at a premium in the market place.

I wish that there was more detail regarding the sales figures and superior quality of the Bt brinjal fruit over the non-Bt brinjal. Fruit quality is subjective and difficult to measure in an objective economic analysis paper. The political unrest in Bangladesh at that time had a considerable impact on all vegetable sales and market price. Mostly due to the inability of trucks to manoeuvre from the rural areas into Dhaka, resulting in oversupply and unusually low prices in local markets.

The Committee noted that the Adviser had been given access to a draft of the scientific paper which is being prepared by BARI for publication in a scientific journal on condition that its detailed content remained confidential.

The Committee noted the guidance from the Adviser that whilst the draft paper did not include data analysing overall crop failure or concerning the performance of Bt brinjal in the marketplace, it did include detail about overall profit. The Committee was given to understand that the draft paper recorded significant cost advantage to farmers resulting from the reduction in the use of pesticides, and labour to apply them, which would usually account for 30 per cent of the overall cost of production.

The Committee noted that in considering this appeal, many months after the harvest had ended, it would be difficult and impractical to independently and definitively determine with any precision how successful or otherwise the trials had been. The Committee decided that the issue for it to determine was whether what was broadcast, what was omitted and the way information was presented demonstrated that *Panorama* had done all it could to ensure due accuracy and due impartiality.

The Committee acknowledged that *Panorama* had presented the trials of Bt brinjal as an unqualified success despite some farmers who had participated in the trial having expressed to *Panorama* their concern about the Bt brinjal: in some cases because the crop had failed and in others because consumers did not appear to like the colour, texture or taste and as a result it was not commanding the same price as the conventional brinjal.

The Committee considered the overarching requirements for due accuracy and due impartiality which underpin the Editorial Guidelines and which state:

"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 Committee considered:

- the programme had clearly signposted the focus of its ambition which was to examine whether a new generation of GM crops might be a game-changer in persuading governments and critics of the technology that it could be a force for good.
- the purpose of the segment from Bangladesh was to illustrate how this might be achieved.
- the programme had made clear that the aim of the genetic modification in the case of Bt brinjal was “to cut pesticide use and boost the yield” by repelling the fruit and shoot boring caterpillar.
- the extent to which the audience would either expect, or need to hear about, other factors which might affect the viability of Bt brinjal was limited.
- there was some evidence in the unpublished data that regardless of crop loss or marketplace resistance to the crop, the Bt brinjal would be more profitable to farmers and bring health benefits, directly as a result of using less pesticide.

The Committee considered that, had there been reliable evidence of widespread failure of the trial crops, for whatever reason, that would have been a relevant fact which needed to be reflected. However, having considered the following factors,

- the claim in the UNB article that the journalist “hardly found any living or properly fruiting plant” in the 12 field visits he had made.
- this was not *Panorama's* experience of the farms it visited.
- in some cases evidence in the article was contradicted when *Panorama* visited the same trial sites.
- BARI had said that the UNB article was “totally partial and worthless”.
- evidence seen by the Adviser suggested that the overall yield in the Bt brinjal fields which participated in the trial was higher than for the comparable conventional crop during the same period.

the Committee concluded that the view that the trial had been a widespread failure was not sustainable on the basis of the available evidence.

The Committee decided that the programme took sufficient steps, in the circumstances, to investigate the allegations. Having reached that view, the Committee did not consider that any of the material gathered by *Panorama* during its investigation of those allegations required to be reflected in order for the programme to achieve due accuracy and due impartiality.

Trustees decided therefore that the programme met the requirements of 3.2.1 of the Accuracy guideline in that it did all it could to ensure due accuracy and also the requirement of 4.4.1 of the Impartiality guideline, in that it was fair and open-minded when examining the evidence and weighing material facts.

### **Finding on Point (B): Not upheld**

### **Point (C) – whether the programme was duly accurate in how it reflected the safety of Bt brinjal**

The Committee noted the relevant clauses from the Accuracy guideline:

- Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.
- If an issue is controversial, relevant opinions as well as facts may need to be considered.
- We should normally identify on-air and online sources of information and significant contributors, and provide their credentials, so that our audiences can judge their status.

The Committee noted the point related to the claim made in the programme by Mark Lynas that there was “nothing that scary” about the Bt brinjal; genetic modification was “just a way of protecting a crop against an insect”.

It noted too that the commentary stated:

“An overwhelming majority of scientists now agree that, when properly controlled, GM crops pose no more risk to the environment or our health than traditionally bred commercial crops.”

Source: UK Council for Science and Technology [on-screen caption]

The Committee noted the contention by one complainant that:

- no independent toxicity testing has been done on the GM crop
- the industry’s own studies revealed toxic effects in rats that ate it

The Committee noted that Mark Lynas was identified in the programme as the spokesman for Cornell University who were managing the trials on behalf of USAID, and that the programme had already reflected his view that he considered the GM crop to be safe.

The Committee noted that the comment by Mr Lynas was followed by an interview with, Farida Akhter, an anti-GM activist, who spoke explicitly about toxicity:

REPORTER:

But on this organic farm they are not convinced...

FARIDA AKHTER, ANTI-GM ACTIVIST:

GM seed is making the seed toxic... They are saying that with this seed it [the fruit and shoot boring caterpillar] will die. OK and so if it dies in the brinjal when I eat the brinjal why don't you think that it is toxic for me as well?

REPORTER:

Because you're not a fruit and shoot borer, you're a human being.

FARIDA AKHTER:

But I'm a life as well. That is a life you know, so there is no evidence that it will not have any health impacts.

The Committee noted where concerns that GM crops could be harmful to health and the environment were discussed in interviews elsewhere in the programme. It noted this exchange with the Chief Scientist for Greenpeace UK:

DOUG PARR, CHIEF SCIENTIST, GREENPEACE UK:

Once they are out in the open environment ... the genes can ... contaminate other forms of agriculture and ... also that there may even be health effects from the foods that derive from them. We can't give any kind of blanket assurance that GM foods are safe to eat.

REPORTER:

They've been eating them in America for close to 20 years, probably billions of meals, famously litigious society, no-one's brought a case saying it damaged their health.

DOUG PARR:

A single instance where GM crops have been shown to be safe, if indeed they have been, does not give any kind of blanket assurance that other unpredictable effects can't happen in other crops or other foods...

There's reasonable evidence that the particular [Bt brinjal] modification could transfer to wild weedy relatives... There's other evidence that suggests that there's a health risk associated with it so in terms of...

REPORTER:

Sorry, where is the evidence there is a health risk associated with Bt brinjal?

DOUG PARR:

The evidence about the health risks of Bt brinjal is relatively tentative but ... we've got the possibility of ... a crop that will ... contaminate potentially for time immemorial the ... wild relatives.

REPORTER:

Surely the balance you've got here is a certainty of using less pesticides and that is better for the farmer, better for the consumer and quite possibly better for environment, against these hypothetical kind of what if risks that you're throwing in?

DOUG PARR:

Look, the risks of outcrossing to wild weedy relatives are not what if questions, they are genuine uncertainties...

The Committee noted the complainant's assertion that the industry's own studies revealed "toxic effects in rats that ate it". It noted this was a reference to data gathered by Mahyco, the Indian seed company who developed the GM brinjal seed, and that in 2011 a scientist in New Zealand said she had reanalysed Mahyco's data and that it revealed organ damage in rats which were fed Bt brinjal. The Committee noted that the Adviser was not aware of any evidence that the scientist's paper had been peer-reviewed or that it had been published in a recognised scientific journal.

The Committee considered the following factors in reaching its view:

- the comment that there was "nothing scary" about Bt brinjal was made by a contributor who had already been identified as a supporter of GM technology and as the spokesman for Cornell University who were monitoring the trial.

- an alternative to Mr Lynas' view, that the seeds were making the plants toxic, was reflected immediately afterwards in the contribution from an organic farmer in Bangladesh who was featured growing healthy non-Bt brinjal.
- this was supplemented elsewhere in the programme with other opposing views, including that of the Chief Scientist for Greenpeace UK who outlined his concerns but acknowledged that the evidence about the health risks of Bt brinjal is "relatively tentative".
- the Committee was not aware of any published peer reviewed studies which have identified adverse health or environmental effects from consuming Bt brinjal or planting its seeds.
- the prevailing scientific consensus, as noted in the programme, is that GM crops when properly controlled pose no more risk to the environment or human health than do traditionally bred crops.

The Committee decided therefore that the programme met the requirements of 3.1 and 3.2 of the Accuracy guideline in how it reflected safety concerns about Bt brinjal: the comment was clearly attributed and the audience had been provided with the contributor's credentials; it was well-sourced and based on sound evidence, and relevant opinions from those offering an alternative view were also reflected.

#### **Finding on Point (C): Not upheld**

#### **Point (D) - whether the scientist from Cornell University who provided information to the programme about the Bt brinjal trials had a conflict of interest which should have been shared with the audience**

The Committee noted the relevant clause from the Accuracy guideline:

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

The Committee noted the relevant clause from the Impartiality guideline:

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

The Committee noted the complainant's points:

- Dr Shotkoski worked for biotech companies Novartis and Syngenta for six years.
- Dr Shotkoski holds inventor status on several biotechnology patents (<http://patents.justia.com/inventor/frank-shotkoski>), including two on GM Bt toxin technology. Bt brinjal contains GM Bt toxin technology.
- Did the BBC establish whether these conflicts of interest coloured Dr Shotkoski's opinion on the performance of Bt brinjal?
- Shouldn't his conflicting interests have been made clear?

The Committee noted that Dr Shotkoski had responded directly to the Adviser and said that:

- he had shared his biography with the BBC.
- he had no commercial interests in the trials which he manages:

"I have no financial interest in the Bt brinjal product. My appointment at Cornell University is to provide guidance to certain developing countries to conduct product development, regulation and commercialisation of certain genetically engineered agriculture products that are important for the socio-economic wellbeing of resource poor farmers. All the technologies that we work with have come with no royalty or other financial restrictions. With that said, I confirm that I have no personal contractual commitments to any of these products and will receive no financial gain from the commercialisation of any of the products.

"I should note that I do hold patents in the area of insect protection via genetic engineering of cotton. All those patents are owned by Syngenta so there is no way for me to gain financial benefit from any of those patents. The technology described in those patents do not involve the Cry Bt genes. The patents estate involves the use of (vegetative insecticidal protein) Vip3 technology; a non-sporulating insecticidal toxin that is expressed during the logarithmic stage of bacterial growth. Vip3 protein is quite different from the Cry1Ac technology used for developing the Bt brinjal. I have no patents that relate to the development of the Bt brinjal event."

The Committee noted the programme's response:

"Dr Shotkoski was in attendance to monitor the trial not to market the technology."

The Committee noted that Dr Shotkoski was not an interviewee in the programme. During the complaint the BBC had identified Dr Shotkoski as its source at Cornell University for the statistic used in the programme that the trial crops had been 90 per cent successful. The Committee noted that its consideration on this point was whether the audience had all the relevant facts and information to enable it to assess what weight to place on the information he had provided.

The Committee noted the complainant's contention that wider information about Dr Shotkoski should have been shared with the audience because in her view he was not impartial in the debate about the campaign for wider acceptance of GM technology because of his previous employment and the patents he holds in other similar technologies. The Committee noted that there is no evidence that he derives any financial benefit now, or that he will in the future, from the exploitation of any of his work in this field.

The Committee considered the relevant point was that the audience understood that the statistic in the programme was provided by Cornell University, who had been identified as stakeholders, monitoring the trials on behalf of USAID. The Committee judged that this would have enabled the audience to decide how much weight to place on the information. The Committee considered it would be likely that anyone running the project would have a knowledge and understanding of the biotechnology involved in developing GM crops such as Bt brinjal. The Committee did not consider information relating to Dr Shotkoski's

previous employment or research he had conducted constituted relevant facts which needed to be shared with the audience.

The Committee decided therefore that the programme met the requirement for due accuracy and due impartiality in this regard.

### **Finding on Point (D): Not upheld**

### **Point (E) – The programme failed to inform the audience of the relationship between USAID, ABSP and Monsanto**

The Committee noted relevant clauses from the Guidelines:

- We must do all we can to ensure due accuracy in all our output.
- Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should also be weighed to get at the truth.
- The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences' trust in our content.
- ...the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC's impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement...

The Committee noted the points raised by one complainant:

- the Agricultural Biotechnology Support Project (ABSP) includes Monsanto as a private sector partner.
- ABSP, which is managed by Cornell University, is the Bangladeshi government's partner in the Bt field trials.
- the BBC is supposed not to advertise, but it appears to have promoted private financial and corporate interests in the programme.

The Committee noted how the programme explained where the funding for the trial came from:

REPORTER:

The trial is backed by USAID money and America's Cornell University. The BT aubergines have been given for free by the Bangladesh government and farmers keep their seeds for next year's crop.

The Committee noted that towards the end of the programme the reporter was shown eating a meal of GM aubergine. He said:

REPORTER:

Although given for free, the active gene is under licence from global farming giant Monsanto...

This is a meal I simply couldn't have in the UK. And yet Hafizur and his family, in the heart of Bangladesh, eat it regularly.

So are they being exploited, or are they leading the way?

The Bangladeshi government insists this isn't a Trojan horse for a GM farming takeover.

And are you truly free and independent of the big agri-tech companies or are you in the pocket of Monsanto?

MATIA CHOWDHURY, Bangladesh Agriculture Minister:

You see the Bt brinjal gene, it was given by Cornell University. They are not agri-tech company. My job is to feed our people. I know what I am to do and I am trying to do my job.

Legally I am in the right track, scientifically I am in the right track, Bangladesh is in the right track.

REPORTER:

Monsanto says it does not receive benefit from the Bt brinjal project in Bangladesh.

But helping independent farmers from the developing world could sway the global argument over GM.

It does feel to me very much like this is part of a sort of corporate push to make GM acceptable.

MARK LYNAS:

Well it's not corporate, it's the government and it's American universities, so this is very much a public sector project... This is not some kind of nefarious conspiracy by the Monsantos of this world, to take over Bangladeshi farming, this is just a way to get seeds to Bangladeshi farmers to reduce their pesticide consumption.

The Committee noted the programme's response:

"The fact that Monsanto is one of thirty national and regional partners of USAID's Agricultural Biotechnology Support Project which provided support for these trials is tangential in our judgment.

"The programme confronted head on the project's associations with Monsanto. We put questions about links with Monsanto to Mark Lynas and to the Bangladesh agriculture minister. We questioned Monsanto directly about their associations with the project while researching the programme."

The Committee noted information provided by Dr Shotkoski for this appeal:

- there is no corporate sponsor or corporate interests associated with the product.
- the Bt brinjal technology was donated to BARI from Mahyco Seed Co. as a public-private partnership facilitated by ABSPII. There is no corporate involvement and no royalty associated with the technology.
- the Bt brinjal varieties are not patented and there are no intellectual property constraints placed on BARI for the use of the technology.
- the farmers will have the right to save their seed and share with others or

purchase the seed at a nominal cost of recovery fee for seed production.

The Committee concluded that the programme had achieved due accuracy and due impartiality in the way it reflected the role of Monsanto. In accurately stating Monsanto's direct interest and in reflecting the reporter's professional judgement that the exercise could sway the public argument over GM, *Panorama* gave the audience sufficient information to reach an informed view on the issue.

**Finding on Point (E): Not upheld**

**Overall finding: Not upheld**

## The Stephen Nolan Show, BBC Radio 5 Live, 3 April 2015, and more generally

### Complaint

The complainant said that the selection of the newspaper reviewers on the Stephen Nolan show on Radio 5 live on 3 April 2015 (and more generally) was not impartial in the run up to the General Election 2015 as Labour was under-represented and Conservatives over-represented. The complainant said he was talking about the political leanings of the reviewers, not that they were members of a specific political party. The complainant alleged there was always a representative of the coalition in every review – and almost always a Conservative – but that this was not true for opposition parties. He said the casting was particularly poor on Fridays, had been for months and that this was unacceptable in the run-up to the election. The complainant was disappointed that his complaint had not been expedited so matters could have been rectified before the Election.

### Background

The Stephen Nolan show airs on Friday, Saturday and Sunday on Radio 5 live, usually between 22.00 and 01.00. On occasion, the programme transmits earlier, or is supplanted or interrupted by the demands of sports coverage.

Each programme has regular features plus news and sports coverage and some phone-in/participation items. It usually has a long recorded interview at 2340 preceded by a trail of the newspaper review.

The newspaper review almost always involves two reviewers and transmits between 00.00 and 01.00. It frequently does not take up the full hour but it can do so. On only one occasion in the formal election period before the General Election in 2015 did the programme log show three reviewers participating. This was 4 April 2015, when there were two reviewers: a former Conservative MP, Edwina Currie and former Lib Dem MP Evan Harris with a third guest introduced later in the review: Emma Burnell, Contributing Editor to "Labour List".

The newspaper review is not always political in nature. The review on Saturday 28 March, for example, had relatively little political content. In the run-up to the election, there were inevitably more reviews with a strongly political theme than not.

### The BBC's response at Stage 1 & 2

At Stage 1 Audience Services explained the casting of the review over several programmes and also said:

"Stephen Nolan our presenter, in his chairing of the debate, brings in points of view that represent the other main parties, in order that we can hear what is being said by the parties not represented (for example, on that night, the Labour Party)"

At Stage 2, the Head of Editorial Standards, BBC News, said:

“...the programme seeks to provide a balanced discussion in its newspaper review, for example between right and left, not a party political balance.”

The Programme Editor described how his team had assessed impartiality over the casting of the paper review as follows:

“We balanced the paper review across the hour-long slot (i.e. always having one left-wing and one right-wing contributor) and then broadly-speaking across the Nolan paper review slot only throughout the election campaign (i.e. looking at the number of left-wing and right-wing contributors in the Nolan paper review across the period, and then, within that, looking at the different party political points of view, i.e. making sure we had the main political parties specifically represented). We didn’t maintain a formal grid, but we did keep a broad tally.”

### **Appeal to the Trust**

The complainant said he was concerned particularly with the Friday night newspaper review – and then, by extension, the casting of all the paper reviews in the run-up to the election. He remained concerned that his complaint was not treated with expedition.

### **Applicable Editorial Guidelines**

The full text of the Editorial Guidelines is at: <http://www.bbc.co.uk/editorialguidelines>. The following sections of the editorial guidelines are applicable to this case:

- Impartiality
- Politics, Public Policy & Polls

The Election Guidelines which were in force during the Election Period (30 March 2015 to the Election on 7 May 2015) were also relevant:

[http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/2015\\_Election\\_Guidelines.pdf](http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/2015_Election_Guidelines.pdf)

Section 3.2 is particularly applicable in this case:

Elections

#### **3.2 Impartiality in Programmes and Online Content**

Daily news magazine programmes should normally achieve proportional and appropriate coverage within the course of each week of the campaign.

This means that each strand (e.g. a drive time show on radio) is responsible for achieving impartiality itself within the week and cannot rely on other outlets at different times of day (e.g. the breakfast show) to do so for it...

Programme strands should avoid individual editions getting too far out of kilter. There may be days when inevitably one party dominates the news agenda, e.g. when party manifestos are launched, but in that case care must be taken to ensure that appropriate coverage is given to other manifesto launches on the relevant days.

The following sections are also applicable here:

Deciding respective levels of coverage for different political parties, who have varying levels of political support, requires, primarily, good and impartial editorial judgement. There will be legitimate differences in interpretation and application for different programmes and formats. Advice is available, on a case by case basis, from the Chief Adviser, Politics, both before and throughout the campaign.

So although each outlet must ensure its coverage is proportionate between the parties, that should be treated as a guide rather than as a set mathematical formula. However, there must be good editorial reasons for any significant variation and these cannot supersede the over-riding obligation for due impartiality and fairness.

...

Party Coverage for broadcasts across the UK:

### 1.1 Larger Parties in Great Britain

Parties which secured a substantial share of the vote across Great Britain at the last General election are: Labour, Conservatives and Liberal Democrats. Bearing in mind the respective shares of the vote in 2010, Labour and the Conservatives should receive broadly similar levels of coverage. In many programmes and formats, the Liberal Democrats should receive similar levels of coverage to the two largest parties...

## **The Committee's decision**

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 transcripts of several newspaper reviews.

The Committee noted that the original complaint was made to the BBC on 4 April 2015 about the programme of 3 April 2015. Usually the Trust Unit considers only the programme which the complaint is about. In this case, looking at the terms of the complaint, and given the significance of the Election Period, the Trust Unit decided to consider programmes before and after the programme which triggered the complaint.

The Committee noted the list of contributors to the paper review slot in the four weeks before the weekend of the programme which was complained about plus the four weeks afterwards. The first four were not in the formal Election Period, the second four were:

6/3 Commentator Mohammed Shafiq and former Conservative MP Jerry Hayes

7/3 Former editor of the Mirror David Banks and financial analyst and blogger Louise Cooper

8/3 Bishop Stephen Lowe and broadcaster Charlie Wolf

13/3 Commentator Mohammed Shafiq and former Conservative MP Jerry Hayes

14/3 Former Labour Party parliamentary candidate and theologian Andrew

Graystone and former Conservative MP Edwina Currie

15/3 Bishop Stephen Lowe and broadcaster Charlie Wolf

20/3 Commentator Mohammed Shafiq and former Conservative MP Jerry Hayes

21/3 Former editor of the Mirror David Banks and former Conservative MP Edwina Currie

22/3 Bishop Stephen Lowe and broadcaster Charlie Wolf

27/3 Actress and commentator Kiruna Stamell and former Conservative MP Jerry Hayes

28/3 Former editor of the Mirror David Banks and financial analyst and blogger Louise Cooper

29/3 Bishop Stephen Lowe and broadcaster Charlie Wolf

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3/4 Commentator Mohammed Shafiq and former Conservative MP Jerry Hayes

4/4 Contributing Editor to Labour List Emma Burnell, former Lib Dem MP Evan Harris and former Conservative MP Edwina Currie

5/4 Bishop Stephen Lowe and broadcaster Charlie Wolf

10/4 Bishop Stephen Lowe and broadcaster Charlie Wolf

11/4 No papers (US Masters)

12/4 No papers (US Masters)

17/4 Bishop Stephen Lowe and broadcaster Charlie Wolf

18/4 Outgoing Labour MP for Great Grimsby Austin Mitchell and former Conservative MP Edwina Currie

19/4 Commentator Mohammed Shafiq and former Conservative MP Jerry Hayes

24/4 Bishop Stephen Lowe and broadcaster Charlie Wolf

25/4 Former editor of the Mirror David Banks and financial analyst and blogger Louise Cooper

26/4 Labour party member and broadcaster Andy Walton and former Conservative MP Jerry Hayes

1/5 Bishop Stephen Lowe and broadcaster Charlie Wolf

2/5 Outgoing Labour MP for Great Grimsby Austin Mitchell and former Conservative MP Edwina Currie

3/5 Commentator Mohammed Shafiq and former Conservative MP Jerry Hayes

#### ELECTION 7 MAY

The Committee noted information about the position of the reviewers:

Jerry Hayes (Conservative, former MP); Charlie Wolf (Stage 1 said: "broadly supports policies from the Conservative Party and the right of the political spectrum"); Edwina Currie (Conservative, former MP); Mohammed Shafiq (Stage 1 said "generally supports Liberal Democrat policies"); Evan Harris (former Lib Dem MP); Bishop Stephen Lowe (Stage 1 said "generally supports Labour policies"); Austin Mitchell (outgoing Labour MP); David Banks (former editor Daily Mirror – left of centre); Andy Walton (Christians on the Left); Andrew Graystone (Former Labour party candidate, Director of the Church and Media Network); Emma Burnell (Stage 1 said "contributing editor to Labour List"); Louise Cooper (financial blogger/not political); and Kiruna Stamell (actress/not political).

The Committee noted that the relevant Editorial Guideline on Politics, Public Policy and Polls says:

"The way in which due impartiality is achieved between parties will vary, depending on the format, output and platform. It may be done in a single item, a single programme, a series of programmes or items, or over the course of the campaign as a whole. But programme makers and content producers must take

responsibility for achieving due impartiality in their own output and not rely on other BBC content or services to redress any imbalance for them.”

It also noted the relevant section of the Election Guidelines – section 3.2 – as cited above.

The Committee noted the BBC was seeking to achieve impartiality over the newspaper reviews during the Election Period. It also noted the view of the BBC’s Chief Adviser, Politics that (in the abstract, without taking a view on the facts of this complaint) “it would not be unreasonable to seek to achieve impartiality across newspaper reviews during the Election Period as long as this was done fairly (e.g. not loading a specific set of views to one end or the other). This is less definitive when the reviewers are not themselves party representatives or candidates. Outside the election period impartiality over time is less constrained depending on how active the politics of that election is ahead of the election period”.

The Committee noted that the complainant considered that consistently featuring two reviewers, both of whose views aligned with the coalition with no Labour voice, was in breach of the “due impartiality” guideline. However, Trustees noted that for the General Election the Conservative and Liberal Democrat parties were entirely different parties competing for support. The Election Guidelines explained that: “Bearing in mind the respective shares of the vote in 2010, Labour and the Conservatives should receive broadly similar levels of coverage. In many programmes and formats, the Liberal Democrats should receive similar levels of coverage to the two largest parties”.

The Committee noted that over the weekend of the programme which sparked the original complaint, there were three reviewers on the right, two on the left and two who were liberal and that the following weekend due to the Masters Golf Tournament coverage there was one reviewer to the left and one to the right. The preceding weekend there were two to the left and two to the right. During the formal election period no prospective candidates were interviewed. There were four review slots where the reviewer’s viewpoint can be identified as Liberal Democrat, twelve as Conservative and ten as Labour. Trustees recollected that balance on-air may also have been achieved by way of interventions by the presenter and that reviewers may also take positions that are not in line with the political position with which they normally align themselves.

The Committee noted that more generally it was apparent that the casting of the paper review was generally constant: on Friday evenings in March before the formal Election Period the reviewers were usually Jerry Hayes and Mohammed Shafiq (although on one occasion it was an actress and Mr Hayes). For the Friday evening (which was in the formal Election Period) about which the complaint was lodged, the pairing was again Jerry Hayes and Mohammed Shafiq. Then Bishop Stephen Lowe and Charlie Wolf were moved to Friday and the programme went “on the road” around the UK. These latter two were otherwise almost always Sunday’s pairing. Saturday was more varied, with a greater range of voices.

The Committee noted that the Friday programme newspaper reviews, featuring Bishop Stephen Lowe and Charlie Wolf in the formal Election Period, were political in tenor but, as Stage 1 indicated in their replies to the complainant, Bishop Stephen Lowe maintains views which are to the left of the political spectrum whilst Charlie Wolf’s views are to the right – though neither is a UK party politician. Turning to three of the Friday nights in March and on the evening triggering the complaint (which was in the formal Election Period) the newspaper reviewers were Jerry Hayes, who is a former Conservative MP representing conservative views and Mohammed Shafiq, who described himself as: “a

leading Muslim commentator on TV, Radio, Online often leading the debate and response from the Muslim community”.

The Committee noted that Mr Shafiq stepped down as vice-chair of Rochdale Liberal Democrats in early 2008. After the 2015 election he joined the Labour Party but in doing so clarified to his local paper that he had been a liberal activist. But, at the time in question, the Committee noted that it is clear that he spoke positively about the Liberal Democrats and saw himself, at that time, as a liberal voice, for example:  
Friday 3 April 11.40.12 – 11.40.17 “Jerry Hayes: I thought Nick Clegg did best.  
Mohammed Shafiq: I think Nick was absolutely excellent. I thought he was a pro at this **and obviously I would say that.**” (emphasis added)

The Committee concluded that the paper review of 3 April and the paper reviews across the Election Period met the requirements of the BBC’s Editorial Guidelines (and where applicable Election Guidelines) on Impartiality. There was a sufficient range of views across the political spectrum for the Guidelines to have been met in the run up to the election, when the parties were to be treated as separate entities.

## **Not Upheld**

### **Complaint Handling**

The Committee noted that the BBC responded to the complaint within the usual timeframes as set down in the BBC’s Editorial Complaints and Appeals Procedure. The Executive maintained the programming was duly impartial. The Stage 2 reply was dated 29 April. The General Election was on 7 May.

The Committee noted that the complainant felt that the programmes were not impartial and so his complaint should have been dealt with more swiftly and rectifying action taken before the election.

The Committee was aware that the BBC receives many complaints contacts during an election period and assesses them for serious issues. Complaints about coverage from the parties and candidates would usually be expedited by the Executive and the Trust. However, not all complaints by audience members could receive that level of treatment. Given that the BBC had reached the (correct) opinion that this complaint from a member of the public did not amount to a breach of the Guidelines it was appropriate to answer the complaint within the usual time-frame.

## **Not Upheld**

Finally, Trustees were made aware that this appeal had taken longer than it should have done to reach the Editorial Standards Committee. This was due to administrative errors within the Trust Unit. The Committee apologised to the complainant for this regrettable delay.

## **Overall finding: not upheld**

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

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

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

## Scotland 2015, BBC Two Scotland, 7 September 2015

*Scotland 2015* was a current affairs programme which describes itself as "taking an in-depth look at the stories behind the day's headlines and issues affecting Scotland". It was broadcast Monday-Thursday on BBC Two Scotland at 10.30pm.

On 7 September 2015 David Cameron announced that the UK would accept 20,000 refugees from Syria over the next five years. The programme broadcast a filmed report which showed excerpts from his speech in Parliament that day, as well as earlier interview clips with Mr Cameron. It also included the SNP's response, footage of a cross-party group of MPs who held a vigil outside Westminster in support of Syrian refugees and interviews with a Syrian refugee family who had settled in Scotland.

This report was followed by a discussion chaired by presenter Sarah Smith, which featured Robina Qureshi, Director of Positive Action in Housing, and Naomi McAuliffe, Director of Amnesty International in Scotland.

The complainant made the following points:

- the discussion featured two guests, both of whom represented the same minority view. There was no representative of what he believed was the majority view, which was that Britain could not take unlimited numbers of migrants
- no one was available to point out that the majority of Syrian migrants had entered Europe as a result of rich countries failing to meet their responsibilities for financing refugee camps
- one guest attacked the presenter for calling them migrants rather than refugees. The complainant said this was not true and the guest should have been challenged
- no one put the view of Scottish families who, with increased immigration, would be shunted further back in the housing queue; nor did anyone put the view that the SNP's enthusiasm to increase immigration was down to their failure to stem the flow of young people to England and elsewhere
- there was a covert editorial agenda; to support the SNP's position of having an open door policy to these migrants, and this constituted bias.

BBC Audience Services and the Editorial Complaints Unit (ECU) made the following points:

- the discussion was deliberately exploratory rather than showing two significantly different points of view. It was not appropriate to cast every discussion in the manner requested by the complainant
- the presenter referred to a poll which suggested that nearly 60 percent of people did not want to see any more refugees coming into the country
- the introductory film allowed the Prime Minister to make the case for the solution he proposed, as well as the benefits accruing from not being part of the Schengen Agreement, and the inclusion of the all-party group illustrated that this was not a matter which split neatly along party-political lines, but was a complex problem on which there were a range of views across the political spectrum
- impartiality was not as simple as a count of guests who were “pro” or “anti” an aspect of the debate. In a situation where both guests were broadly in favour of accepting more refugees, it would be the responsibility of the presenter to test their views and make sure that alternatives were aired; she did so by:
  1. putting the Prime Minister’s point that taking refugees from camps in the Middle East would help deter people from making the journey to Europe
  2. suggesting that a poll undertaken by the BBC showed that public opinion was against taking more refugees
  3. responding to Ms Qureshi’s complaints about BBC coverage, and explaining the distinction between the terms “refugee” and “migrant”
  4. raising the question of the potential impact of an influx of refugees on housing
- Naomi McAuliffe of Amnesty did say that funding for the camps had gone down over the last year while access to food and water had become difficult and this was why people were making the journey
- it did not follow that without a guest to put those particular points, viewers would have been misled.

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

The complainant appealed to the BBC Trust on the substance of his complaint.

### **Decision of the Trust Adviser**

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

She noted the complainant’s view that the choice of participants represented bias and that it was not the place of the presenter to “champion” the missing point of view.

She noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC’s editorial and creative output” is defined as a duty that is the responsibility of the Executive Board under article 38, (1)(b) of the Charter. She considered that the choice of production treatment for this subject was part of the legitimate right of the BBC’s freedom of expression under the Charter and also under the Human Rights Act 1998, provided that Trustees did not consider this to be a breach of the BBC’s Editorial Guidelines on Impartiality. She did not believe that Trustees would consider it to be a breach..

She noted that the starting point for the discussion was the Prime Minister’s announcement that the UK would accept 20,000 refugees from Syria.

She noted that the programme invited two guests to participate in a discussion, both of whom stated that the UK should take more refugees than the number announced by the Prime Minister. She considered that Trustees would be likely to note that there was a good deal of overlap in terms of the views expressed by the guests, but noted that there were also significant differences in emphasis between them; Robina Qureshi, Director of Positive Action in Housing, focused on people in Scotland offering accommodation and spare rooms to refugees while Naomi McAuliffe, Director of Amnesty International in Scotland, focused on the international picture, including conditions for refugees in camps outside Syria, what the Prime Minister's comments meant for migrants who were already in Europe and what the implications were for those leaving other areas such as Darfur and Eritrea. The Adviser noted the description of "due weight" in the BBC's editorial guidelines:

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

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

She considered that Trustees would be likely to consider that the introductory film allowed David Cameron to put a different perspective to those of the two studio guests and that a legitimate role of the presenter was to put forward opposing views.

She noted that the presenter:

- reminded the guests on two occasions of a poll commissioned by the BBC's *Newsnight* programme which suggested that 57 percent of people in the UK were in favour of the UK taking fewer refugees from Syria and Libya, or the same as at present
- asked whether David Cameron was "right to stay on the right side of public opinion on this?"
- asked whether the UK was "ready to receive that number of refugees" and how they would be accommodated.

The Adviser noted that the complainant believed that Ms Qureshi should have been challenged when she criticised the BBC for referring to "migrants" rather than "refugees" but she noted that the presenter did put forward the BBC's reasons for doing so on two occasions:

"The reason why the BBC used the word migrant is that refugees are migrants as well – not all migrants are refugees. We're trying to be accurate about the people who are travelling across Europe, not every single one of those is a refugee and we just don't know."

She noted the complainant's view that there was an influx of Syrian migrants because rich countries had failed to meet their responsibilities for financing refugee camps, and she noted that Ms McAuliffe had referred to a drop in funding for refugee camps on Syria's borders. She noted that, whilst this point was made by a contributor rather than the

presenter, the guidelines simply refer to the airing of “perspectives” rather than defining who should contribute those views.

She noted that the complainant believed that the debate should have included someone who put forward the view that the SNP's enthusiasm to increase immigration was down to “their failure to stem the flow of young people to England and elsewhere” but she noted that the BBC's definition of due weight meant that “impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content”. She considered that Trustees would be likely to decide the subject of this discussion was David Cameron's announcement to accept 20,000 refugees (and whether this decision was appropriate) and there was therefore no requirement to discuss the impact of the SNP's policies on youth employment in Scotland. She considered that Trustees would be likely to disagree that there was any evidence of a “covert editorial agenda” supporting the SNP stance on migration.

In conclusion the Adviser decided that Trustees would be likely to decide that the decision not to include a contributor who opposed the UK's acceptance of Syrian refugees did not result in a breach of the BBC's guidelines on impartiality, and that the choice of contributors was therefore an “editorial and creative decision” for the BBC executive.

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:

- he did not accept the description of the debate as “deliberately exploratory” as it did not explore a range of options, nor did it explore alternative views in a robust manner
- he had raised a significant matter of general importance
- the Trust Adviser had misrepresented his view by suggesting that he had wanted the programme to include a contributor who opposed the UK's acceptance of any Syrian refugees. The point of his complaint was that both guests had the same point of view and it was a minority one.

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

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

Trustees noted that the reference to the discussion being “deliberately exploratory” was a quote from earlier correspondence between the BBC and the complainant and did not form part of the Trust Adviser's decision.

Trustees noted that the BBC is required to apply due impartiality to its output. The Editorial Guidelines explain that:

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

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

- not every debate needed to be cast as “a balance of views”
- the discussion was preceded by an introductory film which included an excerpt of the Prime Minister giving a different perspective to that expressed by the studio guests
- the presenter put alternative views to the contributors, such as questioning whether the UK could accommodate the suggested number of refugees and stating that 57 percent of people in the UK were in favour of the UK taking fewer refugees from Syria and Libya, or the same as at present.

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.**

## Breakfast Show with Nick Grimshaw, BBC Radio 1, 6 August 2015

The complaint concerned the song "Thrift Shop" by the white rapper Macklemore which was heard by the complainant on BBC Radio 1. The song contained the word "honky" which the complainant considered was racist and offensive.

The song is a humorous tribute to shopping in second-hand stores. The rapper, who is white, is the central character and he describes how, with very little money, he finds clothes that make other people think he is very cool. He raps about the response he received to his second-hand clothes in a nightclub and refers to himself in the line "The people like, 'Damn! That's a cold ass honky'".

The complainant made the following points:

- the inclusion of the word "honky" was racist and offensive
- the use of the word was unacceptable even if used in a humorous context. It would not be acceptable to use the n-word in the same context
- the serious nature of the use of the word "honky" was illustrated in a news story from 2008 about a white man who pleaded guilty to a charge of racially abusing three white security guards. He had called the men "honky wannabe cops"
- this case set a precedent - the word was used by a white person in a jokey context and yet the offender was convicted
- the BBC muted the word "ho" in Wyclef Jean's song "Perfect Gentleman" and the context was less serious.

The BBC made the following points in response:

- BBC Radio 1 carefully considered the use of the word "honky" in the song and decided that it was appropriate in the context of the record. It was a humorous song with witty lyrics that had achieved huge international success
- the song was a modern update of "The Emperor's New Clothes". The line was not intended to insult people on the basis of colour but was a jokey comment and in context it was a positive description of how cool the rapper was
- "Thrift Shop" was meant to be very tongue in cheek and the BBC believed that only a tiny minority of people would consider the use of the word "honky" to be offensive in this context
- the complaint was referred to the Head of Music for Radio 1. He said that a word, in itself, was not necessarily racist - the context and the intent in its use should equally be taken into account
- the use of the n-word would also depend on the context. Many black rappers now used the n-word in their songs as a way of expressing solidarity with their contemporaries; however, its use on Radio 1 was very limited
- the extent to which offence might be caused by a particular word depended to a large degree on how it was used and by whom and the BBC's guidelines did not impose an absolute ban on any particular words for this reason
- the use of the n-word was not relevant to this complaint. The two terms were not interchangeable or likely to cause an equal degree of offence
- the court case referred to by the complainant was not relevant to this use of the word as the context was very different
- the BBC's decision regarding another word in another song in another context was also not relevant.

## Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 17 November 2015 on the substance of his complaint.

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) listened to the song and read the correspondence. She decided that the appeal did not have a reasonable prospect of success.

The Adviser noted that all BBC output had to meet the standards set out in the Editorial Guidelines, which included a section on Harm and Offence. She noted there was no requirement not to cause offence (which would be impossible to achieve) but that decisions about potentially offensive output were made bearing in mind the nature and context of the output, audience expectations, editorial justification and an awareness of generally accepted standards.

She agreed that there were times when referring to a white person as a “honky” would certainly be offensive. She noted the Editorial Guidelines for Harm and Offence were principally intended to protect vulnerable groups, and the introduction to them included:

“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 it is within audience expectations, we may feature a portrayal or stereotype that has been exaggerated for comic effect, but we must be aware that audiences may find casual or purposeless stereotypes to be offensive.”

The Adviser appreciated that the complainant believed that the broadcast of the word “honky” within the song “Thrift Shop” was insulting and racist. However, she noted that it was written by a white rapper about himself and was delivered in a humorous context. She noted the song itself had been very popular and widely played and that Radio 1 had given consideration to the lyrics before playing the song. She considered Trustees would be likely to conclude the phrase had not been used in a way that was likely to cause offence and that playing the song was within audience expectations for the music station.

The Adviser noted that the complainant had compared the use of the word “honky” to what he referred to as “the n-word”. However, the Adviser believed that the two terms were very different and could not be compared. Nor did she consider the complainant’s separate points – about an unrelated court case and a different song which used a different word – were relevant to the Trustees’ considerations.

Taking this into account the Adviser did not therefore consider that the complaint concerned a breach of editorial standards and she 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 he did not believe it was acceptable “to offend even a minority”. He also questioned the basis for the statement “we believe only a tiny minority of people would consider the use of the word ‘honky’ to be offensive in this context”.

## **The Panel’s decision**

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

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

- decisions about potentially offensive output were made taking into account the nature and context of the output, audience expectations, editorial justification and an awareness of generally accepted standards
- the BBC’s Editorial Guidelines on Harm and Offence allowed “a portrayal or stereotype that has been exaggerated for comic effect” when it was within audience expectations
- the song was written by a white rapper about himself and was a humorous tribute to buying and wearing second-hand clothes
- the words were spoken in humorous admiration of his style as he walked into a night club and the word “honky” used in this context was not likely to cause widespread offence
- the song was highly successful and widely played and playing the song on BBC Radio 1 was within audience expectations
- the complainant’s belief that it was unacceptable for the BBC to cause offence even to a minority was unrealistic for any broadcast service aimed at a broad audience.

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>4</sup> explains that:

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

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

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

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

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

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

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<sup>4</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2014/complaints\\_fr\\_work\\_ed\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf)

## Decision of BBC Audience Services not to respond further to a complaint about Israeli PM Benjamin Netanyahu's 44-second UN silence, BBC News online

The complaint concerned a recorded report within a brief online news article about a speech to the United Nations General Assembly (UNGA) by the Israeli Prime Minister Benjamin Netanyahu. In his speech Mr Netanyahu made the point that he considered there had been a failure by the international community to respond to Iranian threats against Israel. He illustrated this by pausing for 44 seconds. The report included a ticking timer with a buzzer at the end of the silence. The complainant considered that the way the BBC reported this had mocked the fear of genocide and was offensive.

The complainant made the following points:

- Mr Netanyahu's silence reinforced "his implied point that the world did nothing to save the Jews from the Nazi Holocaust, and now (in his view) the world is doing nothing to save the Jews from another potential genocide".
- The writer of the piece could not have been unaware of its context. The use of a ticking clock on the screen during the silence and a buzzer at the end of it was intended to make fun of the silence. Therefore by mocking this silence, the BBC "was mocking the very real... and completely understandable Jewish fear of another genocide".

BBC Audience Services initially sent a standard reply referring to the way BBC News had reported attacks committed by Palestinians on Israeli civilians and security forces. They subsequently sent further replies which addressed the complainant's concerns and made the following points:

- The meeting of the UNGA was a high-profile event in the international diplomatic calendar. In that context the silence adopted by the Israeli Prime Minister Benjamin Netanyahu was worth reporting.
- The piece aimed not to poke fun but "to highlight a particularly striking moment from the speech of a world leader relating to a divisive issue". Audience Services quoted from The Times of Israel which had described the silence as a "theatrical centrepiece". The BBC also quoted The Washington Post as saying that "to supporters of Israel and many others, it was a remarkably powerful moment, showing how the world was ignoring the risks posed by a nuclear deal with Iran. To critics of the sometimes divisive Netanyahu, it was laughable".
- The BBC was aware of the context. The silence itself was not a direct reference to the Holocaust, which had been included as a supporting reference to contextualise Mr Netanyahu's wider point about international silence in the face of an Iranian threat.
- The BBC did not agree that the report suggested that Holocaust references were funny. The wider speech was not the focus of the piece, which was instead designed to report an unusual event in a fair, if slightly unusual, way.
- Both the clock and timer drew attention to his action and did not undermine what he did or the reasons why he did it. In a speech that garnered a lot of attention, both positive and negative, this article highlighted one aspect of it.

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 19 November 2015 on the substance of his complaint.

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood 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 noted that the complainant had found the first reply from the BBC to be "highly unsatisfactory" and that it had not addressed his concerns. However, she noted that the BBC had apologised for this and had given a detailed response to his complaint.

The Adviser noted that the BBC's Editorial Guidelines required that BBC output balanced "the right to broadcast innovative and challenging content with our responsibility to protect the vulnerable from harm and avoid unjustifiable offence".

The Adviser then noted the content of the article and the video report in question. The text featured in the report was one minute and 16 seconds long and stated:

"Israeli PM Benjamin Netanyahu is angry about the UN's response to Iranian threats against Israel... During his speech he found a novel way to highlight the absence of criticism."

The report featured Mr Netanyahu saying "Utter silence. Deafening silence." before showing the silence with an on-screen clock ticking to show the passage of time for 44 seconds. She noted what Mr Netanyahu had said during his speech to the UNGA but which had not been quoted during the video report:

"Seventy years after the murder of six million Jews, Iran's rulers promise to destroy my country, murder my people. And the response from this body, the response from nearly every one of the governments represented here has been absolutely nothing. Utter silence. Deafening silence."

The Adviser noted the complainant's view that the piece was "clearly mocking the accusation that the world is doing nothing to prevent a genocidal threat against the Jews... clearly mocking the very real fear of genocide among Israelis... clearly mocking Netanyahu's implied point that the world has learned nothing from 70 years ago when it stood by as six million Jews were murdered".

The Adviser considered that the purpose of the report was to describe the unusual way in which Mr Netanyahu had chosen to address the UNGA rather than to go into detail about the content of his speech. The Adviser noted that the text accompanying the report had described Mr Netanyahu's action as "novel" and she believed that the viewer would have been in no doubt that this was the intended focus.

She noted that the report had included Mr Netanyahu saying "Utter silence. Deafening silence" before he paused for 44 seconds – during which time he was shown looking out

across the delegates as a timer counted the seconds in the corner of the screen. When the silence stopped, there was onscreen text asking: "Was this the longest silence in a UN speech ever?" Mr Netanyahu was then shown stating: "... Perhaps you can now understand why Israel is not joining you in celebrating this deal [about Iran's use of nuclear technology]".

The Adviser considered the timer and buzzer had clearly been a device used to highlight the unusual nature of what had happened during the speech. While she appreciated that the complainant had found it offensive, she did not consider that it suggested that the BBC found genocide or the Holocaust "funny". She did not therefore agree with the complainant's view that the short video report intended "to mock Jewish fear of another genocide".

The Adviser noted that the content of news stories covered by BBC News was the responsibility of individual news editors and therefore involved editorial decisions which were the responsibility of the BBC's Executive Board. They were not a matter for the BBC Trust unless they involved a breach of editorial standards – which the Adviser considered was not the case here. She noted that such decisions were matters where news editors should be free to exercise editorial judgment and that it was bound to be the case that not everyone would agree with each decision. She considered that Audience Services had explained that there was no intention to cause offence and that the item was intended to draw attention to the unusual element of Mr Netanyahu's speech. She considered that Trustees would be likely to conclude that Audience Services had given a reasonable response to the complaint and had acted appropriately in deciding to cease correspondence.

Taking this into account the Adviser considered Trustees would be likely to conclude that as there was no evidence of a breach of editorial standards it was not a matter for the BBC Trust. 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:

- any reasonable viewer would come to the conclusion that this piece mocked Mr Netanyahu's silence by means of the timer, the buzzer and the phrase "Was this the longest silence in a UN speech ever?"
- the relevant extract from Mr Netanyahu's speech was making a clear and direct link between the two genocidal threats - the Nazi threat to murder Europe's Jews and the Iranian threat today to destroy Israel.
- the silence was asking the world: have you not learned the most obvious lessons from the recent past? The piece therefore mocked the accusation that the world was doing nothing to prevent a genocidal threat against Israel; it mocked the very real fear of genocide among Israelis; and it mocked Mr Netanyahu's implied point that the world had learned nothing from 70 years ago when it stood by as six million Jews were murdered in the Holocaust.

## The Panel's decision

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

The Harm and Offence Guidelines can be found at this link:

<http://www.bbc.co.uk/editorialguidelines/guidelines/harm-and-offence>

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 were not likely to uphold a breach of the Editorial Guidelines given that:

- the report highlighted the striking way in which Mr Netanyahu had addressed the UNGA.
- the context of the silence was clear – the embedded video began with the wording on screen: “Israeli PM Benjamin Netanyahu is angry about the UN’s response to Iranian threats against Israel. During his UN speech he found a novel way to highlight the absence of criticism”.
- the use of the ticking timer, the buzzer and the question on screen “Was this the longest silence in a UN speech ever?” were all ways of drawing attention to the length of the silence.
- these devices were particularly effective on mobile phones and offered the opportunity of bringing the subject of the speech to a wider audience who might not naturally engage with the politics of the Middle East.
- there was no indication that any of these devices was used to mock what Mr Netanyahu was saying, either in reference to the threat he said was posed by Iran to Israel today or to the Holocaust, which was not mentioned within the news item.
- the Royal Charter made it clear that the creative and editorial direction of the BBC was a matter for the BBC Executive unless they involved a breach of editorial standards.
- the BBC had explained its reasons for reporting Mr Netanyahu’s silence in this way and Trustees agreed that if they took this matter on appeal they were likely to decide that a reasonable response had been provided by the BBC Executive.

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.**

## Decision of BBC Audience Services not to respond further to a complaint about Kermode and Mayo's Film Review, BBC Radio 5 live, 16 October 2015

The complaint concerned references to Apple products in the programme. The complainant made the following points:

- He loved the programme, but felt that repeated references to "listening via your 'fruit-related device'" and its variations had become tired over time, and the joke, which was weak to begin with, should be laid to rest.
- He thought that "disguising an often-repeated transparent reference to the Apple iPhone ... was worse than saying 'Apple iPhone' directly", and made it more prominent rather than less.
- There was no need to "plug Apple", and he suggested simply using the word "device" instead.

BBC Audience Services made the following points:

- The BBC was prohibited from carrying any form of advertising, but it should be recognised that the modern world contained many brands and logos which appeared in almost every area of life. The BBC did not promote the brands involved or promote one brand over another.
- The BBC Editorial Guidelines explained that the BBC needed to be "able to reflect the real world and this will involve referring to commercial products, organisations and services in our output". Acknowledging the existence of a commercial product should not be regarded as either advertising or endorsing that item.

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 reiterated his concerns and said he thought the response he had received from Audience Services was odd because it said that the BBC recognised the existence of commercial products and did not receive any money from commercial bodies, which was something he had never questioned. His concern was that there was no need to plug Apple, and the term "fruit-related device" was a very tired weak joke.

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood 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 noted that all BBC output was required to meet Guidelines on Editorial Integrity and Independence from External Interests. She understood his complaint to be in two parts:

- He was giving his opinion, as a regular listener who enjoyed the programme, about the quality of the “joke” and the wearisome effect of its repetition.
- He felt that saying “fruit-related device” as a veiled reference to the Apple iPhone drew more attention to it rather than less.

She noted that Audience Services had explained that his feedback had been passed to the production team. She noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC’s editorial and creative output” was defined as a duty that was the responsibility of the Executive Board. She considered that responsibility for decisions about the editorial content of the programme rested with the programme makers, not the Trust.

In terms of the second part of his complaint, the Adviser considered whether this engaged section 14 of the Editorial Guidelines relating to Editorial Integrity and Independence. She appreciated that the complainant felt that saying “fruit-related device” gave Apple more prominence than just saying “device”. She considered that Audience Services, by explaining the BBC’s position on commercial references in the modern world, had been addressing this concern. She noted that, under the Editorial Guidelines, the BBC was able to refer to commercial products (whether in a veiled way or not) and considered Trustees would be likely to conclude that the references quoted by the complainant were within the Editorial Guidelines.

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:

- Mark Kermode and Simon Mayo should not be allowed to name-check Apple iPhones.
- The BBC declared itself independent of any commercial bias; in fact, independence was key to the BBC’s claims to the right to be publicly funded, and this key opened the door to the funding. For that reason he considered his complaint about name-checking to be a matter of substance and worthy of consideration by the Trust.

### **The Panel’s decision**

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

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 were not likely to uphold a breach of the Editorial Guidelines given that:

- Audience Services, by explaining the BBC's position on commercial references in the modern world, had explained the BBC's position.
- Under the terms of the Editorial Guidelines, the BBC was permitted to refer to commercial products, directly or indirectly.
- Decisions as to whether the "joke" of referring to "fruit-related devices" was funny or not rested solely with the BBC Executive, whose editorial judgements were not subject to scrutiny by the Trust unless they involved a breach of the Editorial Guidelines.

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.**

## Decision of BBC Audience Services not to respond further to a complaint about Inside Out (Yorkshire, East Yorkshire & Lincolnshire) 12 October 2015

The complaint concerned a report which followed a wheelchair user's successful attempt to smuggle banned items through airport security at Leeds Bradford and Malaga airports. The complainant made the following points:

- it was inaccurate to say that wheelchair users could smuggle a gun or explosives onto a plane, because security checks were very tight
- a security expert featured in the programme recommended that people should get out of their wheelchair to be checked over; as the complainant was a wheelchair user who was unable to do so, he would no longer be able to fly
- when wheelchair users booked their tickets they had to provide information about their disability; the reporter had either given inaccurate information to the airline or had not reported his disability – if so, this was wrong
- the programme should have focused instead on passengers' access to potentially dangerous items in the air-side area of airports; this posed a greater risk than someone in a wheelchair who would be unable to bring down a plane without help
- the programme should have consulted wheelchair users more widely, given the report's potential to affect their ability to use airports in future.

BBC Audience Services made the following points:

- the film followed a genuine wheelchair user and filmed his experiences
- the programme did not suggest that his experiences were universal amongst all wheelchair users or across all airports
- the report did not say that the interviewee's suggested changes to security procedures were workable or universally applicable.

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.

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood 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 noted that the film reported the experiences of an apprentice at BBC Radio Leeds who is a wheelchair user. He reported that airport security staff had consistently failed to check his wheelchair for hidden items. The programme set out to test his claims by hiding a bottle of water and some wheelchair-maintenance tools in a zipped pocket on the front of the chair behind his calves.

Before arriving at the airport the reporter completed an online form, ticking a box to say that he needed assistance. At check-in, staff said that they had not received the special assistance form but took his words on trust.

At Leeds Bradford and an overseas airport the reporter was asked to bypass the scanner. He was patted down and the wheelchair was swabbed for explosives, but the pocket was not searched. At Leeds Bradford, security staff asked the reporter, "Where can't I touch?" when patting him down and the reporter asked them to avoid his legs because they were "sensitive". Security staff at the overseas airport asked if he could get out of his chair. An aviation security consultant stated that the reporter had said no, and he wondered how staff knew if he was lying or not. The security consultant said that loopholes in the system were playing into the hands of terrorists, and staff had not screened the reporter to the standard deserved by all passengers. This claim was disputed by Leeds Bradford airport.

The Adviser noted the complainant's view that:

"It should have been made clear that the wheelchair user in the film could stand and hence his wheelchair could have been checked or he was deliberately lying about the severity of his disability (which would be immoral for a BBC employee)."

She noted that programme-makers were required to meet the standards set out in the BBC's guidelines on fairness which state:

6.2.1 "We will be open, honest, straightforward and fair in our dealings with contributors and audiences unless there is a clear public interest in doing otherwise."

She noted that the programme did not say whether the reporter was able to stand or not, but considered Trustees would be likely to conclude that the significant point was that airport staff had accepted the reporter's comments on trust. She considered that Trustees would be likely to decide that there was a clear public interest in testing the robustness of airport security. The Adviser noted the complainant's view that:

"the whole argument in the documentary is invalid because the security expert explains that if a wheelchair users [sic] cannot transfer to another chair then other security protocols are in place"

The Adviser noted the relevant section of programme:

Security Consultant: "You could carry a handgun, you could carry a knife, you could carry a device. The fact that he's in a wheelchair and he's asked if he can get up and says no, how do we know he's not lying?"

Reporter: "[NAME] says regulations require all wheelchairs to be screened."

Security Consultant: "My reaction is the staff were not doing their job as they'd been trained; they were not screening [NAME] to the standard that he and every other passenger deserves to be screened to."

She noted that even if other security protocols were in place for wheelchair users who were unable to stand, they had not been used at Leeds Bradford, or at the overseas airport. She considered that Trustees would be likely to consider that the complainant had not raised an issue that engaged the BBC's editorial guidelines.

The Adviser noted that at Stage 1a, the BBC had said of the report that:

“The main implication seemed to be that smaller airports, like Leeds/Bradford, need to adopt the practices of larger airports, like Heathrow.”

She noted that the complainant had disputed this. The Adviser noted that the report included the claim that the reporter had not been fully searched at many European airports, including Heathrow. She considered that Trustees would be likely to agree that this initial response from the BBC did not accurately reflect “the main implication” of the report, but she decided they would be likely to consider the BBC’s response at Stage 1b to be more pertinent both to the programme and the complaint.

The Adviser noted the complainant’s view that the programme had “increased the discrimination and difficulty which wheelchair users have with air travel” and that the BBC had not consulted enough wheelchair users before making the film. The Adviser noted that the introduction to the BBC’s guidelines on harm and offence states:

“We balance our right to broadcast innovative and challenging content ... with our responsibility to protect the vulnerable and avoid unjustifiable offence.”

She also noted that the 1998 Human Rights Act recognises “the right to freedom of expression, which includes the audience’s right to receive creative material, information and ideas without interference, subject to restrictions in law”.

She considered that Trustees would be likely to conclude that the report had a clear public interest and there was no requirement for the programme to consult with a particular number of wheelchair users before proceeding with the film. She considered that Trustees would conclude this was an editorial and creative decision for the BBC. 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 asked the Trustees to review the decision not to proceed with his appeal. He said that:

- his recent experience flying from Manchester airport to Tenerife had been similar to that shown in the programme; he therefore disputed the argument that security checks were tighter at larger airports than smaller airports
- the airline was at fault rather than Leeds Bradford airport because the airline should have provided an escort and sent the reporter to the special assistance desk and staff there would have asked him if he was carrying tools, and would have checked his wheelchair before he went through security

- if a wheelchair user had any sensitive areas that security could not touch, he would need a letter from his GP or consultant to confirm this
- the reporter was untruthful about his legs being sensitive and this undermined the integrity of the report
- the security expert suggested that all wheelchair users should transfer to a different wheelchair so that their own chair could be searched. This would be impossible for the complainant. The expert's comments did not take into account that other people with different disabilities needed different equipment
- the documentary was one-sided and had increased discrimination for wheelchair users travelling by air
- the programme was not a true portrayal of a genuine wheelchair user and did not consult widely with other wheelchair users.

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

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

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 were not likely to uphold a breach of the Editorial Guidelines given that:

- the programme had made no reference to security being tighter at larger airports than smaller airports
- the programme had set out to explore what happened when a wheelchair user attempted to carry concealed items through airport security checks. The complainant had made a number of points as to what should happen in these circumstances, such as the airline sending him to the special assistance desk or the wheelchair user needing a letter from his GP. In reality these checks did not happen and the reporter was able to carry tools and bottled water unchecked through security
- while the reporter was a wheelchair user, the programme did not claim that he was in any way representing all wheelchair users, nor did it say that his experiences were applicable to others with a range of disabilities; there was no requirement under the guidelines for the programme to have consulted widely with other wheelchair users
- the security expert had not suggested that all wheelchair users should transfer to a different chair. Instead he had stated that airport staff had not screened the reporter to the standard deserved by every passenger
- Trustees noted it was not clarified whether the reporter was able to stand or not. The Trustees did not know whether the reporter could stand; when he was asked whether he could stand, he had said he could not. Trustees considered the point was that airport staff had taken his comments on trust. Trustees agreed there was a clear public interest in testing the robustness of airport security even if that did entail the reporter saying he could not stand when he could stand
- the choice of which subject to cover was an editorial and creative decision for the BBC
- the programme had a clear public interest
- Trustees agreed that if they took this matter on appeal they were likely to decide that a reasonable response had been provided by the BBC Executive.

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.**

## Decision of BBC Audience Services not to respond further to a complaint about Today, Radio 4, 12 August 2015

The complaint concerned a comment made on the programme by Ed Vaizey, MP, Minister for Culture, Media and Sport, with special responsibility for digital industries, about the energy efficiency of DAB radio.

The complainant raised his concerns directly with the *Today* programme and made the following points:

- In an interview, Ed Vaizey MP stated that DAB radio was more “energy efficient” than FM, which was not true and needed to be corrected.
- He cited a Guardian online article in support of his complaint: <http://www.theguardian.com/environment/2009/jun/03/ask-leo-dab-radios> and an online article by the Energy Saving Trust: [www.energysavingtrust.org.uk/domestic/home-appliances](http://www.energysavingtrust.org.uk/domestic/home-appliances)  
The 2009 article referred to a report produced by the Energy Saving Trust two years earlier which stated that “traditional analogue radios have an average on-power consumption of two watts, but digital radios consume, on average, more than four times this amount (8.5 watts)”.
- He asked the programme to issue a correction as the statement could encourage people to buy DAB radios in the mistaken belief that they were more energy efficient, when the opposite was true.

Later, BBC Audience Services responded to this complaint and made the following points, having reviewed the programme:

- When asked by the presenter Justin Webb about DAB and government targets concerning the FM switch-off, Ed Vaizey suggested that digital coverage was as good as FM. Mr Webb made it clear that a lot of people did not agree.
- Mr Vaizey suggested that it was becoming much cheaper to buy a digital radio and they were much more energy efficient. Mr Webb pointed out that that was not the question asked. It was not possible to challenge every point made by programme contributors, especially during a live broadcast.

The complainant made a follow-up complaint. Audience Services responded and 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.

### Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust, (the Adviser) understood 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 noted that all BBC output was required to meet the standard of “due accuracy” which, under the terms of the Editorial Guidelines, was defined as follows:

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

The Adviser noted that the main focus of the interview was on the roll-out of “super-fast” broadband in the UK. Towards the end of the interview Mr Webb said he would like to turn briefly to the subject of digital audio and the Government’s stated aim to close down FM. She noted the exchange between Mr Webb and Mr Vaizey at the centre of the complaint:

**EV:** Most cars now have digital radios fitted as standard. It’s becoming much cheaper to buy a digital radio, they’re much more energy efficient.

**JW:** That wasn’t my question though.

The Adviser noted that the comment was open to interpretation – it may have meant that DAB radios were much more energy efficient than they used to be or that DAB radios were more energy efficient than FM radios. The Adviser was of the view that any listener who had decided to buy a DAB radio was responsible for checking out the facts about DAB radio themselves before they made a purchase.

The Adviser considered that it was not possible in an interview to challenge or clarify every point made. It was important to keep an interview on track. It was evident that Mr Webb wanted to return the minister to his key question which was whether the Government would close down FM.

The Adviser concluded that, having taking into account that the comment had more than one meaning, and also the context of the item as whole, it was likely Trustees would consider that the item was duly accurate if they took the substance of the complaint on appeal. The Adviser also concluded that Audience Services had addressed the complainant’s substantive concerns.

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. She did not propose to put it before Trustees.

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

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

- He could also have taken issue with the factual accuracy of the statement “Most cars now have digital radios fitted as standard”, because there were millions of older cars that had not had DAB radios fitted as standard. He said the intent of that sentence was “clearly to promote that most car drivers/users can listen in their cars to a DAB radio”.

- He disagreed that DAB radios were more energy efficient and it was wrong to promote DAB by stating this.
- He noted the Adviser's statement that the remark about DAB energy efficiency could be interpreted as meaning DAB radios were more energy efficient than they used to be, but however the remark was interpreted, he did not believe the report met the requirements for due accuracy. DAB radios were less energy efficient than FM radios.
- He believed the switchover from FM to DAB was a matter of substance and the BBC had a duty to deal with it.
- He believed DAB radio was being promoted on false and inaccurate facts which was also a matter of substance.

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

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

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 were not likely to uphold a breach of the Editorial Guidelines given that:

- it was not possible in an interview to challenge or clarify every claim that an interviewee might make.
- the key question during the interview was whether the Government would close down FM.
- in context, the remark concerning the efficiency of DAB radio ("they're much more energy efficient") could be interpreted as meaning that they were much more energy efficient than they used to be, rather than that they were much more energy efficient than FM radios.
- they would be likely to conclude that the accuracy was adequate and appropriate to the output.

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.**

## Decision of BBC Audience Services not to respond further to a complaint about Today, BBC Radio 4, 6 October 2015

The complaint concerned an interview on *Today* between James Naughtie and a BBC correspondent, Peter Taylor, who had interviewed the American whistle blower Edward Snowden for *Panorama*. The complainant considered that Peter Taylor had given his own opinions instead of remaining impartial.

The complainant made the following points:

- Peter Taylor breached BBC editorial guidelines by expressing “his personal views about the Snowden controversy”.
- He stated that Mr Snowden had performed “a public service”.
- He expressed his opinion that David Anderson QC (Independent Reviewer of Terrorism Legislation for the Government) had “got the balance [between security and privacy] about right” when he spoke on *Panorama*.
- Peter Taylor was obliged to be impartial and not give his opinion on these issues.

BBC Audience Services made the following points:

- Peter Taylor’s comment was “you have to balance the damage that he did, which the agencies say is considerable, against the public service that he did in raising this issue, and given the forthcoming Parliamentary debate on the Investigatory Powers Act I think the issues he’s raised will be at the forefront of the debate”.
- James Naughtie reflected the opinion about the “balance in this debate” which had been expressed by David Anderson QC
- Peter Taylor’s comments were not biased or personal in view, beyond the remit of giving his expert opinion.

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 24 November 2015 on the substance of his complaint which he felt had been ignored by the BBC.

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood 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 noted that all BBC output was required to be duly impartial. She also noted the following guidelines on impartiality:

“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 what had been said on *Today*:

Peter Taylor: You have to balance the damage that he did - which the agencies say is considerable - against the public service that he did in raising this issue and, given the forthcoming parliamentary debate on the Investigatory Powers Act, I think the issues that he's raised will be at the forefront of the debate.

James Naughtie: It's interesting that David Anderson QC the Independent Reviewer of Terrorism Legislation for the Government spoke on the programme [*Panorama*] saying "Snowden's done harm to the ability of this country to protect itself but I think you could also say [that] he's done us a service by ensuring that these intrusive powers will be publicly debated and properly provided for in law". So there is a balance in this debate.

Peter Taylor: I think so, and I think that David Anderson QC has got the balance about right.

The Adviser noted that the complainant felt that Peter Taylor was biased when he said that Edward Snowden's revelations had provided a "public service". She noted, however, that James Naughtie had referred to David Anderson QC, who had spoken in the *Panorama* programme itself of the issue of balance between causing damage and providing a public service and had reflected the view that "he's done us a service by ensuring that these intrusive powers will be publicly debated and properly provided for in law".

The Adviser also noted that the complainant felt that Peter Taylor showed bias by saying "I think that David Anderson QC has got the balance about right". However, she noted that the BBC's guidelines allowed for BBC reporters and presenters to "provide professional judgements, rooted in evidence". She considered that Peter Taylor was providing a professional opinion on the issues raised by the story; she considered this was understood by audiences, who anticipated that reporters and correspondents would be able to give their analysis of a story, and she did not consider this was a failure of impartiality.

The Adviser considered that the output did not raise an issue under the Editorial Guidelines. She noted that decisions about the content of news interviews such as this one were the responsibility of individual news editors. Such issues were editorial decisions which were the responsibility of the BBC's Executive Board. They were not a matter for the BBC Trust unless they involved a breach of editorial standards which the Adviser did not consider was the case here.

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:

- Peter Taylor had expressed two personal opinions: firstly that Edward Snowden performed a public service by making the revelations and that David Anderson's report got right the balance between security and privacy.
- Peter Taylor could have reported these two issues without giving listeners his opinion.
- "A professional opinion" and "analysis" were not one and the same. Peter Taylor did not offer any analysis in his piece backed up with evidence, therefore there was no benefit to listeners in hearing his personal opinion.

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

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

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 were not likely to uphold a breach of the Editorial Guidelines given that:

- the BBC's guidelines allowed for BBC reporters and presenters to "provide professional judgments, rooted in evidence"
- Peter Taylor had made a film for *Panorama* about Edward Snowden and had interviewed him. He had an acknowledged expertise in security issues having reported on them for the BBC over several decades.
- Peter Taylor was entitled to give his professional judgement which was that it was necessary to balance the "damage that he [Edward Snowden] did" (caveated with the opinion of the agencies that it was considerable) against "the public service that he did" in the context of the forthcoming parliamentary debate on the Investigatory Powers Act.
- Peter Taylor was entitled to give his professional judgement on the views of David Anderson QC, expressed in *Panorama*, based on his own knowledge of the issues involved when he said that he had "got the balance about right".
- the audience to *Today* expected the current affairs programme to provide such professional judgements through interviews with the BBC's journalists and reporters.

Trustees agreed that if they took this matter on appeal they would be likely to decide that a reasonable response had been provided by the BBC Executive.

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.**

# Admissibility decisions

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

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

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

The Editorial Complaints and Appeals Procedure<sup>5</sup> explains that:

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

- o fails to raise an issue of breach of the Editorial Guidelines; or
- o is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

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

In the cases which progressed to Stage 2 the decision for the Trustees was whether to take the complaint as an appeal or whether it had no reasonable prospect of success and was not admissible.

In each of the following cases the Committee was provided with the complainant's correspondence with the BBC and the complainant's appeal/s to the Trust. The Committee was also provided with the relevant broadcast or published content.

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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)

## Newsnight, BBC Two, 17 March 2015

The complainant asked the Editorial Standards Committee to review the decision of the BBC not to uphold the complaint at Stage 2.

### The complaint

The complaint concerned a *Newsnight* report which investigated claims made by Simon Danczuk MP that CCTV footage of Cyril Smith approaching and grooming children at a railway station was used in a British Transport Police training video during the 1980s.

The complainant made the following points:

- *Newsnight* had “unquestioningly broadcast claims which had no basis in fact”.
- Station staff, British Transport Police, and the police all stood accused of watching Cyril Smith offend.
- The un-named viewers of the training video featuring Cyril Smith were identifiable to their friends, families and colleagues. He said that anyone from that era, in that area, was now a “suspect” in the eyes of some, guilty of covering up heinous crimes, if only by their silence.
- He referred to a police statement which had said that the police had been unable to substantiate a different incident regarding Cyril Smith alleged in a book by Mr Danczuk but that they were continuing their investigation.
- He wanted it acknowledged that the story was untrue, and should not have appeared.
- He believed that the Editorial Guidelines had been breached because the individuals and organisations were not given the chance to respond. He quoted the BBC’s published guidance relating to the Right of Reply which said:

Offering a right of reply to those who are the subject of significant criticism or allegations of wrongdoing is a fairness obligation under the Ofcom Broadcasting Code. It can also help achieve accuracy in our output by serving as fact-checking and informing the nature of our allegations.

The ECU made the following points at Stage 2:

- The issue raised by the complainant that the report was unfair to particular individuals because they were not afforded a right of reply did not engage the Editorial Guidelines because the BBC would not take complaints of unfairness brought by third parties.
- On the issue of accuracy, the ECU said that although no corroboration was offered in the programme for Simon Danczuk’s allegation, it was clearly attributed to Mr Danczuk. There was no suggestion that it was endorsed by the programme. The Complaints Director did not consider there had been a breach of editorial standards.

### Appeal to the BBC Trust

The complainant made the following points:

- He did not agree with the ECU that the second part of his complaint, regarding the failure of the programme to give a right of reply to those implicitly accused of

being complicit in the cover-up of child abuse by powerful figures, amounted to a “complaint of unfairness”. He said that was not his complaint; his complaint was that the Editorial Guidelines were not adhered to.

- He noted that the guidelines he was referring to, which were in place at the time of his complaint, had been modified recently, and links to “fairness” clauses appeared to have been inserted.

### **The Panel’s decision**

A panel of the Committee was provided with the complainant’s appeal to the Trust and the correspondence between the complainant and the BBC.

Trustees noted that the Editorial Complaints and Appeals Procedure<sup>6</sup>, which was approved by the Trust following public consultation, distinguishes between first party complaints regarding fairness and privacy and third party standards complaints. First party complaints may be brought only by the individual affected (or those with authority to represent them).

The Trustees would not therefore consider a complaint of unfairness to individuals unless it was brought by the individual or their representative.

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

- the script made it clear that this was a claim (as opposed to proven fact) and that it was made by Mr Danczuk:

“Here [Cyril Smith] is at Euston station, checking out new automated ticket gates in 1989. It was not his first visit there, according to new claims.”

and

“Police had previously filmed him on the station’s platform approaching under-age boys. So says the man who has done most to unearth Smith’s offending.”

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.**

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<sup>6</sup> [http://www.bbc.co.uk/bbctrust/governance/complaints\\_framework/editorial.html](http://www.bbc.co.uk/bbctrust/governance/complaints_framework/editorial.html)

## Match of the Day 2, BBC One, 13 September 2015

The complainant asked the Editorial Standards Committee to review the decision of BBC Sport not to uphold the complaint at Stage 2.

### The complaint

The complaint concerned a comment made by Sam Allardyce during the analysis of Sunderland's match against Tottenham on *Match of the Day 2*. After describing the build-up to Tottenham's goal he said:

"If you look at the Sunderland midfield players ... all four of them made the slight mistake that ultimately ended up with Mason getting in and taking what was a very good move, a very good goal, but I still think Sunderland could have done something about it - when all's said and done Mason started that move off inside the centre circle so somebody should have got something on him even if it meant fouling him and taking a yellow card."

The complainant made the following points:

- Encouraging football players to break the rules was irresponsible and unacceptable. It provided a very poor role model for viewers, especially children
- Personal opinions which were relevant to the way the game was played or the tactics used were acceptable but urging a player to commit a foul was not
- By using guests who actively encouraged people to break the laws of the game, potentially in a violent way, the programme was "condoning violence and promoting a very unacceptable side of football"
- The programme was pre-recorded so there was opportunity to stop views such as this being broadcast. If live, guests should be warned that certain views were unacceptable
- In other areas of BBC broadcasting there were clear guidelines concerning strong language and promoting violence or racism
- There was uproar recently following a series of fouls committed by Diego Costa and the FA was forced to act. If even the FA could see that it was unacceptable to incite or condone breaking the rules why couldn't *Match of the Day*?
- This had happened more than once on the programme.

The Chief Adviser and Business Manager, BBC Sport made the following points at Stage 2:

- The complainant's point was a very good one and one that had long divided opinion within the game and with audiences
- These types of situation arose all the time and would continue to do so in the future
- The BBC's pundits, as ex-professionals, always spoke with honesty about the incidents that arose during Premier League matches. There was a fine line between condoning behaviour that infringed the laws of the game and explaining the motivation behind the decisions taken by professional footballers
- None of the programme's pundits would willingly encourage violence on the football pitch, nor would anybody responsible for BBC Sport's football programmes share or broadcast such a point of view
- *Match of the Day* was almost always broadcast live from the BBC's studios in Salford.

## Appeal to the BBC Trust

The complainant appealed to the BBC Trust. He said that in this context the contributor was not explaining a player's motivation but said that a player *should have* committed a foul. He clearly condoned behaviour that infringed the laws of the game. There was a difference between condoning/encouraging and interpreting. There had been another similar incident in a previous programme.

### The Panel's decision

A panel of the Committee noted the points made by the BBC 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 guidelines on Harm and Offence can be found at this link:

<http://www.bbc.co.uk/editorialguidelines/guidelines/harm-and-offence>

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 BBC's guidelines allowed "a wide range of individuals, groups or organisations to offer a personal view or opinion, express a belief, or advance a contentious argument in its output" as long as this output is clearly signposted.
- it was the role of the pundit to provide professional insight into the game and to offer a personal opinion based on previous experience - in this case as a former professional football player and manager - and that this would be generally understood by audiences to the programme.
- this comment by this pundit was within audience expectations for *Match of the Day*
- the BBC had assured the complainant that none of the contributors to *Match of the Day* would willingly encourage violence on the football pitch, nor would those responsible for BBC Sport programmes share such a point of view.

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.**