

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

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

# Remit of the Editorial Standards Committee

The Editorial Standards Committee (ESC) is responsible for assisting the Trust in securing editorial standards. It has a number of responsibilities, set out in its Terms of Reference at [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_operate/committees/2015/esc\\_tor.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2015/esc_tor.pdf)

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Summary of findings

**Analysis, The Anatomy of a Panic, BBC Radio 4, 25 May and 1 June 2015**

## Summary of finding

This was a consolidated appeal by a number of complainants about two programmes in the *Analysis* strand for Radio 4 which examined concerns about ritual sexual abuse in the 1980s and 1990s. They were broadcast over successive weeks and presented by the Times journalist, David Aaronovitch. The complainants said amongst other things that the BBC had failed to be duly accurate and impartial and that in the case of three complainants, the programme had dealt with them unfairly.

The consolidated appeal raised 20 points of issue; the Committee upheld two of those points (one in relation to accuracy and impartiality and the other in relation to accuracy); Trustees decided not to uphold the remaining 18 points.

To summarise with regard to the upheld matters, the Committee concluded with regard to the reflection in the programme of allegations of ritual satanic abuse in Nottingham:

- given the distance of 25 years and the fact that the court records remain sealed, the assertions of each party as to what Justice Booth and Judge Morrison might have considered, and what evidence their judgements relied on, cannot be independently verified
- nevertheless, comments which have been attributed to Justice Booth and Judge Morrison could be considered to have come from reliable sources
- it would be reasonable to conclude that the judges' findings would have comprised significantly more than is currently in the public domain, that they would have taken into account all available evidence in reaching the conclusions they did, and that they would have taken due care in the drafting of their judgements
- Justice Booth and Judge Morrison reached profoundly different conclusions to those in the JET Report regarding the credibility of the children's stories as recorded by their foster parents
- the judges' comments constituted material facts
- the latitude allowed for personal view content did not extend to an exemption from the requirement that content is duly accurate
- in light of the weight given by the programme to the JET<sup>4</sup> Report and to Professor Jean La Fontaine's findings in her 1994 report for the Department of Health, which concluded (amongst other things) that foster parents had unwittingly imprinted stories in the children's minds through leading questions, it was incumbent upon

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<sup>4</sup> The Joint Enquiry Team of independent social workers and police set up in 1989 by Nottingham Police and Nottingham Social Services to examine allegations of ritual abuse

the programme to reflect that there had been authoritative sources which had concluded otherwise

- in not giving any editorial weight to the judges' comments (albeit that the programme was unaware of one set of the comments) the programmes had failed to be duly accurate and the omission was therefore a breach of Section 3.2 of the Accuracy guideline
- while a breach of accuracy does not always lead to a failure of impartiality the guidelines explain that the omission of an important perspective, in a particular context, might jeopardise perceptions of the BBC's impartiality
- despite the latitude given to appropriately signalled personal view programmes, in this particular context the omission of the views of two judges who had made findings of fact on this matter and were acquainted with the evidence should have been included and given due weight
- the effect of the inaccuracy had on this occasion led also to a failure to be duly impartial

The Committee concluded with regard to references in the programme to content in the book *The Courage to Heal* that:

- there is no evidence that the book says that if the person you accuse of being your abuser denies it, it is confirmation that it happened
- given the importance of the book to the presenter David Aaronovitch's central thesis, there was a particular responsibility on the programme to ensure any reference to its content was accurate
- the audience was misled on a material fact and this had led to a breach of 3.2 of the Accuracy Guideline.

Trustees agreed that the breaches identified in this finding were minor and that publication of the finding was sufficient remedy.

**Overall finding: Upheld in part in relation to due accuracy and due impartiality regarding the omission of judges' comments in Wardship hearings and also in relation to due accuracy regarding the description of the book *Courage to Heal*. Not upheld on all other points**

# Appeal Findings

## Analysis, The Anatomy of a Panic, BBC Radio 4, 25 May and 1 June 2015

### Background

The complaint concerned two programmes in the *Analysis* strand for Radio 4 which were broadcast over successive weeks and examined concerns about ritual sexual abuse in the 1980s and 1990s.

The programmes were presented by the Times journalist, David Aaronovitch. He set out the scope of the programmes in these sections of commentary early in the first programme:

“Today the idea of ritual abuse is less fashionable, while the notion of murderous rings of paedophile politicians is far more current. But to me there is a consistent ideological thread that runs through both phenomena – a tendency to allow stories to outstrip the facts, obscuring genuine abuse and creating an atmosphere in which false or mistaken accusations can flourish. To the detriment, often, of the very people who most need help. To explore how such ideas gain currency and what they mean we’re devoting two consecutive editions of *Analysis* to the linked subjects of ‘recovered memory’ and a belief in widespread organised satanic and ritual abuse of children”

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“In many situations, such as those exploited by the gangs who groomed young teenagers, complaints by the victims were disbelieved or not taken seriously. Unsurprisingly some of those whose job it was to help such youngsters began to correct such prejudices by a stance of more uncritical belief. In not a few cases this mutated into a settled determination to find that there had been sexual abuse. The importance of corroborative evidence began to be overlooked.

“The dangers in such an over-correction have always bothered me almost as much as the dangers of abuse. And to illustrate that, I’ve looked at the extraordinary spread of the belief in ritual abuse. The result of that spread was a vicious cycle of accusation, confabulation, excessive credulity and injustice, all of which – when it collapsed – led to a new period of disbelieving victims.

“The object of these programmes then is to show how an idea, a belief, began in America, how it crossed the Atlantic, how it bewitched a generation of childcare professionals and how it caused – and still causes – long term damage to the welfare of vulnerable children in Britain. And if listeners think they spot parallels with some of the current claims being made about VIP paedophile rings and group child murder, then all I can say is, ‘I agree’.”

### Appeal to the Trust

This was a consolidated appeal by a number of complainants who considered, amongst other things, that:

- the BBC failed to be duly accurate and impartial
- in the case of three complainants, the programme dealt with them unfairly as contributors
- the programme failed to consider the potential impact of the programme on victims of sexual abuse or the encouragement it might give to those who abuse children

### **Applicable Editorial Guidelines**

The following BBC Editorial Guidelines are applicable to this complaint:

- Accuracy
- Impartiality
- Harm and Offence
- Fairness, Contributors and Consent
- Interacting with our Audiences
- Accountability

The full text of the Editorial Guidelines is at: <http://www.bbc.co.uk/editorialguidelines/>

### **Preliminary Consideration – did the subject matter qualify as personal view content?**

Trustees considered next whether the programmes qualified as personal view content, which is explained in 4.4.29 of the Editorial Guidelines thus:

The BBC has a tradition of allowing 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. This can range from the outright expression of highly partial views by a campaigner, to the opinion of a specialist or professional including an academic or scientist, to views expressed through contributions from our audiences. All of these can add to the public understanding and debate, especially when they allow our audience to hear fresh and original perspectives on familiar issues.

Such personal view content must be clearly signposted to audiences in advance.

Trustees considered the following factors in reaching their decision on this point:

- *Analysis* was first broadcast in 1970 and has a long tradition of providing a platform to people from outside the BBC to examine a range of issues.
- *Analysis* describes itself on the BBC website as

“a programme examining the ideas and forces which shape public policy in Britain and abroad, presented by distinguished writers, journalists and academics.”

- the format of the two programmes, in the Trustees’ opinion, was consistent with what they considered the likely audience would expect from *Analysis*
- the continuity announcement indicated that the programmes were presented by David Aaronovitch of the Times
- Mr Aaronovitch acknowledged at various points over the two programmes that he approached the subject matter from a particular viewpoint, as in these extracts from the commentary:

“But to me there is a consistent ideological thread that runs through both phenomena – a tendency to allow stories to outstrip the facts...”

“The dangers in such an over-correction have always bothered me almost as much as the dangers of abuse.”

“I wanted to make these *Analysis* programmes because the way in which ideas of organised ritual abuse and recovered memory spread, had strong parallels with some (but not all) of the claims being made of historic VIP abuse. I am, in that sense, a selective sceptic.”

“In a way, given my own published views on the subject – I am deeply sceptical about her [Valerie Sinason’s] work – that’s not so surprising.”

Trustees made the following points:

- the programme makers relied on their belief that the audience would understand that these were authored programmes, rather than choosing to state explicitly that they were
- the combination of the expectations of likely listeners to the *Analysis* strand, and statements in the commentary which indicated the presenter’s position, meant that on balance the programme met the guideline definition for personal view content
- in deciding that for these specific programmes the threshold for signposting personal view content had been reached without an explicit statement to inform listeners, the Committee noted that this would not necessarily always be the case
- the Committee considered that it would be prudent as a rule to err on the side of caution and not to rely on implicit signposting, but to consider on each occasion including an explicit statement to the effect that the content the audience was about to hear constituted the presenter’s personal view, and the Committee would invite the Director of Editorial Standards to consider whether guidance should be developed to encourage that approach

### **Preliminary Consideration – was the subject matter “controversial”?**

Trustees noted the overarching requirement in the Editorial Guidelines which underpins the consideration of all complaints and requires that content be tested against the editorial standard of “due impartiality”, defined in the Editorial Guidelines as follows:

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

Trustees noted that there were particular considerations when broadcasting controversial content. They therefore considered whether the subject matter of the programmes met the Editorial Guideline's definition of a controversial subject, taking account of 4.4.6 which states that the following factors should be taken into account in determining whether subjects are controversial:

- the level of public and political contention and debate
- how topical the subjects are
- sensitivity in terms of relevant audiences' beliefs and culture
- whether the subjects are matters of intense debate or importance in a particular nation, region or discrete area likely to comprise at least a significant part of the audience
- a reasonable view on whether the subjects are serious
- the distinction between matters grounded in fact and those which are a matter of opinion

Trustees noted the content of 4.4.7 which states:

When dealing with 'controversial subjects', we must ensure a wide range of significant views and perspectives are given due weight and prominence, particularly when the controversy is active. Opinion should be clearly distinguished from fact.

Trustees considered the following factors in reaching their decision:

- the subject matter was the genesis and transmission of ideas about the existence of widespread ritual satanic abuse and the programmes posited the idea that "group think" took hold when such ideas began to circulate in the 1980s and 1990s
- the scope of the programmes' ambition was clearly signposted in the continuity announcements and the introductory sections of both programmes. The Committee had agreed (above) that these were personal view programmes
- the idea of widespread ritual satanic abuse was not a matter of public or political contention or topical debate in May and June of 2015 to the same extent as it was when the ideas were circulating in the 1980s and 1990s
- whilst the subject matter remains an emotive and sensitive issue for a relatively small number of people, the issues discussed were not matters of intense debate or sensitivity to a significant part of the likely audience
- whilst the issue of satanic ritual abuse was discussed in the context of contemporary concerns of child abuse, the specific subject matter dealt with over

the two programmes was historic and clearly distinct from any contemporary allegations

- these programmes examined an historical phenomenon and, whilst the incidents of abuse referred to in the programme were still extremely serious to those children (now adults) and those involved in supporting them, the programme focused on the arguments for and against the existence of widespread ritual satanic abuse decades ago. A debate about the existence or not of a type of organised child abuse today would be very serious but the passage of time meant that the debate was of interest but was not so contentious in its nature as to render the subject matter controversial

The Committee decided the subject matter did not meet the guideline definition for controversial content and that therefore the additional considerations set out in 4.4.7 did not apply and did not need to be taken into account in reaching a view on the points of complaint.

### **Points of appeal**

The Committee noted the points which complainants had asked to be considered:

Point (A) – Whether the programme observed due accuracy and due impartiality in how it reflected allegations of ritual satanic abuse in Nottingham

Point (B) – Whether the programme observed due accuracy in how it reflected the terms of the current debate regarding dissociative identity disorder and recovered memory

Point (C) – Whether the programme observed due accuracy in how it discussed the 1989 Reading Conference

Point (D) – Whether the programme observed due accuracy when it suggested that the book *The Courage to Heal* said something like “if the person you accuse [of sexual abuse] denies it, that’s confirmation it happened”

Point (E) – Whether the programme observed due accuracy and/or impartiality in how it reflected its thesis of a link between a historic satanic abuse panic and contemporary concerns about child abuse

Point (F) – Whether the programme observed due accuracy/and or impartiality in how it reflected the influence of certain books in disseminating the idea of ritual abuse

Point (G) – Whether the programme breached the Harm and Offence and/or Interacting with our Audiences guidelines in not offering an audience helpline and not including a content warning

Point (H) – Whether the programme observed the Fairness, Contributors and Consent guidelines in informing the complainant about the nature of the programme and the context of the complainant’s contribution; whether the complainant’s position was fairly represented; and whether the programme reneged on an undertaking it gave to include specified material

Point (I) – Whether the programme observed the Fairness, Contributors and Consent guidelines in what it told Sarah Nelson about the nature of the programme and her part in it; whether specific material from her interview should have been included in order that the programme achieved due accuracy

Point (J) - Whether the programme observed the Fairness, Contributors and Consent guidelines in its portrayal of an individual; whether the Individual should have been offered a right to reply

Point (K) – Complaints handling: whether the Editorial Complaints Unit observed the Accountability Guidelines and acted in accordance with the Editorial Complaints Framework in its consolidation of complaints

Point (L) – Complaints Handling – Whether the content of a posting on a third party website engaged the Editorial Guidelines

Point (M) – Whether the programme observed the Accuracy and Fairness guidelines in the programme commentary which related to an individual's views about satanic abuse

**Point (A) – Whether the programme observed due accuracy and due impartiality in how it reflected allegations of ritual satanic abuse in Nottingham**

The Committee noted that a case of child sexual abuse in Nottingham from the late 1980s was discussed across the two programmes as an illustration of David Aaronovitch's theories about a ritual sexual abuse panic.

The Committee noted the following relevant background:

- the case involved multi-generational sexual abuse of several children on a Nottingham housing estate, which culminated in a court case in 1989 in which ten adults were jailed for 53 offences of incest, indecent assault and cruelty
- while the prosecution was preparing its case, foster parents of the abused children began reporting that some of the children in their care were giving accounts of the abuse they had suffered as having been ritualistic in nature
- these allegations, that the children were abused within a ritualistic context, did not form part of the prosecution's case and the foster parents' records of the children's accounts were not tested in a criminal court

The Committee noted the complainants' contention that, in featuring the Nottingham case, *Analysis* ignored or suppressed authoritative evidence which substantiated allegations of ritual abuse in Nottingham and that it gave too much weight to sources which had concluded the claims were without foundation.

The Committee noted that Point (A) engaged the Editorial Guidelines' requirement that content is duly accurate and duly impartial.

The Committee noted the clauses from the Accuracy Guidelines most relevant to its consideration of Point (A):

### **3.2.1-3.2.3 (Principles)**

- 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
- 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)

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### **3.4.2 (Gathering Material)**

- In all our content we must check and verify information, facts and documents, where required to achieve due accuracy

The Committee referred to its previous decision (above) that the programmes met the definition of personal view content as outlined in 4.4.29 of the Impartiality section of the BBC Editorial Guidelines. The Committee referred too to its decision (above) that the subject matter was not "controversial". The Committee understood therefore that whilst the overarching requirement of "due impartiality" still applied, in practice this meant that the individual programmes were not obliged to reflect opposing views: the audience would have recognised they were hearing a partial view and that others may hold different opinions, and they would have judged the content accordingly.

The Committee considered a number of sub-points before reaching its overall view on Point (A):

#### **Point (A)1 – The reflection of the JET Report in the programme**

Trustees noted that JET was an acronym for the small Joint Enquiry Team of independent social workers and police set up in 1989 by Nottingham Police and Nottingham Social Services to examine allegations of ritual abuse. The JET Report was discussed in programme two:

DAVID AARONOVITCH

25 years ago, in the Nottingham Broxtowe estate case, social workers believed they'd uncovered an extensive network of ritual abusers. The local police did not agree...

...with the police and social workers at loggerheads a Joint Enquiry Team, or JET, composed of three police officers and three social workers was set up to look at the handling of the Nottingham case. The group handed in their 600-page report at the end of 1989.

It noted that the claims of the children had included: babies being stabbed in a balloon and cooked in the oven; babies being cut out of the tummies of the female members of the family; a naughty policeman killing babies; and the family having dead babies hung around their necks.

Furthermore almost none of the places with secret underground rooms described by the children actually existed. The report concluded that, left with the choice between the outlandish often impossible nature of the claims and the possibility of confabulation, the social workers had decided to go for the impossible. And, unwittingly, they had guided the process.

The JET Report was utterly rejected by some of the Nottingham social workers and by their supporters. To them it seemed like a replay of previous pig-headed attempts to deny the reality of child abuse.

In the event Nottinghamshire County Council refused to publish the JET Report, claiming that it was never meant for public dissemination, and injunctioned anyone else from publishing it. You can, however, find it online.

Trustees noted that the complainants contended the programme's reliance upon and reflection of the Jet Report was flawed because:

- the JET Report was a single source
- the reference to "some social workers" does not adequately reflect the range of authoritative sources which have dismissed the claims made in the JET Report
- it was "unadopted, unpublished and discounted by the courts"
- the programme stated merely that some of the Nottingham social workers utterly rejected the JET Report whereas it had also been rejected by Nottinghamshire Social Services
- the JET Report was the exemplar in the *Analysis* programme but the programmes suppressed evidence that contradicted its hypothesis

Trustees considered the following:

- the Nottinghamshire Director of Social Services, David White, presented a report to his Social Services Committee in 1990 in which he gave his view on the case. He wrote his paper having seen the JET Report and having had a similar length report from his social workers rebutting its findings.
- extracts from Mr White's concluding comments:

"I cannot, nor can anyone else, state with certainty the nature and extent of ritualistic abuse. There may be groups who practice [sic] the abuse of children to further a particular system of perverted beliefs. If so, the empirical evidence for their practice as opposed to their ideas, has yet to be uncovered in any consistent or extensive way. On the other hand children are abused in all kinds of ways and some of those ways may include ritualistic practices. It may even be that some of those who carry out such practices seek to provide them with a spurious legitimacy by associating them with satanic cults. Even here, little has been revealed in terms of evidence which would stand the test of a Court of Law in a criminal trial."

"I do feel that on the basis of the strength of the children's testimony that it would be unwise not to accept the possibility that there were ritualistic elements to this case."

"Given all the written material I have reviewed and the comments of the Judiciary, the disclosures made by the children are unlikely to have been created in their minds by the Social Workers or foster parents."

- the programme's response to the ECU at Stage 2 of the complaints process:

"It is not at all fair to paint this as a rejection of the findings of JET.

"At the outset, the DSS [David White] says that he initially accepted all of the findings of JET. He sets out in detail the bitter divisions that existed in Nottingham not just between social workers and the police, but among social workers too.

"The DSS accepts that there is no corroborating empirical evidence that the kind of ritualistic abuse the children described exists – the point which is made in the *Analysis* programmes.

"However, he does soften his stance towards the end of the report, explaining that the social workers only ever had the interests of the children at heart (a point not disputed by the programmes). At the tail end of the report he says that 'on the basis of the strength of the children's testimony that it would be unwise not to accept the possibility that there were ritualistic elements to this case'. This is as far as he goes.

"He refers to this as a 'more cautious position', but certainly not one that endorses that these things actually happened and that the nature of abuse alleged by the children happened, or that the places to which they referred actually existed."

- the programme's response to the assertion that it suppressed Mr White's report:

"We were not aware of the report so could not have suppressed it. However having considered its contents we cannot see how its inclusion would have changed the arguments put forward in the programmes."

- David Aaronovitch's response to the point on appeal in which he pointed to this comment from his blog (appended for the complainants' convenience – the blog is not for publication as part of the finding):

“Despite the various attempts that ... have (been) made to discredit the report it remains the case that undisputed facts, such as the discovery that the adult corroboration was (a) utterly flawed and (b) subsequently retracted, arose from the JET enquiry.

“Readers can see that the JET enquiry team concluded that almost every single assertion that suggested ritual abuse and that could be tested, was found to be impossible. It is as damning a document as I think I have ever seen and, though there have been quibbles raised ... the mass of detail in the Report has never been countered.”

Trustees concluded with regard to Point (A)1 that:

- the statement in the commentary that Nottinghamshire County Council had refused to publish the JET Report would have left the audience with the accurate sense that it was controversial at the time and it was adequate acknowledgement that concerns about the JET Report’s conclusions went beyond the social workers involved
- the report by Nottinghamshire’s Director of Social Services did not amount to a rejection of the JET Report’s findings, though he had reached different conclusions in some instances
- given the prominence of the Nottingham case over the two programmes and its specific allusion to details of the JET Report’s finding, the programme’s ignorance of the existence of the Director’s response was both surprising and of some concern – but there was no evidence to support the assertion it had been deliberately suppressed
- it would have added to the audience’s understanding had they been made aware of the Director’s comments that “it would be unwise not to accept the possibility that there were ritualistic elements to this case”
- given that the personal view expressed in the programmes was focused on the argument that there was no evidence of widespread ritual satanic abuse, the omission of this information was not, however, a breach of due accuracy

### **Finding: Not upheld**

### **Point (A)2 – The omission of judges’ comments in Wardship hearings**

Trustees noted that:

- allegations that the children in the Nottinghamshire case had been subject to ritual abuse have never been tested in a criminal court although it is understood that some evidence was heard in Wardship hearings in the Family Court involving the Nottingham children
- evidence and judgements in Family Court hearings in the UK are confidential
- but some content from judgements in the Wardship hearings has come into the public domain

- two judges commented in some detail on the children's disclosures to their foster parents; what is known of their judgements shows that they found the children's stories credible and that they dismissed suggestions that the children had been influenced by their social workers or foster parents
- the judges' comments were not reflected in either of the programmes
- complainants also cited two further related cases: the first an appeal by some of the defendants in the Nottinghamshire abuse case that evidence heard by Justice Booth in the Wardship hearings should not be handed over to police, and the second a separate criminal appeal by defendants against their convictions for sexual abuse. In each case complainants argued that the defendants cited arguments in the JET Report (that there was no evidence of ritual satanic abuse) and yet their appeals were dismissed; complainants said this demonstrated that the JET Report's findings were not given any weight by judges in those cases.

The Trustees also noted with regard to the judges' comments that:

- because of the confidentiality of proceedings in Family Courts, information as to what Justice Booth and Judge Morrison are understood to have said has come into the public domain entirely from secondhand sources
- Justice Booth is quoted as having stated in her judgement in a Wardship hearing in July 1988 that the abuse the children suffered was "Satanic". (Sources: Glasgow Herald court report and the JET Report page 8)
- the Nottinghamshire Director of Social Services, David White, wrote in his report to his Committee in 1990:

"Indeed the view of Justice Booth (who commented that the children had 'been compelled to witness ... slaughter of animals ... made to drink blood') made during the Wardship Hearings about the disclosures is worth repeating at this point. 'I was very impressed by all of these foster mothers. They are extremely caring people, but more importantly, from this point of view, I took them to be reliable witnesses; witnesses who listened to the children and did their best to record what the children said to them, and I regard the foster mothers as reliable witnesses and as good recorders of the children's disclosures'."  
(paragraph 16)

[...]

"Recently, in June 1990, His Honour Judge Morrison in praising a foster carer (unconnected with the foster parents involved at the beginning of the case) for the quality of the material she kept in diary form of the children's experiences said – 'That record is the most eloquent testimony I have ever heard or seen in a case of this sort... It has been suggested that she led the children or put ideas into their head. I find that is ludicrous and very unfair'. He concludes that, 'Although I have made certain findings of fact, and I am satisfied beyond reasonable doubt, it is different from actual evidence.'" (paragraph 36)

Trustees noted that the complainants contended that:

- the programme suppressed information that the children's stories had been deemed credible in Wardship Court and Appeal Court proceedings
- given that the programme placed so much weight on the JET Report and on the conclusions of a report for the Department of Health by Professor Jean La Fontaine (which concluded there was no evidence to support the existence of ritual abuse) the programme should have accorded at least as much weight to the official and legal adjudications in the case, from 1988 to 1995

Trustees noted that one complainant said:

- "To meet the required standard of accuracy laid down in BBC Guidelines, Mr. Aaronovitch was under a duty to also report the statements by Mrs. Justice Booth in the Wardship proceedings, reaffirmed by the Appeal Court which found – as fact – that the foster mothers who recorded the apparent ritual abuse disclosures were reliable; AND that the abuse suffered by the Broxtowe children was 'satanic'."

Trustees noted the programme's response was that:

- Justice Booth's comments were not suppressed; the producer was aware of what she was quoted as having said and did not accept that her comments required to be reflected because:
  - they predated the JET Report and she would not therefore have had the opportunity to consider the evidence it had gathered or the findings it had reached
  - when she wrote her judgement in the Wardship hearing, Justice Booth was under the impression that the children's stories had been corroborated by an adult
  - the JET Report subsequently noted that an adult who had sworn an Affidavit in the Wardship Court, in which she mentioned witch parties and big houses, had since retracted her statement and admitted she had misled the Wardship Court and that her evidence had been the result of "pressure" from her social worker
- *Analysis* had not been aware of Judge Morrison's comments so could not have suppressed them
- regarding the Appeal Court case which challenged Justice Booth's ruling for evidence to be handed to the Police:
 

"The programme did not know about this case prior to transmission. However the judges in this case were making a ruling about whether documents should be handed over to the police. It was not a judgment about whether Satanic ritual abuse had taken place."
- regarding the separate criminal appeal by defendants who cited JET Report findings and whose appeal was turned down, the programme said:

“The programme did not know about this criminal appeal. But we wish to reiterate that these two programmes were not presented as a reinvestigation of the Broxtowe case but were an exploration of how new ideas about child sexual abuse were transmitted and were trusted even in cases where the evidence did not justify them.”

- the JET Report and the report by Professor Jean La Fontaine are authoritative sources and it was correct to accord them both weight
- David Aaronovitch noted what the judges are reported to have said and commented that “judges sometimes get it wrong”

Trustees considered the following factors:

- the precise evidence considered by Justice Booth and Judge Morrison is not in the public domain; nor are their full judgements
- the particular comments of one complainant were noted; she was involved in the Nottingham case, and wrote in correspondence for this appeal:

“I would ... caution ... anybody against anticipating what a High Court judge in the Wardship court might have done had she read the JET report. I have seen the judgement, and sat through both the wardship and criminal proceedings unlike the JET TEAM, the programme makers, or the Trust. I cannot reveal the Judgement but I can say the following:

The Judge took her lead from Lord Justice Denning in *Baker and Baker* (1951 Probate) in relation to the standard of proof required when considering sexual abuse. She stated that given the seriousness of the allegations, the degrees of probability must be a higher one, ‘a very high one’.

The High Court heard oral evidence over 6 days and read several bundles of documents: Evidence was heard from a range of professionals including those independently instructed. Affidavits were produced by the parents, other family members and a range of professionals.

In a 28 page judgement the Court gave significant space to weigh evidence both for and against the veracity of what the children had told their carers, social workers and independent psychiatrists and paediatricians. Other evidence which the Court regarded as corroborative or not, was considered. The question of reliability or not, of the adults accounts was considered.”

The Committee made the following observations:

- given the distance of 25 years and the fact that the court records remain sealed, the assertions of each party as to what Justice Booth and Judge Morrison might have considered, and what evidence their judgements relied on, cannot be independently verified
- it would be unwise to reach any conclusions purely on the basis of what is in the public domain

- whilst those comments which have been attributed to Justice Booth and Judge Morrison are from second hand sources, these could be considered reliable sources; in some instances there was corroboration, with more than one source quoting identical or similar comments
- it would be reasonable to conclude that the judges' findings would have comprised significantly more than is currently in the public domain, that they would have taken into account all available evidence in reaching the conclusions they did and that they would have taken due care in the drafting of their judgements
- Justice Booth and Judge Morrison reached profoundly different conclusions to those in the JET Report regarding the credibility of the children's stories as recorded by their foster parents
- in the two additional cases cited by complainants (the criminal case and the Court of Appeal) there is no evidence that the judges' decisions in those cases relied on their rejection of the JET Report findings

Trustees concluded with regard to accuracy and Point (A)2 that:

- the judges' comments constituted material facts
- the latitude allowed for personal view content did not extend to an exemption from the requirement that content is duly accurate
- in light of the weight given by the programme to the JET Report and to Professor Jean La Fontaine's findings in her 1994 report for the Department of Health, which concluded (amongst other things) that foster parents had unwittingly imprinted stories in the children's minds through leading questions, it was incumbent upon the programme to reflect that there had been authoritative sources which had concluded otherwise
- had the programme reflected the legal proceedings in some form, the presenter could have challenged their conclusions, as he did with those of other involved parties
- but in not giving any editorial weight to the judges' comments (albeit that the programme was unaware of one set of the comments) the programmes had failed to be duly accurate and the omission was therefore a breach of Section 3.2 of the Accuracy guideline

### **Finding: Upheld as a breach of the Accuracy guideline**

Trustees then turned to impartiality. A breach of accuracy does not always lead to a failure of impartiality. However, in some cases the matters are directly linked. Trustees noted that the guidelines explain that the omission of an important perspective, in a particular context, might jeopardise perceptions of the BBC's impartiality. This is the case despite the latitude given to appropriately signalled personal view programmes. Trustees agreed that in this particular context the omission of the views of two judges who had made findings of fact on this matter and were acquainted with the evidence should have been included and given due weight.

### **Finding: Upheld as a breach of the Impartiality guideline**

### **Point (A)3 – The report by Professor Jean La Fontaine:**

The Committee noted complainants' contentions:

- a government-commissioned report by the anthropologist Professor Jean La Fontaine on organised and ritual abuse of children, which found no evidence of satanic abuse, has been contradicted by more recent research
- one complainant cited a book published in 2001<sup>5</sup>, seven years after Professor La Fontaine's pamphlet, by an academic sociologist Sara Scott who was working at the University of Liverpool

The Committee noted the relevant content:

BBC NEWSREADER (ARCHIVE)

A government-commissioned report on organised and ritual abuse of children has found no evidence of satanic abuse.

DAVID AARONOVITCH

The report - The Extent and Nature of Organised and Ritual Abuse - had been written by the senior British academic, Jean La Fontaine, the anthropologist who had attended some of the conferences where satanic abuse had first been discussed in Britain

JEAN LA FONTAINE

I looked at some cases in very great detail and you could compare the transcript of a recorded interview with a child and then the report of the social worker or the discussion in a child protection meeting, so that you could see the difference between what the child actually said and what it was said to have said.

DAVID AARONOVITCH

And?

JEAN LA FONTAINE

And there were some interesting interpretations. For example, one little boy was reported as talking of ghosts in his family. That child was asked 34 questions about ghosts and finally he got the message and decided he would invent a few ghosts.

DAVID AARONOVITCH

Back in 1994 La Fontaine's conclusions were fiercely disputed.

The Committee noted relevant facts about Professor Jean La Fontaine's report:

- her remit was to investigate whether the phenomenon of ritual abuse existed and if so how widespread it was, in order to answer a specific question posed to her by the Department of Health
- her investigation included:

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<sup>5</sup> Scott, Sara, OUP "The politics and experience of ritual abuse: Beyond disbelief"

- sending out questionnaires to police forces, social services departments and the NSPCC asking for them to report any cases of organised ritual and ritual abuse which had come to their attention between January 1988 and December 1991.
- searching and sampling police and child protection records to check that the response to the questionnaire reflected the level of incidents reported
- being given access to confidential material by the Lord Chancellor's Department; this included relevant Wardship files
- she studied 84 cases, including Nottingham. As reported by *Analysis*, she found no evidence of satanic abuse
- she was able to substantiate three cases of ritual abuse where supposed mystical/magical powers were used to entrap children. She concluded that the ritual was secondary to the sexual abuse which was the primary objective of the perpetrators
- she was very critical of how the duty of documenting children's disclosures had been delegated to foster parents suggesting that it had "circumvented any guidelines on interviewing children"
- she concluded:

"The interviews during this period (1988-1991) were frequently poorly conducted. Too frequent interviewing, leading questions, contamination, pressure and inducements to agree to suggestions, may have resulted from the anxiety of the interviewers to find out what happened. The procedures of transcribing recorded interviews, or summarising them from notes for case conference ... introduced further inaccuracies. As a result of the way in which it was collected, recorded and transmitted, the evidence said to represent the children's disclosures was unreliable and misleading. What is defended as 'what children say' may be nothing of the sort."

Trustees noted that, in its submission to the appeal, the BBC said:

- Professor La Fontaine's report remains an authoritative source as she had access to all the case details; it was right for the programme to accord the weight it did to her findings
- the programme had noted that her findings were fiercely disputed at the time

The Committee considered the relevance of critiques of the Professor's findings cited by complainants in this appeal. They noted that:

- the book by Sara Scott cited featured 13 case histories of adults (three from the USA) who had identified themselves to the author as survivors of ritual abuse
- the introduction of Ms Scott's book said:

"The reality of ritual abuse has been highly contested. Any exploration of the experiences of those who claim to have suffered such abuse will inevitably be surrounded by a cacophony of questions about the veracity of

accounts and the motivations of claim-makers. My intention in writing this book has been to 'look both ways': to take seriously the accounts of survivors while simultaneously exploring the politics of the field in which their accounts have emerged. I do not set out to convince readers – on the basis of the evidence I have collected, the impassioned eloquence of the testimony of my interviewees, or the arguments I construct around them – that ritual abuse 'really happens'. My project is both less ambitious and more fundamental; for I am concerned with how validity is accorded to some kinds of life-stories and not others and how some people are constituted as reliable witnesses of their own lives while others are discredited."

- the Introduction referenced Professor La Fontaine's earlier work:

"Although research undertaken by Jean La Fontaine for the Department of Health was officially concerned with the extent and nature of organized and ritual abuse, it is clear from the final report that its main purpose was to clarify whether ritual abuse, in the terms then being reported by adolescents and adults, needed to be taken seriously by those concerned with the protection of children (La Fontaine 1994). In other words, the research task was to discover whether abuse of this kind really happened. Sadly the methods employed were not well designed to address that question rigorously."

- Ms Scott's methodology was explained in the Appendix to her book:

"The research on which this book is based began in 1994 and the PhD for which it was undertaken was awarded by the University of Manchester in 1997. Self-defined survivors of ritual abuse were contacted through the distribution of ninety questionnaires to UK organizations providing support/counselling to adult survivors of sexual abuse (Broadcasting Support Services 1994) and to individual members of RAINS (Ritual Abuse Information Network and Support), who included clinical psychologists, psychotherapists, psychiatrists, counsellors and social workers. Questionnaires were returned by thirty-six survivors, twelve of whom were approached as potential interviewees and life-history interviews were ultimately conducted with nine of these. Difficulty in making contact with male survivors in the UK led to three interviews being conducted with men in the USA. One male interviewee identified himself as mixed race, all other interviewees were white."

- a complainant referred to comments made by Bernard Gallagher, a former colleague of Professor La Fontaine, in which he criticised aspects of the Professor's approach to investigating ritual satanic abuse. The complainant wrote:

"In an otherwise friendly review of La Fontaine's book on ritual abuse in THS in 1998, *Forked Tails and Forked Tongues: book review of Speak of the devil, Tales of satanic Abuse in Contemporary England* by Jean La Fontaine (1998) Bernard Gallagher comments:

'While she understands the pressure agency workers were under, she is uncompromising in her criticism of how they responded to cases. It is indisputable that mistakes were made, but when she refers to children

being “detained”, to “threats to remove children into care”, to individuals motivated by “ambition” and “self-esteem”, and, at one point, to “Nazis”, one suspects that she has lost some of her objectivity.

‘She comes at the problem by not presenting and analysing her data in a sufficiently systematic manner. Sometimes it is difficult to know which case she is talking about, creating the impression that all suspected satanic cases were handled badly. I know from my own work that this was not the case. Many investigations were carried out quite competently.

‘The other significant weakness is La Fontaine’s failure to acknowledge adequately the importance of organised abuse in the genesis of allegations of satanism. Many suspected satanic cases were known to have involved organised abuse.’”

Trustees concluded with regard to Point (A)3 that:

- while Ms Scott’s book was evidently a serious academic work with a rigorous and transparent methodology it was not – nor did it make any claim to be - a systematic investigation of the extent of ritual abuse in the UK in the relevant timeframe
- while Ms Scott is openly critical of Professor La Fontaine’s conclusions, her book does not appear to dismantle Professor La Fontaine’s arguments nor does it appear to question the database of cases she investigated or the reliability of her sources
- the two works are not directly comparable; Ms Scott’s book did not invalidate Professor La Fontaine’s findings and was not relevant to the assessment of complainants’ arguments that too much weight was accorded to her report for the Department of Health
- the critique of the Professor’s findings by a former colleague who had worked with her on the initial research was more to the point
- however, mindful that the programme was personal view content and that it was stated in the commentary which rounded off the sequence that, “Back in 1994 La Fontaine’s conclusions were fiercely disputed”, there was no requirement for the programme to reflect Mr Gallagher’s or anyone else’s perspective
- Professor La Fontaine is a bona fide academic, who had been selected for her expertise in the field; her study had the status of a government-commissioned report and it was editorially justified for the programme to accord the weight that it did to it
- given that the programme was personal view content, David Aaronovitch was entitled to draw on the evidence he wished to present his thesis, provided it met the Editorial Guideline requirement to be duly accurate and duly impartial
- the Committee decided that the content met the relevant guideline requirements

**Finding: not upheld**

**Point (A)4 – The reflection of “satanic indicators” in the programme**

The Committee noted the relevant content:

#### ROSIE WATERHOUSE

In the Nottingham case, there were some quite significant individuals who had got hold of a document or documents that were loosely described as "satanic indicators". And it was like a checklist of, if your child does this, this, this and this, then they're the victims of satanic abuse. It included all sorts of things that young children do quite naturally and often: wetting the bed, having nightmares, possibly soiling their pants, the things that children do. But these satanic indicators were widely circulated. And in the Nottingham case the children who had been abused were placed with foster parents. The foster parents were given the satanic indicators. The foster parents interviewed and kept diaries, so the language that was being used in the satanic indicators somehow got to be language used by the children.

#### DAVID AARONOVITCH

These indicators, Waterhouse discovered, had originated in America and then crossed the Atlantic.

Trustees noted a complainant's contention:

- the programme presented as fact an allegation by Rosie Waterhouse that the children's disclosures of ritual abuse in the Broxtowe case occurred only after a list of "satanic indicators" had been given to their foster parents - it was not made clear in the programme that Ms Waterhouse's allegations were disputed and that the timeline did not fit; nor was there any corroboration of her claim
- the complainant said the children's disclosures began in 1987 and the indicators were not given to foster parents until 1988
- the complainant claimed it was he who had passed the indicators over AFTER the children began disclosing to their foster parents and that the programme were aware of this (because he had told the producer so in a conversation prior to being interviewed)
- Ms Waterhouse's claim should have been challenged

The Committee noted the following:

- the JET Report had considered the "satanic indicators" and what influence they might have had on the children's reporting of ritual abuse.
- the JET Report acknowledged that the Nottingham children had begun making allegations about the ritual nature of the abuse they had suffered BEFORE their foster parents were thought to have become aware of the satanic indicators
- the JET Report nevertheless considered the "indicators" to have influenced the children's accounts and noted the reasons why:

"On the 9.2.88 Mr W (Ray Wyre, a consultant working with paedophiles) having been contracted to Social Services as an expert gave a presentation to the foster parents using the Satanic Indicators of an alleged American Expert. These were passed around the foster parents. One foster parent

claims great stress was laid upon them and they were told what to look for. These indicators emphasise transportation to other places, animal sacrifices, drinking of blood, eating flesh, defiling children with urine and faeces, monsters and ghosts, a mysterious church, killing of children etc.

...It is our opinion that these indicators had a profound effect upon both the foster parents and the social workers. Prior to this the children had not talked about anything but their own family and 'abuse' at their homes. From this time the foster parents appear to take the children's perceptions as reality and do not question them. The style of the diaries changes with the foster parents taking an interrogative approach in a desire to elicit more information and using many leading questions."

- the complainant who maintained that it was he who handed over the indicators to foster parents said on one occasion, in correspondence for this complaint, that he had done this in 1988, but on another occasion he said this happened in 1989

Trustees concluded with regard to Point (A)4 that:

- the programme's stated ambition was to explore the transmission of the idea that organised ritual satanic abuse existed and was widespread
- there is evidence to support the view that it was not until the satanic indicators were distributed to foster parents that the nature of the disclosures lent credence to the thesis
- the origin of the indicators is not in dispute and was noted in the programme; how they got to foster parents, or the precise date they were handed over were not matters which needed to be resolved or reflected in the programme
- the contention that the "satanic indicators" played a role in the nature of the children's disclosures was well sourced, based on sound evidence and presented in clear, precise language
- the content met the guideline requirement for due accuracy

### **Finding: not upheld**

#### **Point (A)5 – The reflection of the view that the children's disclosures were unreliable**

The Committee noted the complainants' contention:

- the programme presented as fact an allegation by Ms Waterhouse that the children's disclosures of ritual abuse in the Broxtowe case were unreliable because their foster parents had asked leading questions
- no attempt was made by the programme to make clear that this allegation is disputed
- there was no corroboration of Ms Waterhouse's claim

The Committee noted where the commentary referred to the “outlandish often impossible nature of the claims” and then reflected Rosie Waterhouse’s view:

ROSIE WATERHOUSE

In trying to find an explanation for how these words and phrases could be put into the mouths of babes, leading questions...

There were questions like, and this one I remember vividly, ‘you killed three or 30 babies’, no room for I didn’t kill any babies.

The Committee noted the following:

- the JET Report documented evidence (not reflected in the programme) of what it described as leading questions being asked of children in Nottingham by social workers and foster parents
- Professor Jean La Fontaine was highly critical of how the children in the cases she studied for her report were interviewed (see previous point)
- in the programme Professor La Fontaine explained what she meant by leading questions: she referred to one occasion where a child was asked 34 times about ghosts. She said, “and finally he got the message and decided he would invent a few ghosts”
- while she did not identify individual cases by name in her report, it is a matter of record that she had access to police and child protection records and relevant wardship files in the Nottingham cases

Trustees concluded with regard to Point (A)5 that:

- the view that the children were asked leading questions was made by a contributor whose views were already known to the audience from her comments earlier in the programme
- the proposition that the children were asked leading questions was evidently well sourced, based on sound evidence and presented in clear, precise language
- the content met the guideline requirement for due accuracy

### **Finding: not upheld**

### **Point (A)6 – The second programme failed to mention the convictions of adults in Nottingham for sexual crimes against children**

Complainant’s contention:

- the second programme failed to mention that the ten adults in the Nottingham Broxtowe case were all convicted of sexual crimes against children
- listeners to the second programme would have been left with the impression that no abuse of any kind had taken place in Nottingham

The Committee noted how the convictions were reported in the first programme:

“The children had certainly been the victims of appalling sexual abuse and in February 1989 ten adults were jailed, found guilty of 53 offences of incest, indecent assault and cruelty.”

The Committee considered the following factors in deciding whether the audience were likely to have been misled by *Analysis* choosing not to repeat the information about the criminal convictions in the second programme:

- the continuity announcement after the first programme:

“*Analysis* was presented by David Aaronovitch: the producer was Hannah Barnes. And Part Two is next Monday at 8.30.”

- the second programme was introduced as “In the second of two programmes...”
- in the opening section David Aaronovitch encouraged those who had missed the first programme to listen to it online:

“As I said on last week’s programme - available to listen online and as a podcast if you missed it...”

- the indications in the script of the second programme that the Nottingham children had been sexually abused:

DAVID AARONOVITCH (first sentence of the second programme)

In 1990 Christine Johnston, a social worker from Nottingham, appeared on the BBC1 programme, *Heart of the Matter*. She was talking about a local case involving the sexual abuse of children that had achieved national notoriety

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ROSIE WATERHOUSE

... in the Nottingham case the children who had been abused were placed with foster parents

Trustees concluded with regard to Point (A)6 that:

- given the space devoted to the Nottingham case it would have been good editorial practice to have repeated in the second programme the information that the adults involved were convicted of sexually abusing the children
- however, as the programmes were so clearly linked, and as the second programme had referred to the fact of sexual abuse of children having taken place, it was not necessary to repeat in that programme the information about the convictions
- it was made clear in both programmes that sexual abuse in general is a very serious issue, for example in this section of commentary towards the beginning of the second programme:

“I’m not disputing the idea that the society I grew up in was one that was often in denial about the existence of child sexual abuse. Some of our

most trusted institutions dismissed the complaints of victims and colluded in protecting their abusers.”

- the programme was duly accurate

### **Finding: not upheld**

#### **Point (A)7 – The programme gave undue prominence to second-hand sources**

The Committee noted the complainant’s contention:

- the programme gave undue prominence to second-hand sources such as Rosie Waterhouse, said by the complainant to be a journalist with no first-hand experience, and it failed to represent the contributions of first-hand interviewees who were allotted very brief contributions or were treated to hostile interviewing

The Committee noted the relevant content:

#### **ROSIE WATERHOUSE**

I was working as a reporter at the Independent on Sunday. It was March 1990 and the NSPCC had a press conference to launch their annual report. And at the press conference, they come out with a briefing paper, which referred for the first time to this ritual abuse. And one or two documents I think said “Satanic Abuse”. This was the first time you know a national charity had gone claiming that there was this new and horrendous form of child abuse that everyone needed to be on the lookout for. It made the whole story mainstream.

#### **DAVID AARONOVITCH**

Rosie Waterhouse became one of the very few journalists to actively investigate the reality of the phenomenon of ritual abuse.

#### **ROSIE WATERHOUSE**

Imagine you’ve got an organisation as respected as the NSPCC. They’re gonna be taken seriously. And the media without exception initially was entirely credulous, including my own paper. I was tasked along with another reporter to look at the following Sunday’s paper, what’s the evidence for the existence of Satanic ritual child abuse?

The Committee noted where the commentary stated that as well as being a working journalist, Ms Waterhouse had completed a doctoral thesis which discussed the spread of ideas about recovered memory and ritual abuse.

The Committee noted comments made by the Complaints Director, Editorial Complaints Unit at Stage 2:

“It was reasonable that Mr Aaronovitch would include contributions from people who supported his broad conclusions and evidence which did the same. I don’t think it follows the audience would be led to believe they were hearing uncontested or undisputed facts as opposed to a personal judgement or assessment. It is implicit in a programme of this kind that others may reach different conclusions based on the available evidence.”

Trustees concluded with regard to Point (A)7 that:

- the prominence given to individual interviewees was an editorial judgement and a matter for the BBC and not the Trust
- it was clear from the introduction to Ms Waterhouse and the nature of her contributions where she stood on the issue
- where specific complaints had been made about how those with dissenting views were reflected in the programme they have been dealt with elsewhere in the finding
- the content was duly accurate

### **Finding: not upheld**

#### **Point (A) – Whether the programme observed due accuracy and due impartiality in how it reflected allegations of ritual satanic abuse in Nottingham**

The Committee returned to Point (A) as a whole. Trustees noted complainants' overall concerns about the reflection of the Nottingham case across the two programmes:

- the programmes failed to reflect the nature and degree of opposition to the findings of the JET Report
- they presented as fact a range of disputed issues around the credibility of children's testimony
- too much weight was placed on outdated and discredited sources
- evidence which contradicted the main thesis was suppressed
- the programmes hid behind the latitude allowed for personal view content: any failure to report evidence which countered the presenter's allegations was considered justifiable, because the programmes were a personal viewpoint.

The Committee noted the programme's response:

- the programmes were not a re-examination of the facts in the Nottingham case
- they set out to track the transmission of an idea – of which the social workers involved in the Nottingham case were amongst the foremost proponents - which suggested there existed a worldwide satanic network of abuse, of which the case in Nottingham was an example
- the proponents had set the bar very high and while there may have been an element of truth in some of the children's stories it did not remotely meet what was being claimed at the time about the scale and nature of the phenomenon
- David Aaronovitch's view as a sceptic had been clearly stated and having established this, he was entitled to draw on whatever material he wished to make his case, so long as it was not contradicted by the evidence, which the programme did not consider to be the case

The Committee noted its decisions on the various sub-points relating to the treatment of the Nottingham case. In relation to Point A it concluded that with the exception of the failure to reflect the judges' comments in the Nottingham case, which had been upheld as a breach of due accuracy and due impartiality, the reflection of material facts in the Nottingham case were adequate and appropriate in the context of the focus of the two programmes; the clear signposting of their scope and ambition; and the fact that the programmes constituted personal view content.

### **Finding: not upheld**

#### **Point (B) - Whether the programme observed due accuracy in how it reflected the terms of the current debate regarding dissociative identity disorder (DID) and recovered memory**

The Committee noted:

- the twin "conditions" of recovered memory and DID was a main theme across the two programmes
- in David Aaronovitch's view, a belief in their existence and the false memories he considered such a belief produced, were a key source of the spread of ideas regarding ritual sexual abuse
- a range of views were reflected on the issue
- these included the perspective that the human brain is capable of repressing traumatic events which can be "recovered" in adulthood and that victims of sexual abuse may take on other identities as a coping mechanism to enable dissociation from the traumatic event
- it was stated by David Aaronovitch that there was "no sound science" to support the concept of repressed memory, and the idea that it exists had now been "discredited"

Trustees noted the complainants' contention:

- the audience was misled about the extent of the ongoing debate and current understanding of dissociative identity disorder (DID) and recovered memory
- the way the perspective was reflected would have led the audience to conclude that there was no evidence to support it, whereas it remains an issue of intense debate
- David Aaronovitch's witness, Professor McNally, was wrongly presented as THE authority on DID and recovered memory whereas he is on one side of a hugely polarised debate known as the Memory Wars
- recent research by Professor McNally could be seen as contradicting or modifying his earlier opinions on recovered memory but this was not considered
- the programme presented outdated scientific ideas: there is a growing body of contemporary scientific evidence which firmly contradicts Professor McNally

- Dr Hampson, who was also interviewed in the programme and argues the conditions are genuine, was not asked about the body of scientific evidence that supported her views; her voice was not sufficient counterweight to ensure the audience was not misled

The Committee noted the relevant content:

From the first programme:

DAVID AARONOVITCH

Such a memory - often involving extreme childhood sexual abuse - was said to be "recovered". But for this new diagnosis to become respectable it had to be given an official stamp of approval. In 1980 it was, when it was officially listed by the American Psychiatric Association in its Diagnostic Statistical Manual.

Before 1980 there had been around 200 documented cases of MPD [Multiple Personality Disorder]. By 1986 that figure had risen to six thousand.

For many practitioners in the fields of therapy it's a diagnosis – now renamed Dissociative Identity Disorder or DID - that is still valid. Sue Hampson worked with abuse survivors and is Director of the Safe to Say Training and Consultancy organisation and believes DID is a genuine condition.

SUE HAMPSON

It's an excellent coping mechanism and usually people who have "DID", it used to be called "Multiple Personalities", it's when things are so bad that an alter comes in and helps protect them in terms of the abuse and the pain that goes on, so it's very much a really effective coping mechanism and gets them through the abuse in that way.

DAVID AARONOVITCH

So you believe that there are and always have been people out there with something that we might used to have called "multiple personality disorder", they actually have several personalities inside themselves who split off in order to help them cope with trauma?

SUE HAMPSON

Yes. I've worked with people, yes. I've had extraordinary experiences of that when I used to know by the way that the gate was shut when I had a private practice, which personality was coming that day. Some people smoke, some people don't and it's the same person we're talking about, but they fulfilled a very important role in that person's life as they were going through the abuse.

In the second programme David Aaronovitch used an archive clip from 1994 of the psychotherapist Valerie Sinason recounting what patients were recalling. He explained who she was:

DAVID AARONOVITCH

[Valerie Sinason is] one of the most stalwart and influential advocates for the existence not just of ritual abuse, but also of Multiple Personality Disorder (or dissociative identity disorder as it's now known), and the reality of recovered memory. We asked her to appear on this programme, but she declined.

In a way, given my own published views on the subject – I am deeply sceptical about her work – that's not so surprising. However, Sue Hampson, a former counsellor for victims of abuse and a trainer in the field of mental health, did agree to be interviewed.

DAVID AARONOVITCH

One of the difficulties that people have had is with the extreme nature of what's been claimed about ritual child abuse. What's your view about some of the more implausible claims?

SUE HAMPSON

Would you like to tell me what you mean by implausible?

DAVID AARONOVITCH

Well I suppose I mean childhood sacrifice, sacrifice of animals, altars, sort of that kind of thing?

SUE HAMPSON

Ah ha, I don't find them at all implausible, no. Many people have brought the terrible kind of torture that they've been involved in as young children and they're deeply scarred by that. It's incredibly difficult for people to pluck up the courage to come and talk about being ritually abused, so it wasn't my job to not believe people who were clearly scarred physically and mentally by what they'd gone through. So for me it's not implausible at all no.

DAVID AARONOVITCH

If it wasn't your job to disbelieve them, was it your job to believe them?

SUE HAMPSON

It was my job to work with them and support them. I'm very curious about why wouldn't people believe somebody telling you something, which is clearly horrendous. It feels to me very anti-children, very anti-recovery and on the side of abusers rather than actually working with a person who's in front of you who it's your work to actually support through very, very difficult things.

DAVID AARONOVITCH

At the heart of such a desire to believe, lies a sincere anxiety about the consequences of disbelief. An anxiety Sue Hampson expresses very well.

SUE HAMPSON

There are many barriers that prevent people from coming forward. First of all, they're very often told and threatened to keep silent, they're told they won't be believed, they're told they enjoyed it and they're told they initiated, that's one side of it in terms of the threats that prevent them. It's also hugely a taboo subject. There's a lot of guilt, there's a lot of confusion, people feel dirty, they feel ashamed and so those are many reasons why people disclose many, many years later.

DAVID AARONOVITCH

Sue Hampson is surely right about that. And the last thing we need is to return to a situation where the victims of abuse are met with automatic disbelief.

Discussion of the issue ended with a contribution from a psychologist:

DAVID AARONOVITCH

Richard McNally, Professor of Psychology at Harvard University, and possibly the world's leading authority on psychological trauma, has never found any evidence that we are capable of repressing memories in this way.

In fact, he says, people, including sexual abuse victims, are more likely to remember traumatic events.

RICHARD MCNALLY

Events that produce terror they're extremely stressful, they produce the sort of stress hormones, whether it's rape, whether it's combat, things of this sort. People tend to recall these very well. It's not as if they have forgotten or repressed these sorts of memories. People who were in the Holocaust did not forget that they were confined to a concentration camp. Our sexual abuse victims who said they'd never forgot they were sexually abused, some of these were very disturbing cases as well and they would often be quite incredulous and say "people say that they forget these things, I wish I could forget them". No, they're always there.

DAVID AARONOVITCH

So there is no sound science in the idea of repressed memory.

In a section of commentary in the second programme David Aaronovitch repeated his view that DID and recovered memory were no longer valid diagnoses:

"In last week's programme we looked at the influence of several books in spreading now discredited ideas about how the human mind deals with the trauma of childhood sexual abuse."

The Committee noted comments from the programme editor and the producer:

- it would have been hard to find anyone else who might have put the points better than Dr Hampson
- in a blog post one of the complainants referred to Dr Hampson as the "voice of reason" on the programme
- it is impossible to prove a negative, which is that recovered memory is not a genuine disorder, but if during the course of the programme we had come across any proven cases of recovered memory we would have had to have cited it: we did not

The Committee noted David Aaronovitch's response:

- it was a matter of frustration that DID and recovered memory are still in the manual of mental disorders and that the conditions are still given a great deal of credence by public bodies
- it is because of complete inertia: no committee has re-examined them, so they remain in the manual

The Committee considered evidence as to where the contention appears to lie, noting the findings of a paper published in 2014 in the peer-reviewed journal, "Psychological Science" entitled, "Are the 'Memory Wars' Over? A Scientist-Practitioner Gap in Beliefs About Repressed Memory"<sup>6</sup>:

- respondents were presented with the following statement and asked to state whether they agreed with it: "Traumatic memories are often repressed"

- 27 percent of experimental psychologists agreed
- 69 percent of psychoanalysts agreed
- 90 percent of neuro-linguistic programming therapists agreed

- the authors concluded:

"Groups that contained research-oriented psychologists and memory experts expressed more scepticism about the validity of repressed memories relative to other groups. Thus, a substantial gap between the memory beliefs of clinical-psychology researchers and those of practitioners persists today."

The Committee noted that this was effectively how the programme reflected the two sides of the argument:

- in the contribution from Sue Hampson from her perspective as a therapist
- David Aaronovitch's acknowledgement that, "For many practitioners in the fields of therapy it's a diagnosis... that is still valid"
- whereas Professor McNally's view appears to be shared by the majority of his research-orientated colleagues

Regarding developments in neuroscience which complainants argued were proof of the existence of recovered memory and DID, the Committee noted:

- the list of published articles supplied by two of the complainants to support their contention
- that a number of the papers were overviews of already published work
- others had as their starting point that the disorder is real and explored the efficacy of different treatments
- some studies concluded there was evidence in neuro-imaging studies of the human brain and in neuro-biology which supported DID and recovered memory as valid diagnoses
- the findings of such studies are disputed by those who hold Professor McNally's view and who posit alternative conclusions and explanations and/or question the methodologies used

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<sup>6</sup> Patihis, L, Psychological Science, 25, 519-530 2014

- Professor McNally and those who hold his view cannot definitively prove that the conditions are not real

Regarding whether Professor McNally had changed his view, the Committee noted the following:

- a paper which Professor McNally published in 2012 entitled “Searching for Repressed Memory” which was cited by one complainant
- in the paper Professor McNally set out to reconcile the debate and to offer an alternative explanation for why some victims of sexual abuse might appear to have repressed any memory of their abuse until adulthood
- he suggested that some children – particularly if they were very young at the time - did not understand the sexual abuse when it had occurred as a traumatic event, had not processed it as such, and therefore had not experienced terror
- he suggested that, years later, the experience is recalled and only then is it understood as abuse and the victim suffers intense distress
- Professor McNally’s conclusion that:

“The memory failed to come to mind for years, partly because the child did not encode it as terrifying (i.e. traumatic), not because the person was unable to recall it.”

- he concluded in his published paper that this perspective did not require the concept of repression

Trustees concluded with regard to Point (B) that:

- it was appreciated that the issues raised under this point went to the heart of the complainants’ concerns that the programme misled the audience by, in their view, allowing David Aaronovitch to express an opinion but to present it as fact
- Professor McNally is clearly an expert in his field who shares Mr Aaronovitch’s view, but his was not the only voice heard on the issue
- he was presented in the programme as “possibly the leading expert on psychological trauma”: this allowed for the fact that not everyone would agree
- there is no evidence from the analysis of his paper to support the contention that Professor McNally had significantly changed the view attributed to him in the programme, i.e. that there is no scientific basis to support the concept of repressed and recovered memory
- the programme indicated that the debate was ongoing
- Dr Hampson was given space to articulate her experience as a practitioner
- elsewhere in the commentary David Aaronovitch acknowledged that “for many practitioners in the fields of therapy it’s a diagnosis that is still valid”

- this was an authored programme and Mr Aaronovitch was entitled to state where he stood
- David Aaronovitch explicitly stated in the commentary that his views on the subject had been published and that he was known for being “deeply sceptical”
- listeners were given sufficient information to allow them to judge what weight to put on his conclusions
- his statements regarding the concepts of recovered memory and DID would have been viewed as his opinion as opposed to literal fact by the audience in light of the above factors
- the content was duly accurate

### **Finding: not upheld**

#### **Point (C) – Whether the programme observed due accuracy in how it discussed the 1989 Reading Conference**

The Committee noted the relevant content:

Programme One:

DAVID AARONOVITCH

The seeds were generally planted in that hot-house for new intellectual plants, the professional conference. Where social workers and children’s services came together to discuss what was new in their business, the terrible but nevertheless indisputable truth about ritual abuse was told to them. Rosie Waterhouse subsequently tracked the progress of an idea.

ROSIE WATERHOUSE

How it actually came to the UK, is a combination of people from the UK going to the States and picking up all this latest state of the art knowledge, literature, and people from the States coming to the UK. It’s the conference circuit. One of the earliest conferences in the UK was in Reading in 1989, just before it all broke here with the NSPCC. Social workers from Nottingham were in attendance, they were claiming that a vile case of incest that they’ve come across in Nottingham was actually Satanic. It might seem just incredible to think that, you know, individuals could have such influence but they did, I mean they were sort of treated like superstars on the conference circuit. And literature was just passed around.

The Committee noted the points of complaint:

- it is not credible that anyone who attended this conference would suddenly discover that his or her clients had been ritually abused
- the programme was recycling an old myth from the 1990s that the Reading Conference was part of the “panic”
- Mr Aaronovitch was discussing a hypothesis but this was not made clear in the programme

The Committee noted the following factors:

- the conference circuit was cited in the programme as one example of the type of platform from which the idea was disseminated
- Rosie Waterhouse was signposted in her contributions as someone who identified with David Aaronovitch's position and as having done considerable research on the issue for her post-doctoral thesis
- it is not a matter of dispute that ritual sexual abuse of children was discussed at the conference
- one of the conference organisers was an American woman who brought a list of satanic indicators to the UK.

Trustees concluded with regard to Point (C) that:

- whilst Reading was identified by name, it was clear from her contribution that Rosie Waterhouse was talking about the influence of the conference circuit in general, and conferences as one route of transmission
- the perspective that Reading was one conduit for the dissemination of the idea that ritual satanic abuse was a widespread phenomenon was well sourced, based on sound evidence and presented in clear, precise language
- the audience would have been aware this was an authored programme, and of Mr Aaronovitch's personal position, and would have judged his comments accordingly
- the content was duly accurate

### **Finding: not upheld**

#### **Point (D) - Whether the programme observed due accuracy when it suggested that the book *The Courage to Heal* said something like "if the person you accuse [of sexual abuse] denies it, that's confirmation it happened"**

The Committee noted the relevant content from programme two, in which David Aaronovitch interviewed his producer about the research she had undertaken for the series. The relevant passage has been highlighted:

DAVID AARONOVITCH

In last week's programme we looked at the influence of several books in spreading now discredited ideas about how the human mind deals with the trauma of childhood sexual abuse. What shocked my producer Hannah is their enduring influence, including one book which perpetuates the idea that therapists can help us recover forgotten memories of traumatic abuse.

PRODUCER

*The Courage to Heal* is still the most powerful book in this field. It's being recommended to hundreds of thousands of British students via their university counselling services. It's there.

DAVID AARONOVITCH  
In Britain?

PRODUCER

In Britain. But the thing I found more worrying than it being recommended to students was that it's actually required reading for an undergraduate course in counselling at one university. So potentially you've got this whole new generation of counsellors who are told that this is a fantastic text, they then go on to recommend it to their patients. Now, remember it says things like if you don't remember being abused but you think you were, don't worry you probably were.

**And if the person you accuse of doing that denies it, well that's confirmation it happened - I mean these are the kind of things it says.**

This may surprise some people but the Church of England, it wasn't until 2010 the church took *Courage to Heal* off their reading list.

The Committee noted the complainant's contention:

- The *Courage to Heal* book absolutely does not contain the claim that "if the person you accuse is denying it, this is confirmation that it happened". Such a claim would expose such a book not only to criticism but to ridicule.
- this is a serious claim to make about a book on this subject, one which is likely to throw serious doubt on the integrity and credibility of such a book, which is a key text for survivors of childhood sexual abuse
- the complainant had contacted one of the book's co-authors who responded by email saying: "No, we absolutely did not say that. We never said that denial was any kind of confirmation of abuse"
- "it says things like" and "these are the kinds of things it says" would be assumed in any ordinary discourse and any normal ordinary understanding by a listener to be what a book actually contains. This is not about failing to express clearly or succinctly enough. It is about telling a fib

The Committee noted the producer's initial response:

- she acknowledged that the phrase in question was not an exact line from the book and said:

"these were not quotations, but my view of the message that is implicit throughout the book."

- the book does not encourage readers to consider that a person who protests their own innocence might in fact be innocent
- the book actively encourages women to ignore the suggestion from their families that they might not have been abused, even when these same women have no clear memories
- the producer cited a number of passages from *The Courage to Heal*:

"To heal from child sexual abuse, you must face the fact that you were abused ... for many survivors, such proof is not available. Nor is support or

validation from family members. Yet even if your memories are incomplete, even if your family insists nothing ever happened, you still need to face your own experience.”

“Even if what you experienced feels too extreme to be possible or too mild to be abuse, even if you think ‘I must have made this up’, or ‘no one could have done that to a child,’ you have to come to terms with the fact that someone did do those things to you.”

“If the significant adults in your life told you that your experiences didn’t really happen, or that they happened in ways radically different from the way you perceived them, you probably became confused and distressed, unsure what was real... Although you may find it difficult to have faith in your own perceptions, it is possible to develop the capacity to trust your inner voice.”

“Although you may get some sympathetic, supportive responses, the disclosure of abuse usually disrupts a family system of denial. Often family members find the exposure so threatening that they turn the survivor into a scapegoat, denying her experiences, minimizing them, or blaming her.”

The Committee noted the producer’s additional response to the point on appeal:

- “The contribution I made to programme two was a recorded conversation between myself and David Aaronovitch, not an interview as such, and as a result it was not scripted.

“While I honestly gave my overall impression of the book *The Courage to Heal*, in hindsight it would have been better if I had chosen my words more carefully. I was not attempting to quote from the book, but rather convey my perception that the book does not leave open the possibility that someone may not have been abused. I accept that there is not a specific line that says that denial of abuse is confirmation and therefore that I was not as accurate as I always strive to be.

“I did also try to contact both authors of *The Courage to Heal* while making the programme, leaving voicemail messages and emails. They did not respond to me.”

The Committee considered the following factors:

- *The Courage to Heal* is described by the producer as “still the most powerful book in this field”
- one complainant described it as a key text for survivors of childhood abuse
- it was given considerable prominence in the programme as one of the key conduits for the dissemination of what David Aaronovitch effectively considered was a myth

The Committee commended the producer’s candour in acknowledging that the book did not contain a specific line that says that denial of abuse is confirmation and in accepting that she ought to have taken more care in communicating her impression of its content.

Trustees concluded with regard to Point (D) that:

- there is no evidence that the book says that if the person you accuse of being your abuser denies it, it is confirmation that it happened
- given the importance of the book to David Aaronovitch's central thesis, there was a particular responsibility on the programme to ensure any reference to its content was accurate
- the audience was misled on a material fact
- it was a breach of 3.2 of the Accuracy Guideline where it states:

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.

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.

### **Finding: upheld as a breach of Accuracy**

#### **Point (E) – Whether the programme observed due accuracy and/or impartiality in how it reflected its thesis of a link between a historic satanic abuse panic and contemporary concerns about child abuse**

The Committee noted the complainant's contention:

"The two programmes failed in their overt purpose (in order to cast doubt on current cases) to provide evidence linking past allegations of ritual abuse with the current wave of allegations, charges and convictions relating to child sexual abuse. These are overwhelmingly unrelated to ritual abuse allegations."

The Committee noted the main ways in which the programme drew parallels between the past and present:

Programme One:

DAVID AARONOVITCH

Today the idea of ritual abuse is less fashionable, while the notion of murderous rings of paedophile politicians is far more current. But to me there is a consistent ideological thread that runs through both phenomena – a tendency to allow stories to outstrip the facts, obscuring genuine abuse and creating an atmosphere in which false or mistaken accusations can flourish. To the detriment, often, of the very people who most need help.

DAVID AARONOVITCH

Over the last thirty years we have learned some dispiriting things about ourselves when it comes to the abuse of children. It happened. We often ignored it.

One by one institutions have been indicted for tolerating – or, at the very least, not punishing – abuse by their members and officers. Churches, boarding schools, children's homes, the BBC and – of course – the family – have been implicated in that most basic breach of trust – the sexual exploitation of minors.

In many situations, such as those exploited by the gangs who groomed young teenagers, complaints by the victims were disbelieved or not taken seriously. Unsurprisingly some of those whose job it was to help such youngsters began to correct such prejudices by a stance of more uncritical belief. In not a few cases this mutated into a settled determination to find that there had been sexual abuse. The importance of corroborative evidence began to be overlooked.

The dangers in such an over-correction have always bothered me almost as much as the dangers of abuse. And to illustrate that I've looked at the extraordinary spread of the belief in ritual abuse. The result of that spread was a vicious cycle of accusation, confabulation, excessive credulity and injustice, all of which – when it collapsed – led to a new period of disbelieving victims.

The object of these programmes then is to show how an idea – a belief - began in America, how it crossed the Atlantic, how it bewitched a generation of childcare professionals and how it caused – and still causes – long term damage to the welfare of vulnerable children in Britain. And if listeners think they spot parallels with some of the current claims being made about VIP paedophile rings and group child murder, then all I can say is, "I agree".

Programme Two:

DAVID AARONOVITCH

I wanted to make these *Analysis* programmes because the way in which ideas of organised ritual abuse and recovered memory spread, had strong parallels with some (but not all) of the claims being made of historic VIP abuse. I am, in that sense, a selective sceptic.

DAVID AARONOVITCH

And there is another obvious problem. Which is that the existence of false accusation makes it more likely that true accusations will be dismissed. It is one of my big worries about the recent VIP allegations, where the evidence is so much weaker in some cases than others. But when I took this up with Sarah Nelson, she wondered why I was bothering.

SARAH NELSON

Why are you raising this now? Why is ritual abuse rearing its head now, because in all the last two years with Savile, with the celebrities, with the politicians, within care abuse, I have not heard almost nothing about ritual abuse cases.

DAVID AARONOVITCH:

I suppose because I think in understanding what happened over ritual abuse, it might help listeners make sense of what's happening now. Because what you have is a certain amount of testimony and very little corroborative evidence, actually none, none. You've just talked about politicians and so on. There is nearly no corroborating evidence at the moment. It doesn't mean that they won't be and that there can't be, so that's an answer to your question.

The Committee noted relevant detail from the programme's response to this appeal:

- David Aaronovitch was aware of some of the research completed by the *Panorama* team investigating allegations of VIP abuse for a forthcoming edition
- this only cemented his view that there were strong parallels between the way in which these allegations were being handled now and how they were approached in the 1990s

The Committee noted the following detail from the *Panorama* programme which was eventually transmitted in October 2015:

- it investigated allegations that a paedophile ring had operated at the heart of the British Establishment
- it asked why the allegations had been described by police as "credible and true" when there was no hard evidence or corroboration

Trustees concluded with regard to Point (E) that:

- *Analysis* did not set out to prove a direct link in the way the complainant suggested
- the parallel it sought to draw was, just as happened in the late eighties and early nineties, credence was being given in the current VIP paedophile investigation to allegations for which there appeared to be little or no corroborative evidence
- this was clearly explained in the commentary
- the content was duly accurate and duly impartial

### **Finding: not upheld**

#### **Point (F) – Whether the programme observed due accuracy and/or impartiality in how it reflected the influence of certain books in disseminating the idea of ritual abuse**

The Committee noted the complainant's contention:

"(The programmes) failed to provide evidence that the books they claimed to be responsible for belief in both 'satanic abuse' and MPD/DID had in fact influenced practitioners who came to believe that ritual abuse did exist."

"Over decades in sexual abuse work I never came across nor heard of a single person who came to believe that ritual abuse existed through reading *Sybil*, *Michelle Remembers* or *the Courage to Heal!* I never heard of anyone who read *the Courage to Heal* for what it might or might not say about ritual abuse or MPD! They all came to this conclusion after hearing very disturbing disclosures of sadistic abuse from children and/or adults."

The Committee noted the assertion in the programme that certain books had been influential in the dissemination of the idea of ritual sexual abuse, as in this extract from programme one:

#### DAVID AARONOVITCH

The occult flame, however, was kept alive beyond the shores of America. Kept aflame, not least, by what might be called the four key validating texts of recovered memory and ritual abuse: Sybil, the Diagnostic Statistical Manual, Michelle Remembers and, possibly the most influential of all, The Courage to Heal. These four publications were the subject of a doctoral thesis by journalist Rosie Waterhouse.

#### ROSIE WATERHOUSE

"The Courage to Heal" became known as the Bible of the recovered memory movement. And that combined the notions of satanic abuse, recovered memory therapy and multiple personality disorder, and it made all of those concepts mainstream. And that book had massive circulation and became an absolute bestseller...

#### DAVID AARONOVITCH

It is hard to over-estimate how important The Courage to Heal, with its empathic tone, its graphic content and its self-help ethos became. Anyone anywhere could understand it. So even before the McMartin trial had come to its anti-climax, the ideas of repressed memory and ritual abuse had crossed the Atlantic and found surprisingly fertile soil in supposedly phlegmatic Britain.

The Committee noted this extract from programme two:

#### DAVID AARONOVITCH

In last week's programme we looked at the influence of several books in spreading now discredited ideas about how the human mind deals with the trauma of childhood sexual abuse. What shocked my producer Hannah is their enduring influence, including one book which perpetuates the idea that therapists can help us recover forgotten memories of traumatic abuse.

The Committee noted where at various points in the programmes each of the four works is referred to:

- the commentary noted that six million people read "Sybil", which purported to document the "true story of a woman possessed by sixteen personalities"
- a contributor, Rosie Waterhouse, said that following the listing of Multiple Personality Disorder in the US Diagnostic Statistical Manual as a recognised psychiatric condition, the diagnosis "really, really ballooned"
- Rosie Waterhouse also said that the whole idea of satanic ritual abuse began with a book called "Michelle Remembers" and that "there was a sort of convergence of believers in the therapy movement in recovering memories of abuse with those who came to believe that some of this abuse was in satanic cults"
- the programme featured the case study of Roma Hart, who was diagnosed as having 52 different personalities; the commentary noted that Roma's therapy sessions "came not long after the book Michelle Remembers went stratospheric"
- the producer of the programme stated in programme two that "The Courage to Heal" "is still the most powerful book in this field" and that it is required reading for an undergraduate course in counselling at one university

The Committee noted the content of a blog posting by David Aaronovitch following the *Analysis* broadcasts in which he said:

“The programmes never claimed that any professional had concluded that satanic abuse existed from these books alone or even mainly from them. Rather they helped form the intellectual background against which a temporary but significant boom in belief in satanic abuse took place.”

The Committee noted the programme’s response:

- The *Courage to Heal* was promoted in an official pamphlet for the Scottish Government, as a book for people who have been abused and that, “This appears to be at odds with the idea that the book is not influential in this field.”

The Committee noted:

- the complainant who raised this point said in her letter of appeal that “The *Courage to Heal*” is “a key text for survivors of childhood sexual abuse”
- she said in subsequent correspondence that the programme had distorted or misunderstood what she meant by that:

“it is not at all influential in persuading people that ritual abuse, or MPD [DID] exists! I never heard anyone in my life, survivor or otherwise, say that these small elements of very long and substantial books were what they read them for, or frankly even noticed.”

Trustees concluded with regard to Point (F) that:

- in an authored programme the presenter is entitled to propose his thesis in his own way and to present the evidence he chooses, so long as the content is duly accurate and duly impartial
- in giving weight to what it referred to as the “four key texts”, the programme also reflected the alternative view, as expressed by the complainant, namely that practitioners came to the conclusion that ritual sexual abuse existed by listening to what their clients were telling them about what they had experienced
- the content was duly accurate and impartial

### **Finding: not upheld**

#### **Point (G) - Whether the programme breached the Harm and Offence and/or Interacting with our Audiences guidelines in not offering an audience helpline and not including a content warning**

The Committee noted that this point engaged the Editorial Guidelines on Harm and Offence and Interacting with our Audiences, specifically the following clauses:

#### **Section 5 – Harm and Offence**

## 5.1 INTRODUCTION

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

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

When our content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted.

### Section 17 – Interacting with our Audiences

#### 17.4.21

When we broadcast content raising difficult or distressing issues, we should consider whether it is appropriate to provide a helpline offering further information or support and/or supply similar information online. BBC Audience Lines should normally be consulted.

Trustees noted the complainant's contention:

- the programme failed to consider the harm to any victims alleging ritual abuse who state they have been told by their abusers that they would never be believed
- there was a lack of consideration given to the children who had been abused (now adults) and the potential impact of the programme on them:

"No matter how familiar, the content of the programmes was inherently potentially re-traumatising to those affected ... many victims routinely report the return of or increase in post-traumatic symptoms every time the issue is aired in the public domain"

- it failed to consider the potential impact on abusers of any kind who might seek to incorporate ritualistic elements in their abuse or who might welcome the theory of so-called false memory put forward by the programme in order to undermine the credibility of their victims
- from her experience of working with sexual offenders, the complainant considered they would have been listening to this programme, because it was about child abuse

The Committee noted the programme editor's response when asked by the Trust Adviser whether consideration had been given prior to broadcast to providing a helpline offering further information and support:

- having previously worked for four years as producer on *Woman's Hour* she had produced many programmes where difficult and distressing issues were raised and where she had arranged for BBC audience line support to be made available
- she did not consider a helpline was appropriate in this case because the programme was not focusing on victims' stories: the only story of personal suffering heard was that of a woman who had visited a counsellor who tried to convince her that she had been a victim of sexual abuse when she was sure she had not been
- it was a small part of the programme and the story was not told in a way which she would anticipate was likely to cause distress
- offering helpline support at the end of the programme did not feel appropriate given the content and tone of the programmes

The Committee noted the programme editor's response when asked by the Adviser whether consideration had been given to attaching an audience warning to the content:

- it was clear what the broad topic was from the continuity announcement and online programme description
- there was no unexpectedly distressing content which followed
- the issue had come up recently in a programme about Jehovah's Witnesses in the UK, which had the same producer as this programme. The Jehovah's Witnesses programme did contain personal stories of abuse and the producer was advised by the BBC's network compliance editor on that occasion that a content warning was not necessary

The Committee noted the following:

- the programmes were broadcast in the regular *Analysis* slots, with first transmission at 8.30pm on Monday evening followed by a repeat the following Sunday evening at 9.30pm.
- the continuity announcements ahead of the first programme:

"In a moment in Analysis David Aaronovitch will focus on child sexual abuse while tracing the intellectual influences behind society's shift from wrongful denial to excessive credulity..."

"And now, beginning a new series of Analysis, the Times journalist David Aaronovitch looks at allegations of ritual sexual abuse and dissects the anatomy of a panic."

- And ahead of the second programme:

"In a moment David Aaronovitch traces the powerful intellectual influences behind what he sees as one of the most important cultural shifts of the past 40 years, from a society in which accusations of sexual abuse were

wrongly ignored to one in which the falsely accused were crushed by a system where the mantra was victims must be believed..."

"Now Analysis. In the second of two programmes David Aaronovitch explores how a belief in widespread satanic abuse of children spread from the US to Britain and continues to have an impact on vulnerable people to this day."

Trustees concluded with regard to Point (G) that:

- although the continuity announcements did not contain an express content warning, the clear signposting of what the programmes were about was sufficient to ensure listeners would not be likely to come to the programme unaware of what would be discussed and would be likely to expect that some of the content would be challenging
- the programme discussed an historical episode; none of the aspects of the issue aired in the programme were new, confronting, unexpected or insufficiently signposted
- whilst David Aaronovitch drew a correlation between recent allegations of historic organised sexual abuse perpetrated on a large scale by powerful men and the so-called "satanic panic" of the eighties and early nineties, the programmes did not include any detail on the current allegations
- given the abundance of published material on the subject and the passage of time, adult abuse survivors of the Nottingham case, or abuse survivors in general listening to the programme, would be likely to have heard the broad arguments put forward by David Aaronovitch prior to *Analysis* airing the issue
- whilst Trustees were conscious that for survivors of abuse, familiarity with the issues does not necessarily make repetition easier or acceptable, the signposting would have enabled those who considered themselves at risk to choose not to listen to the programme
- the risk of perpetrators of sexual abuse coming upon incidental information from the programme's discussion of the historic allegations by chance was outweighed by the legitimate public interest in airing the topic
- whilst Trustees considered it would have been good practice to have offered a helpline at the end of each programme they recognised that the programme had given the matter the consideration called for under the guidelines and that the editor and the producer had drawn on their recent experience of what had been required when airing content of a similar nature
- The programme makers had struck an appropriate balance between the BBC's right to broadcast innovative and challenging content and its responsibility to protect the vulnerable and avoid unjustifiable offence

**Finding: not upheld**

**First party fairness issues**

The Committee noted that the next three points related to first party issues, as defined in the BBC complaints framework for editorial complaints which can be found at: [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). It defines a “first party complaint” as:

This is a complaint alleging that someone (“the first party”) has personally been treated unfairly, or suffered an unwarranted invasion of their privacy, in BBC content, or in the making of BBC content.

The Committee noted that these points engaged the Editorial Guidelines on Fairness, Contributors and Consent, specifically the following clauses:

The BBC strives to be fair to all – fair to those our output is about, fair to contributors, and fair to audiences. BBC content should be based on respect, openness and straight dealing (Guideline 6.1)

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... (Guideline 6.2.1)

Individuals should normally be appropriately informed about the planned nature and context of their contributions when they are asked to take part in BBC content and give their consent, unless there is an editorial justification for proceeding without their consent (Guideline 6.2.2)

Our commitment to fairness is normally achieved by ensuring that people provide ‘informed consent’ before they participate. ‘Informed consent’ means that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content.

“Before they participate, contributors should normally know:

- o why they are being asked to contribute to BBC content and where it will first appear
- o the context of the content
- o the nature of their involvement.

“The more significant their contribution, the more detail we should provide. However, we should normally expect to explain the following:

- o The kind of contribution they are expected to make
- o We should tell them in advance about the range of views being represented in the specific content to which they are contributing and, wherever possible, the names of other likely contributors
- o The final content will be a fair and truthful representation of what they say and do
- o We should not make any commitment to a contributor that we cannot keep.” (Guideline 6.4.1)

“We should normally make contributors aware of significant changes to a programme or other content as it develops and prior to transmission, if such changes might reasonably be considered to have affected their original decision to participate, had it been known at the time.” (Guideline 6.4.4)

The Committee noted that the Editorial Guidelines on Accuracy are also relevant.

**Point (H) – Whether the programme observed the Fairness, Contributors and Consent guidelines in informing the complainant about the nature of the programme and the context of the complainant’s contribution; whether the complainant’s position was fairly represented; and whether the programme reneged on an undertaking it gave to include specified material**

**This finding has been written so as to respect the complainant's wish to remain anonymous.**

The Committee considered three matters under this point:

- Point (H)1 Whether the programme reneged on an undertaking to include specific material
- Point (H)2 Whether specific material required to be included in order that the programme achieved due accuracy
- Point (H)3 Whether the complainant was misled about the nature of the programme and the context and content of his contribution

**Point (H)1 - Whether the programme reneged on an undertaking to the complainant to include specific material**

The Committee noted the complainant’s contention that:

- there had been successful prosecutions of a number of adult men and women for the sexual abuse of children in what the courts heard were satanic rituals
- the programme told the complainant it would include this information reflecting the complainant’s position but did not do so

The Committee noted the following:

- neither programme explicitly reflected that it was the complainant’s position that there had been successful prosecutions of cases in which evidence was produced that satanic rituals had been a feature of the abuse

The Committee noted the relevant details in a timeline compiled by the Trust Adviser which drew its information from:

- copies of correspondence provided by the complainant and by the programme
- correspondence at previous stages of the complaint

- the transcript and the audio recording of David Aaronovitch's interview with the complainant the producer's typed notes of a telephone conversation she had with the complainant before he was interviewed
- a telephone conversation between the Adviser and the editor of the programme

The Committee noted the Adviser's analysis of the relevant detail from the timeline:

- the complainant requested, in writing, on four occasions, an assurance that the programmes would reflect the complainant's contention that there had been successful prosecutions of adults in Britain for the sexual abuse of children during what courts heard and accepted to have been satanic rituals
- there is nothing in the email correspondence, the producer's notes of her conversation with the complainant, or in the audio recording of the interview that indicates any undertaking was given
- the audio recording of his interview demonstrated that the complainant stated the view that there had been relevant successful prosecutions, but the complainant did not specifically request in the recording that the information be included in the programme

The Committee noted the complainant's explanation in an email to the producer as to why the complainant was so insistent that the programme include information on previous prosecutions:

"As I explained to you and to David Aaronovitch my views rest squarely on these successful prosecutions. I do not believe you can, as you have promised, accurately reflect my interview if you omit the fundamental fact of proven cases."

The Committee noted the following detail from the programme editor's response to the ECU at Stage 2:

- I spoke to the complainant on the telephone on 27 May (ie between transmission of the first and second programmes)
- having heard programme one, the complainant was anxious that programme two should fully reflect what the complainant told me was strong evidence of Satanic/ritual abuse being practiced in the UK
- the producer had shown me a list of criminal cases which the complainant had sent her and which the complainant said were ones in which Satanic/ritual abuse had been proven to have been a factor
- having looked at the list I agreed with the producer that there was insufficient detail in it for us to be able to say that these cases were indeed ones in which Satanic/ritual abuse had been proven
- the complainant assured me that I would find sufficient detail in another source and promised to send me relevant material
- I said that I would read the material and ensure that the programme reflected any evidence they provided of the Satanic/ritual abuse phenomenon existing in the UK

- the complainant then emailed me some material
- I concluded that they did not constitute the sort of good evidence of ritual/Satanic abuse that the complainant seemed to think they did
- in only one of the cases... did it appear (according to the complainant ) that there was evidence that a judge had accepted that the abuse had taken place in the context of a ring of Satanists. But in that case the defendants all pleaded guilty so there was no trial and the evidence was probably only heard in outline and probably not tested
- it may be, as the complainant believes, that the judges and investigators who came to these conclusions were in denial about the existence of Satanic abuse
- however, as programme makers we had to weigh against the complainant's beliefs the fact that every known case of alleged ritual abuse in the UK was investigated by Professor Jean La Fontaine. Unlike the complainant, Professor La Fontaine had privileged access to the relevant case files. Professor La Fontaine's report concluded that there was no evidence that the sexual and physical abuse of children was part of rites directed to a magical or religious objective in these cases
- I concluded that it would not have been journalistically responsible to use the material provided by the complainant to undermine the conclusions of Professor La Fontaine's report
- I believe it was clear from my telephone conversation that I would only have included evidence from the complainant if I found it to be satisfactory. I expected that the complainant would have understood this

The Committee noted the content of an email written by the complainant to the editor after the second programme, in which the complainant said that:

- the editor had breached an undertaking she had given the complainant in their telephone conversation that a specific section of the complainant's interview, which detailed the cases, was already included and that it would be supplemented by an additional back reference by David Aaronovitch

In her response the editor explained her assessment of the evidence the complainant had provided and her conclusion that:

"it seems reasonable to acknowledge in the programme that Satanism has been used by some abusers to intimidate their victims – but to put it no higher than that."

The Committee noted there was a sentence in the commentary to that effect in programme two.

Trustees concluded with regard to Point (H)1 that:

- whilst the correspondence trail demonstrated a clear desire by the complainant for specific information to be included there is no basis on which to conclude that any such undertaking was given

- there was no evidence to corroborate the complainant's view of what had been agreed in the correspondence or the audio recording
- however, it would not be consistent with usual editorial practice to agree to include material without a programme maker having had the opportunity to consider it and to assess its relevance
- editorial decisions about what material to include or omit are generally within the discretion of programme makers
- the correspondence trail indicates that due consideration was given to the material the complainant submitted
- the programme met the guideline requirements to be open, honest, straightforward and fair in its dealings with the complainant

### **Finding: not upheld**

#### **Point (H)2 – Whether specific material was required to be included in order that the programme achieve due accuracy**

It was noted that, although this was not strictly a first party issue, its inclusion was to allow the Committee to consider the relevance of the material the complainant provided, separately from its decision as to whether the complainant was treated fairly as a contributor.

The Committee understood the issue under this point to be whether the information provided by the complainant about other prosecutions was a material fact which required to be included in order for the programme to achieve due accuracy.

The Committee noted that the Adviser had reviewed the information from the complainant which he submitted to the programme and that:

- it detailed six English court cases in which it was said adults had been convicted for the sexual abuse of children in what were explicitly described as satanic rituals
- with the possible exception of one case from 1982, none of the cases documented by the complainant appeared to suggest, in nature or scale, what was claimed was happening in the panic of the late eighties and early nineties and which was the focus of the programme: that is, widespread incidents where large groups of adults were conducting satanic rituals in the context of sexual abuse of children
- in one case amongst the six submitted there were multiple perpetrators and multiple victims where evidence of satanic rituals was presented in court as a feature of the abuse

The Committee noted the complainant's summary of what the complainant considered were the key features of that case. His summary included the following information: .

[NAME A] was given three 14-year prison sentences for the buggery, wounding and rape of four children between 12 months and 15 years old.

His wife, [NAME B] and her sister [NAME C], were given two and five years sentences respectively for aiding and abetting. [NAME C's] husband, [NAME D], was given a 10 year sentence for specimen charges of buggery and assault.

The victims were raped on an altar dedicated to Satan, alter candles and a cross was used on the victims. One victim was convinced [Name A] was Lucifer.

The Committee noted that the local newspaper published a court report of the trial and that the details in the complainant's summary were very similar to those in the newspaper report.

The Committee noted the *Analysis* Editor's contention that as all the defendants in this case pleaded guilty "there was no trial and the evidence was probably only heard in outline and probably not tested".

The Committee noted the following from the complainant summarising what the six cases the complainant submitted demonstrate:

"Each one was a clear case in which adult men and women had been sent to prison for sexually abusing children in what the court heard – without challenge or complaint – were satanic rituals. I also detailed them during the recorded interview I gave to Aaronovitch. As a result, he knows that there is unequivocal proof that ritual abuse does – occasionally – happen."

The Committee considered the programme's view:

- David Aaronovitch considered that those making the claims of a worldwide network of satanic abusers had set the bar very high and that it was wrong to put too much emphasis on what might have been minor ritual elements
- the editor did not consider that specific information on other prosecutions constituted evidence which required to be included but that it was reasonable to acknowledge that Satanism has been used by some abusers to intimidate their victims

The Committee noted how the information was reflected in the second programme:

DAVID AARONOVITCH

Of course, in the thousands of cases of child sexual abuse over the years there have been some where the abusers have sought to intimidate their victims with claims of being the Devil or Lucifer. But the claims for ritual satanic abuse went much wider than that.

Trustees concluded with regard to Point (H)2 that:

- the programme had clearly signposted its subject matter
- the cases cited by the complainant did not contradict the programme's thesis that there was no evidence to support the notion of a worldwide network of satanic abusers

- the programme acknowledged that there had been satanic features in some cases of abuse over the years
- the decision not to include detail of any specific cases, was a matter of editorial judgement
- the audience had not been misled on a material fact; the content was duly accurate

**Finding: not upheld**

**Point (H)3 – Whether the complainant was misled about the nature of the programme and the context in which the complainant was being asked to contribute?**

The complainant contended that:

- the complainant was misled about the aims and intentions of the programme and was deceived into giving an interview
- what the complainant had been told, including in the producer's original email to the complainant, radically differed from both the published billings for the programmes and their content

The Committee noted the Adviser's summary of the relevant timeline points:

- when the complainant was first contacted by the producer the complainant was told that *Analysis* on Radio 4 was planning a documentary "to explore the ideas and beliefs that have shaped how British society views allegations of child sexual abuse over the last 30 years or so and look at how these views have changed".
- prior to the interview the complainant was sent an email with a list of the areas the interview would cover; the complainant responded and said it was "all fine". These were:
  - o the complainant's take on ritual abuse and how the complainant began looking into it
  - o the conflict between children's testimony and what they perceive to be true and the evidence needed for prosecution
  - o the complainant's take on the unhelpful polarisation surrounding ritual abuse
  - o whether the complainant's thoughts on the subject had changed over time
  - o in a conversation prior to his interview the producer's notes reflected that the complainant had told her that to some extent the complainant shared David Aaronovitch's scepticism about the issue

- o after the complainant's interview the complainant requested and was provided with a list of the other known contributors, all of whom subsequently featured in the programme
- o the editor informed the complainant prior to the second programme, and in answer to a question the complainant had raised concerning the approach of the programme, that it was meant to be an "authored" programme
- o the correspondence suggested that the complainant had not been aware of the line David Aaronovitch had taken in the programmes until the complainant saw the programme billing on the *Analysis* website shortly before the first programme was broadcast

The Committee noted that in conversation with the Adviser the producer said she made clear to every interviewee what the programme was aiming to do and that in her view it was not possible that the complainant did not know what the programme would be about.

Trustees concluded with regard to Point (H)3 that:

- there is no evidence that the programme secured the complainant's cooperation by deception
- the outline of the areas of questioning given to the complainant ahead of the interview was reflected in the contributions which were included in the broadcast programmes (as detailed in Point (H)1 above)
- the producer's note of her pre-interview conversation with the complainant indicated that the complainant was aware of where Mr Aaronovitch stood on the issue
- the programme treated the complainant fairly and was open, honest, straightforward and fair in its dealings with him
- the complainant was appropriately informed about the planned nature and context of the complainant's contribution
- the complainant was given adequate information for the complainant to provide informed consent before the complainant participated in the programme

### **Finding: not upheld**

**Point (I) – Whether the programme observed the Fairness, Contributors and Consent guidelines in what it told Sarah Nelson about the nature of the programme and her part in it; whether specific material from her interview should have been included in order that the programme achieved due accuracy**

The Committee considered two matters under this point:

- Point (I)1 Whether Dr Nelson was misled about the context of the content and the nature of her involvement

- Point (I)2 Whether specific material was required to be included in order that the programme achieve due accuracy

**Point (I)1 - Whether the programme observed the Fairness, Contributors and Consent guidelines in informing Sarah Nelson about the nature of the programme and her part in it**

The Committee noted the complainant's contention:

"I was not dealt with fairly and honestly but deceived in terms of what I was led to expect in participating, and what I was assured would happen, compared with the broadcast content of these programmes."

"I repeatedly sought and received assurances both verbally and by email, and as part of my agreement to participate, that the programmes would fairly reflect conflicting views and evidence on this controversial and sensitive topic..."

"It is now clear that there was never any intention for balance; indeed even before the programmes were broadcast, from the blurb on the BBC website about the forthcoming programmes and from Mr Aaronovitch's spoken previews, there was no indication that this was going to be a debate or discussion, nor that other views would be presented. The views of people like myself were described by him in the preview as 'bizarre'."

The Committee noted the timeline compiled by the Adviser which was drawn from email correspondence, the transcript of David Aaronovitch's interview with Dr Nelson, and the producer's typed notes of a telephone conversation with her before the interview. The Committee noted the Adviser's evaluation of the information:

- prior to agreeing to take part and being interviewed the complainant appeared to have been made aware that the programme would focus on ritual abuse and recovered memory in the context of contemporary allegations of child sexual abuse
- the complainant appeared to have been made aware of where Mr Aaronovitch stood on the issue, that his view would be shared by some of the other contributors, and that it was contrary to the views which she held
- the correspondence recorded the complainant stating that she noted at an early stage that there would be other contributors and "totally accepted" that only portions of what she and [NAME] said would be transmitted
- the complainant appeared not to have been aware, at least at the outset, of how Mr Aaronovitch's views might affect the framing of the programme
- there appeared to have been no formal indication given to the complainant prior to broadcast that the BBC considered the programme to constitute personal view content
- the programme was aware that, following her interview, the complainant had "serious anxieties" about the programme and of her reasons for that anxiety
- the complainant was supplied with a transcript of her interview prior to the first programme

- the complainant highlighted specific content from that interview, and asked that it be included after the first programme had been broadcast
- the programme addressed Ms Nelson's concerns and explained how it might meet them and what it could and could not do at that stage of editing
- the complainant was advised that the programme could not guarantee to contributors to include exact clips

The Committee considered this extract from an email the complainant wrote to the producer just after her interview:

"I was not fully aware until after the programme recording of the consistent and considerable line of scepticism over many years which David has taken to allegations of sexual abuse in a variety of settings and situations, nor of publicised arguments he has made about young people and sexuality with which I would much disagree. That is all his privilege, and his views which he is more than entitled to as an individual; the point is that it is now clear he has an agenda for programmes he is involved in making, as opposed to an impartial stance between arguments... As you will understand this reduces my confidence that such a programme will be impartial."

The Committee noted the producer's response for this appeal:

"I completely reject the suggestion that Dr Nelson was treated unfairly and it is not true to say that she was misled or deceived in any way into giving an interview.

"Throughout the process of making these programmes, I approached many people who believed that satanic ritual abuse had occurred in the 1990s and still exists today. I recognised the need to acknowledge that some, albeit they are a tiny minority, still hold these views. None agreed to be interviewed, precisely because I had been so honest with them about the expected narrative of the programme and about the fact that David Aaronovitch was on the record as being sceptical on this particular matter...

"As part of my initial approach to Dr Nelson I had agreed to provide her with a full transcript of the interview, something that is very rare, but which I agreed to do because I was so convinced that she would be given a fair hearing. At no point was Dr Nelson given any assurance that certain parts of the interview would be included or that she had any power of veto over editorial content."

The producer asked that the Committee also consider a statement provided by one of her producer colleagues:

"I sat opposite Hannah while she was making the programme. Hannah was acutely aware that she needed to have voices in the programme that believed that recovered memories, multiple personality and satanic abuse happens. She knew she had to be very clear with potential interviewees what the programme thesis was.

"I believe I overheard most of Hannah's conversations with potential interviewees. I can say that she was scrupulously fair; so fair that most people said no immediately.

"In January I happened to be working on a different story about historical child abuse so attended the survivors meeting in Parliament. Valerie Sinason, was there. Sinason is a leading psychotherapist who champions the idea of recovered memory of child abuse. The reporter I was working with is sympathetic to her ideas and had been in contact with her for many years.

"I met Valerie with that reporter in the coffee shop after the meeting. Valerie was surrounded by fellow believers in satanic abuse. Virtually all of them had been approached by Hannah to take part in the programme. They told my reporter they were unhappy that the BBC was making a programme that questioned recovered memories etc. But, all of them said that Hannah had been very honest and open and professional when she'd approached them. For that reason all of them declined to be interviewed."

The Committee noted that, with the exception of the complainant's contention that material essential to the audience's understanding of the issues was excluded (see Point (I)2 below), the complainant had not raised any concerns about the content or context of the clips from her interview which were used.

Trustees concluded with regard to Point (I)1 that:

- there is no evidence that the programme secured Ms Nelson's cooperation by deception
- the producer's note of her pre-interview conversation with Ms Nelson and the subsequent correspondence between them indicated that Ms Nelson was aware of where Mr Aaronovitch stood on the issue
- the programme appeared to have gone out of its way to address the complainant's concerns when it became aware that she was anxious about her participation
- the programme treated Ms Nelson fairly and was open, honest, straightforward and fair in its dealings with her

In not upholding Ms Nelson's complaint the Committee considered nevertheless that it would be helpful that where contributors are invited to participate in an authored programme it is made clear to them what that means in practice, particularly where the contributor holds a view that differs from that of the author of the personal content. Where there is any concern that the contributor might not have the same understanding of personal view content as the programme makers, i.e. that the audience will be likely to hear a partial view, it would be better to err on the side of caution and to provide the contributor with more information rather than less, regarding the presenter's likely approach and what is permitted under the Editorial Guidelines.

**Finding: not upheld**

**Point (I)2 – Whether specific material required to be included in order that the programme achieved due accuracy**

The Committee noted that this was not a first party issue. It was included so that Trustees could make a decision about the relevance of the material the complainant provided, separately from their decision as to whether she was treated fairly as a contributor.

The issue is whether the clips highlighted by the complainant as essential to listeners' understanding were required to be included so that the programme could achieve due accuracy.

The Committee noted the complainant's contention that it was essential listeners understood the nature of the debate on why ritual abuse allegations arose at the time and why the satanic panic theory was nonsense:

"Given that most of the first programme was spent claiming that a 'satanic panic' was created and zealously promulgated by a bizarre alliance of radical feminists, evangelical Christians, counsellors, crazy female mental patients and social workers, invited contributors who challenged this conspiracy theory could surely expect even a few minutes to respond on air. I asked after the first programme that sections ... be included from my own transcript, not from some vanity but precisely because they summarised absolutely key positions in this particular aspect of the debate, which David had asked me about in my interview: viz. My position on:

- Why the belief that children were being ritually abused actually arose at the time that it did; and
- Why the satanic panic theory is nonsense: I gave a number of reasons very succinctly.

"I wrote to [the producer], 'I consider that these two passages would be essential to listeners' understanding if these programmes, and especially the second one, genuinely is a debate between two positions, a debate which the listeners are entitled to hear'.

"The points took less than five minutes to say, yet not one point from my interview transcript was used. I was told by the editor, that they 'did not fit the structure of the second programme'."

The Committee noted the editor's view that *Analysis* gave a fair and accurate account of the views Dr Nelson expressed in her interview and that where the points were not made in clips they were reflected elsewhere in the script. The Committee noted the editor's response to the complainant at Stage 1:

"Decisions about which extracts to use have to be left to the programme team which has to balance a number of considerations. As you know from one of my previous emails to you, I did consider your request to have the extracts you asked for included in the programme. As I said in that email, the 25.09 extract did not fit into the structure of programme two. Regarding 35.35 extract, it was not possible to include this extract without losing another element of the programme. (Even without that addition, the extracts from the joint interview you gave with [NAME] was the second lengthiest contribution to the pair of finished programmes.) The point you made in the 35.35 extract was summarised in the script line: 'Sarah Nelson believes that if there is

a moral panic, it's on the other side – people who want to deny the full horror of child abuse, making scapegoats out of social workers and paediatricians'."

The Committee noted that decisions about what material to include are generally matters of editorial judgement and are the responsibility of the programme makers.

The Committee noted the Adviser's summary of the first answer from her interview which Dr Nelson considered should have been included:

- she was responding to a question about what she would say to those who contended there had never been any evidence for ritual sexual abuse
- she said that an awareness of the issue of ritual abuse came about in the late 1980s because people started hearing evidence, from places like Orkney, where children and adults were reporting extraordinary things - and not automatically disbelieving that those reporting the abuse were fantasists or insane

The Committee noted that Ms Nelson, and others heard on the programme who shared her view, disagreed with the thesis proposed by Mr Aaronovitch because in their view ritual abuse is real: evidence came from those reporting it, and no other explanation – such as the conference circuit, works of literature, false memories - was needed to explain the phenomenon.

The Committee noted how the point was reflected in the programme:

- the first point was a key theme explored in the programmes: that even in the absence of corroborative evidence, children and adults reporting ritual abuse had to be listened to and believed:

DAVID AARONOVITCH

For those who did accept the possibility of a widespread problem of satanic child abuse, there now seemed to be corroboration in cases as far apart as Rochdale in Lancashire and the Orkney island of South Ronaldsay...

The Orkney case, which had originated in a family where abuse was happening, eventually went to a full Inquiry. In 1992 the Inquiry report concluded that the idea of ritual abuse was "not only unwarrantable at present but may affect the objectivity of practitioners and parents".

The Committee noted that shortly afterwards David Aaronovitch introduced Dr Nelson:

DAVID AARONOVITCH

One of the reasons why, after 1994, there was less popular acceptance of the idea of satanic rites was the lack of corroborating evidence. I put that to Dr Sarah Nelson of Edinburgh University, who wrote about the Orkney case and who still believes that ritual abuse was involved.

DR SARAH NELSON

Well you make the mistake that many people make. The testimony of children and adults is in itself evidence. It's very interesting that this is always rejected. There was no evidence but what people say and testify is also evidence, I think you mean corroborative evidence.

The second clip which the complainant said should have been included noted that the theory that there had been a “moral panic” did not stand up because, amongst other things:

“... according to a classic model panic theory, the scapegoats and folk devils were not the accused adults, they were the social workers and paediatricians. Thirdly, the idea that in a classic moral panic theory the media has to support that panic! As you said yourself, it only supported it for probably a few weeks and then most media supported all the accused adults against those who believed that this existed.”

The Committee noted that David Aaronovitch paraphrased the second point in his commentary, attributing the view to Dr Nelson and also included a clip of her elsewhere in the programme making a similar point:

“Sarah Nelson believes that if there is a moral panic, it’s on the other side – people who want to deny the full horror of child abuse, making scapegoats out of social workers and paediatricians.”

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SARAH NELSON

I think one would could say that just as there was a very, very concerted attempt to dismiss ritual abuse... we could equally say that that the claims now that there is a moral panic, which neither of us have seen any moral panic ... this is another attempt to dismiss what is emerging at the moment. I mean that’s cynical but it would be my view.

DAVID AARONOVITCH

Well in that case perhaps you’d care to speculate on what the motive for such a dismissal would be?

SARAH NELSON

I’m not suggesting David that it’s your motive by any means, but when we look at backlash theories on the whole, you know what motive would there be for certain people who are abusers or supporters of abusers to put forward reasons to dismiss sexual abuse. This has gone on for centuries, it’s the most defended crime - they have a huge stake in in protecting abuse rings, sexual exploitation. And why other people believe it, it’s not that I’m saying they’re stupid or credulous, it’s because it’s a terribly hard and unpleasant thing to believe.

Trustees concluded with regard to Point (I)2 that:

- this was an authored programme and did not claim to be a debate between two sides
- nevertheless it reflected the views of those who did hold an alternative view
- the content was duly accurate

**Finding: not upheld**

**Point (J) - Whether the programme observed the Fairness, Contributors and Consent guidelines in its portrayal of an individual; whether the individual should have been offered a right to reply**

**This finding has been written so as to respect the complainant's wish to remain anonymous.**

The Committee noted the complainant's contention that:

- the reflection of the complainant in the programme, without the complainant's prior knowledge or consent, was inaccurate and unfair and amounted to a personal smear
- in the circumstances, the complainant should have been offered a right to reply
- the programme had initially attempted to get in touch with the complainant, but had not tried very hard and therefore the attempt to locate the complainant had not been genuine

The Committee noted that whilst the complainant was not a contributor to the programme, the complainant was referred to in it. The Committee noted that the complainant initially wrote to the BBC asking why no attempt had been made to contact the complainant: any reasonable person listening to both programmes would have regarded the complainant's role as central to the argument.

The Committee noted that at Stage 1 of the complaints process the complainant was told:

- "You were one of many people that the producer attempted to approach as possible
  - participants in the programme. The only telephone number the producer could find
  - for you was one that she found on a website..."
- the producer said she had called the telephone number several times on one day in
  - January and tried every day that week at various times, including after work hours,
  - but the phone was never answered and there was no facility to leave a message

The Committee noted the detail of the complainant's concerns:

- the reference to the complainant was taken out of context
- having apparently considered they should interview the complainant, the team then did not make any real effort to locate the complainant, which the complainant believed would have been easy to do

"I was not contacted to respond to what I believe was essentially a personal smear to support a flawed agenda. I was not used to provide

'balance', as suggested by [the ECU]. I was used to support an agenda, without being given the chance to respond."

- the programme makers should have offered the complainant a fair right to reply.

The Committee noted the programme's view that:

- given the purpose of the programme it was not felt necessary to contact the complainant. The facts were not contentious. The complaint's views on ritual abuse had not changed.

The Committee considered the following:

- In one section it was possible the complainant would have been identifiable although the complainant was not identified by name
- the programme's position that the complainant was one of a number of individuals who were on its list to approach, and having found others who reflected the perspective the complainant represented there was no particular reason, in the BBC's view, why they needed to talk specifically to the complainant
- the original efforts to make contact with the complainant appeared unrelated to the programme's plans to refer to the complainant; the producer did not consider the complainant needed to be offered a right to reply

Trustees concluded with regard to Point (J) that:

- there was no evidence to suggest that the initial attempts to locate the complainant were not genuine
- there was no evidence to suggest that the initial attempts to contact the complainant were because the programme considered the complainant was entitled to a right to reply
- the content referring to the complaint was about the complainant's public position, which was already on the record, and there was no indication that'll the complainant had changed position
- the content referring to the complainant in this context did not meet the guideline threshold for a right to reply as outlined in 6.2.3:

When our output contains allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or organisation, those criticised should normally have a right of reply, unless there is an editorial justification to proceed without it.

- the content was fair and accurate in its portrayal of the complainant and therefore met the guidelines requirement

**Finding: not upheld**

**Point (K) - Complaints handling: whether the Editorial Complaints Unit observed the Accountability Guidelines and acted in accordance with the Editorial Complaints Framework in its consolidation of complaints**

The Committee noted that one complainant had raised concerns about the way that her complaint had been consolidated by the ECU with those of five other complainants for the purposes of considering their appeals.

The Committee noted the Editorial Guidelines on Accountability as relevant to the Committee's consideration of this point, and also Procedure No. 1 – Editorial Complaints and Appeals from the BBC's Complaints Framework.

The Committee noted the relevant extract from the Guidelines on Accountability and from Procedure No. 1 – Editorial Complaints and Appeals:

The BBC is accountable to its audiences. Their continuing trust in the BBC is a crucial part of our relationship with them. We will act in good faith by dealing fairly and openly with them. (Guideline 19.1.1)

If the BBC receives a number of complaints about the same issue, it may –

- compile a summary of the range of issues raised;
- consider them together across the full range of issues identified;
- send the same response to everyone and/or it may publish it on the BBC's complaints website.

These steps may be applied by the BBC at each stage of the Procedure (Paragraph 2.11 of Procedure No.1 – Editorial Complaints and Appeals)

The Committee noted the complainant's contention that:

"[The ECU Complaints Manager] changed his approach without informing me. At first he had decided to look at all the complaint holistically. When I received my response he had changed his mind. I ... would like you to consider this as part of my complaint. He did adopt a common approach in some respects, as it is clear that he adopted a cut and paste approach in responses sent to us. This, I would argue, is not fair unless he is truly looking at the evidence as a whole. Either he adopts a holistic approach or we are assured that he weighs all the evidence, or he considers the evidence of individuals, in which case I would have ensured that he had as much evidence as I have at my disposal, presented in my own way as an individual, with my own perspective. As it is, I have formed the impression that he has 'cherry-picked' between one approach and the other."

The Committee noted:

- the procedure does not require that complainants must be consulted prior to consolidation of their complaints, nor that they be advised that their complaints have been consolidated although, in fact, the BBC usually does make this clear to complainants when they are written to
- the ECU informed the complainant, prior to issuing its finding, about how it intended to proceed:

"I believe I mentioned that I intend to investigate all the complaints the BBC has received about these programmes and draw on information

provided by all complainants to ensure I have a full understanding of the facts and the issue”

- the subsequent ECU finding included the following paragraph:

“I had originally intended to draft a single finding which addressed all of the complaints which had been made about the programmes but I now think it is more appropriate to send each complainant a separate response. As a result, some aspects of this finding will be repeated in my finding to other complainants but some aspects will be unique. I can, however, confirm that I have taken account of all the information provided to me in reaching a provisional finding on each separate complaint.”

- in considering the appeal the Committee looked at the points of complaint afresh; the approach taken by the ECU had no material impact on the Committee’s consideration of the points raised

Trustees concluded with regard to Point (K) that:

- the ECU’s handling of the complaint was consistent with the requirements of the Editorial Guidelines and 2.11 of Procedure No.1 – Editorial Complaints and Appeals

### **Finding: not upheld**

### **Point (L) - Complaints Handling – Whether the content of a posting on a third party website engaged the Editorial Guidelines**

The Committee noted the relevant background:

- whilst the complaints process was underway, three of the complainants in this consolidated appeal published material online critiquing David Aaronovitch and the programmes he had presented for *Analysis*
- David Aaronovitch responded by writing a guest post

The Committee noted the contention of a complainant (who was not one of the three who had published material online):

- Mr Aaronovitch had used his post to publicly escalate smears he had made about her in the programme
- those involved in a complaints process should not respond whilst the process was ongoing, however unfair they felt the complaint to be
- she had asked the ECU to investigate her concerns that Mr Aaronovitch’s blog was effectively an abuse of process and had been advised that it was unable to do so as it had no remit to investigate the content of material which had not been published by the BBC

The Committee noted this extract from the blog published by David Aaronovitch:

“Following transmission three substantial complaints were made online by people either interviewed for the programme or featured in it. Once those were published I either had a choice of letting them be, or of replying in full. Probably foolishly I’ve chosen the latter...”

“[Three individuals] have all either given notice of an intention to make formal complaints to the BBC, or have already complained. I am not here formally (or indeed, informally) responding to these BBC complaints, which I haven’t yet seen.”

The Committee noted that:

- David Aaronovitch is not a BBC employee and his blog was published on a third party website
- the blog was not covered by the Editorial Complaints and Appeals Procedure which can be found at:

[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)

The relevant clause is 1.1:

You can complain to the BBC if you consider that any BBC content has failed to follow the BBC’s Editorial Guidelines. This is called an “editorial complaint”. “BBC content” means something that has been broadcast on a BBC radio or television service or published on a BBC website or in a BBC owned magazine, for which the BBC is responsible.

- the blog stated that it set out to respond to complaints that were made online (and on non-BBC websites) by people either interviewed for the programme or featured in it – it was not, therefore, intended to address complaints made to the BBC
- Mr Aaronovitch had not had sight of any of the complaints to the BBC when he published his blog
- The editor of the *Analysis* programmes had advised that she was not consulted in advance about Mr Aaronovitch’s blog and was not aware of it until after it had been posted; her view was that it was a matter for Mr Aaronovitch if, and how, he chose to respond to any criticism which had been made of him online, independent of the BBC complaints process

Trustees concluded with regard to Point (L) that:

- the content of Mr Aaronovitch’s blog did not engage the Editorial Guidelines
- the ECU had correctly advised that it was not able to consider such a complaint
- there is no evidence that Mr Aaronovitch had had sight of any of the complaints to the BBC when he wrote the blog
- there had been no abuse of process

- the appeal did not qualify for consideration by the Trust

### **Finding: not admissible**

Point (M) – Whether the programme observed the Accuracy and Fairness guidelines in the programme commentary which related to an individual's views about satanic abuse

**This finding has been written so as to respect the complainant's wish to remain anonymous.**

The Committee noted the relevant background:

- This element of the appeal was brought at a late stage by one of the first party complainants to the consolidated appeal. As he was a first party complainant it was decided that the point should, exceptionally, be put before Trustees.

The Committee noted the complainant's view:

- There had been a breach of the Editorial Guidelines on Accuracy and Fairness. He said that a statement in the programme commentary which related to his views about satanic abuse was untrue and unfounded.

The Committee noted the relevant content from the programme which the complainant claimed was inaccurate (the contested phrase is in bold):

DAVID AARONOVITCH

Author and broadcaster [the complainant], **formerly one of the foremost exponents of the idea of satanic abuse, is tired of the reality/unreality argument.**

[COMPLAINANT]

Ultimately what matters in my view is not empirical truth, but perceived truth. It doesn't matter if you say to a 5 year old, that cannot have happened. If that child absolutely believes it, what you have to deal with, surely, therapeutically, is what they perceive to have happened? Police and social workers have two differing imperatives. A policeman's job, an investigator's job, is to bring a case to court if the evidence is strong enough to secure a conviction. A social worker's job is therapeutic, to address the child's fear and diffuse it.

And that:

- what was meant by satanic abuse in these programmes had been defined at the start of the first of the two programmes when the presenter had explained that *Analysis* was devoting them to:

"...the linked subjects of 'recovered memory' and a belief in widespread organised satanic and ritual abuse of children"

The Committee also noted:

- the complainant's request that the Trust

"...rule that the implications concerned in Mr Aaronovitch's statement are untrue and unfounded, and that therefore this was a breach of both

accuracy and fairness.”

- the grounds on which the complainant was appealing:
  - his views had not changed: his position today “corresponds exactly to what I have written for the past 25 years”
  - when he was first approached to do the interview the producer told him that the programme wished to ask how his views had changed over the years and that:

“Despite being told that they had not changed ... the programme makers misrepresented the facts to imply that I have resiled from my original views.”

- the second assertion in the sentence, that he was “tired of the reality/unreality argument” was also inaccurate:

“Furthermore, the committee might wish to consider the evidential basis for Mr. Aaronovitch’s assertion (in the programme) that I am ‘tired’ of this question. There is nothing within the recorded interview, nor within my correspondence with the programme, to support this claim.”

- he had written a book on the subject of ritual abuse which was published in 1991 and which set out “precisely the same arguments” he had made in the recorded interview for *Analysis*; he believed that if the programme team had read the book they could not reasonably “have had the impression” that his views had changed.

- the response from the editor of the programme:

“The programme had the impression that [the complainant’s] views had changed over time because in his pre interview research call on 19th January 2015 with the producer he was keen to emphasise that he shared some of David Aaronovitch’s scepticism and that he did not believe there was evidence of ‘a gross Satanic conspiracy’.

“This was in contrast to the credulous tone of the 1989 Cook Report documentary on which he worked. The notes that the producer made at the time of her research call to [the complainant] record him describing that edition of The Cook Report as ‘drivel’ and ‘a travesty from start to finish’. These comments contrast with his views at the time of the 1989 broadcast: he went on television to defend the programme.

“[The complainant] also contests the description of him as being ‘tired’ of the ‘reality/unreality argument’. The programme believes that this was a reasonable inference to draw from (i) the tone of his recorded interview; and (ii) from the content of the research call he had with the programme’s producer. Notes of the producer’s research call from 19th January 2015 record [the complainant] complaining about ‘two sides shouting at each other’ not being helpful because he believed it got in the way of investigation.

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The Committee noted that in December 2015, during her investigation for the original

appeal before this point was raised, the Adviser was sent the producer's typed notes of her telephone conversation with the complainant, which had taken place prior to his interview. The notes corresponded to the summary in the programme's response for this appeal.

The Committee noted the following in relation to the complainant's assertion that his views had not changed:

- the complainant was listed in the credits of the 1989 *Cook Report* as the co-producer and researcher
- in a 15-minute extract of *The Cook Report*, which was filmed in the US and the UK and viewed by the Adviser, the programme presented what it said was evidence of widespread international satanic abuse. The extract included interviews with alleged victims, the Police and the clergy; none of their accounts was challenged. At one point the presenter Roger Cook voiced over a map of the UK which was animated with graphics of red daggers to mark the location of "cases". The commentary stated:

"In a year-long investigation we've catalogued more than a score of recent serious cases with clear evidence of satanic ritual abuse or crime."

- in his 2015 *Analysis* interview the complainant criticised *The Cook Report* stating that his co-producer credit really meant that he was just a researcher and that:

"I will only take responsibility for that which I have the power to change and I had no power to change that. I think it was a poor programme."

- in the interview Mr Aaronovitch cited a quote which the complainant was said to have given at the time of *The Cook Report* to BBC Radio Leeds (the relevant section is in bold):

DAVID AARONOVITCH

I believe you were interviewed about the Cook Report – the day after it was shown. Is that correct?

[COMPLAINANT]

If you say so. I'm afraid it's twenty ... no it's the best part of thirty years ago, so ... I'm afraid my memory isn't that good.

DAVID AARONOVITCH

...You were asked about ... what appeared to be an extremely bizarre phenomenon. And then you said, "**Well you either have an international conspiracy of toddlers, which is extremely unlikely, or some rather more intelligent adult organisation doing it.**" And that seemed to give credibility to the notion of a much bigger conspiracy of I don't know what you'd call them – Satanists, occultists, ritualists or whatever – abusing children.

[COMPLAINANT]

You're right, I don't remember the quote. It doesn't actually seem an unreasonable ... quote if it ... That said it was slightly clumsy and I think we have to be careful about the word "conspiracy".

- the complainant had stated during the course of the complaint that he did not believe there is, or ever was, a network of worldwide satanic abusers, as recorded in the producer's pre-interview note and in this extract from a website posting by the complainant shortly after *Analysis* was broadcast (the relevant sentence is in bold):

"Aaronovitch's *Analysis* programmes set out to demolish what he sees as the conspiracy of gullible child protection workers underpinning the 'satanic panic'. **The facts are that there was no such conspiracy – just as there is no evidence of a conspiracy of international Satanists.**

"But nor was there ever any 'satanic panic' – at least not as he means it. Since the 1980s there have been a total of four cases of alleged multiple-perpetrator, multiple-victim abuse in which satanic rituals were alleged: Nottingham, Rochdale, Orkney and (recently) Hampstead. Four cases in almost 30 years do not a panic make: it exists only in the imagination of those, like Aaronovitch, who can't be bothered to do research before rushing to broadcast their prejudices."

The Committee also noted the content of additional correspondence from the complainant prior to its consideration of this supplementary appeal, in which the complainant challenged the producer's account of her conversation with him prior to his interview:

- I did not say the programme was "drivel" or a "travesty from start to finish" or anything like it
- my description of the programme as "poor" referred to the decision made by its producer about what footage to include in relation to claims that Broxtowe foster parents had asked the child victims leading questions.

The Committee decided the statement in the programme that the complainant was "formerly one of the foremost exponents of the idea of satanic abuse" was duly accurate for the following reasons:

- there is well-sourced evidence from the 1989 *Cook Report*, of which the complainant was named as the co-producer, and from an interview he gave to BBC Radio Leeds shortly afterwards, to support the programme's contention that at that time he considered there was an international network of people who abused children in rituals in which Satan was invoked
- any different or more nuanced views he might have expressed in a book he published subsequently in 1991 post-dated *The Cook Report* and Radio Leeds interview
- there is well-sourced evidence that the complainant's stated view now is that there never was an international network of satanic abusers
- there is no basis on which to doubt the reliability of the producer's notes; the Adviser has confirmed that they were shared with her in December [2015], before this point was the subject of an appeal.

The Committee noted the complainant's second point, that there was "no evidential basis" for the assertion in the commentary that he "is tired of the reality/unreality argument".

The Committee noted the following unbroadcast section from the complainant's *Analysis* interview:

"The debate about whether it exists or not is frankly a stupid debate and it's a stupid debate because there are, to my certain knowledge, nine successful prosecutions of adults in this country for sexually abusing children in rituals and in which the abuse was an integral part of the rituals... What matters once you move ... the debate on from there is how do we best deal with what is a thorny problem ... in terms of processing ... children's disclosures – how do we deal with that ... which comes first, which is more important, the therapy for the children or the prosecution of the adults? Those are the questions which need to be addressed once you move past the frankly stupid argument that this doesn't exist."

The Committee decided that it was duly accurate to characterise the complainant as being "tired" of the reality/unreality argument for the following reasons:

- the producer's notes record the complainant's frustration that "two sides shouting at each other" was not helpful
- the complainant's interview for *Analysis* reflected his impatience with the terms of the debate in similar terms
- it was reasonable for the programme to have framed his views in the way it did.

Consequently the Committee found also that no unfairness had resulted to the complainant from the way in which the programme framed his position, either then or now.

### **Finding: Not upheld**

Trustees agreed that the breaches identified in this finding were minor and that publication of the finding was sufficient remedy.

**Overall finding: Upheld in part in relation to due accuracy and due impartiality regarding the omission of judges' comments in Wardship hearings and also in relation to due accuracy regarding the description of the book *Courage to Heal*.**

**Not upheld on all other points**

# 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.

## Happy Valley, BBC One, 9 February 2016

The complaint concerned a scene in an episode of the BBC drama *Happy Valley* in which the main character killed a badly injured sheep. The complainant believed this scene breached the BBC Editorial Guidelines on Harm and Offence.

### Stage 1

The complainant made the following points:

- The BBC gave no warning prior to the programme airing that the scene might cause possible upset to viewers.
- The programme had been broadcast just after the 9pm watershed. While the watershed signalled the beginning of the transition to more adult material, that change should not be abrupt unless clearly signposted.
- The BBC guidelines concerning violence against animals stated that audiences could be distressed by images or scenes which showed human violence against animals; therefore, if the scenes were graphic but the BBC knew that the animal suffered no harm, then it should have considered saying so in an on-air announcement or caption.
- The BBC guidelines stated that programme makers should take into account the nature of the channel and viewer expectation as well as taking care to ensure that individual programmes avoided including anti-social behaviour or material that was likely to encourage others to copy.
- The BBC guidelines stated that audiences could be distressed by the portrayal of fictional violence and consideration given to the justification for any depiction of violence should normally be clearly signposted.

The complaint was initially closed down by BBC Audience Services at Stage 1b for the following reasons:

- The question of what type of warning was offered prior to broadcast was one that was given serious consideration at a senior level. In this case, there was a strong language announcement, which was deemed appropriate for the expected audience, time and established tone of the series.
- The BBC appreciated that programme content could have some resonance with someone in the audience. However, it would be very difficult to warn against

everything that might cause offence and so warnings were carefully considered so as not to undermine the importance of those that were issued.

- The killing of the sheep was alluded to in the programme, but not shown.
- The sheep used in the scene was not a live sheep and all Editorial Guidelines to do with the treatment of animals were adhered to in the filming of the sequence.
- They did not believe the complaint had raised an issue that justified further investigation.

## First Appeal to the Trust

The complainant appealed to the BBC Trust on the substance of her complaint. A Trust Adviser considered that Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees. The complainant requested a review of the Trust Adviser's decision and the Trustees decided that the matter should be returned to the Executive for further consideration by the Editorial Complaints Unit (ECU).

## Stage 2

Following its investigation, the ECU did not uphold the complaint. The ECU's Complaints Director made the following points in his finding:

- Any decision of what constituted "generally accepted standards", under the terms of the Harm and Offence guidelines, was a matter of editorial judgement but would take account of "content, the context in which it appears and editorial justification".
- In the case of a widely publicised programme such as *Happy Valley*, he considered it reasonable to assume most viewers would have been aware that the first series dealt with some distressing and controversial issues and did so in a way which was often graphic and uncompromising. It followed that many viewers would expect similar content from the second series, particularly bearing in mind it was shown after the 9pm watershed.
- In terms of context, he thought the way the scene with the sheep unfolded had to be taken into consideration when assessing whether any potential offence was justified. There was a considerable degree of black humour as the police officer, Catherine Cawood, described to her sister the chain of events which led to the death of the sheep. The use of a documentary-style voice-over also enhanced the almost farcical nature of the event, as the "narrator" described Catherine's actions in a calm, dispassionate tone. This signposted what was to come and helped to ensure the audience was not taken unawares by what followed.
- He did not believe a specific warning about this content was necessary, feeling that the scene was not one which could reasonably be described as graphic, since the violence was only implied. The death of the sheep was only alluded to; viewers saw Catherine raise the rock above her head but the next shot was filmed at some distance and the camera cut away before the rock was fully brought down. The sequence did not focus on the animal's suffering. In the Complaints Director's view, the way the scene developed ensured there was no abrupt or sudden transition to content which might be regarded as "more adult material" and no graphic or violent scenes were actually shown.
- In summary, there was a slow build-up to the point where Catherine put the injured sheep out of its misery. The sequence did not focus on the animal's

suffering and nothing was shown which might be regarded as unduly graphic because any violence was only implied. The outcome was also clearly signposted as Catherine recounted the events to her sister, Claire, inter-cut with the documentary-style voice-over.

- Addressing the complainant's concern about whether the scene was editorially justified, he noted that writers were entitled to include any scenes so long as they met the BBC's editorial standards. He believed the sequence in question served a number of purposes: it demonstrated the pressures and responsibilities Catherine faced as a police officer; it demonstrated her attitude to her work and her use of humour as a coping mechanism; it established the bond she had with her sister; it established the tone of the programme from the outset; and it was a plot device to introduce a family who would prove pivotal in the story.

## Second Appeal to the Trust

Following the ECU's finding, the complainant appealed to the Trust at Stage 3 on the substance of her complaint. She made the following points:

- She did not agree that there was a slow build-up to the sheep being killed, or that the outcome was clearly signposted; she did not consider that the viewer was given sufficient warning of what was to come.
- Even if there was a slow build-up or the outcome was clearly signposted, was that reason enough not to give a warning? As a viewer of the first series of *Happy Valley*, any assumed awareness of offence in the second series would be for strong language, for which a warning was given, and for violence against people. As far as she was aware, animal violence, implied or otherwise, was new to *Happy Valley*.
- She did not agree that the Complaints Director's description of a "clear element of dark comedy in the exchanges between Catherine and her sister" lessened the shock effect for her. She said the actors made the scene very realistic.
- By the time viewers had assumed that the incident would end in the sheep's death, it would have been too late as the incident was happening. Where was the clear signposting and sufficient warning given? Some people might have been concentrating on what they were seeing on screen, and not been paying full attention to what was being said in the voice-over dialogue, or understood the possible black comedy element.
- She did not see the relevance of "widely publicised". She had seen nothing in the publicity for the series that alluded to animal cruelty.
- She asked what was the meaning of the ECU Complaints Director's references to "many" and "most" in terms of the likely percentage of people who would have been aware that the series was likely to deal with some distressing and controversial issues.
- She understood that the owners of the sheep were pivotal to the storyline but she did not consider this was the case in terms of the sheep plot line.
- In her view, if the scene in which the sheep was killed had to be included, there should have been a warning about it.

## Decision of the Trust Adviser<sup>7</sup>

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<sup>7</sup> A different Trust Unit Adviser considered the matter on the second appeal

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

The Adviser believed Trustees would be likely to agree with the ECU Complaints Director that there was adequate signposting in the build-up to the scene in which Catherine was seen raising a rock in order to put the injured sheep out of its misery. She noted that there was no graphic violence involving the sheep. Although Catherine was seen picking up a rock, there was an extended lead-up to the event, and at the point at which Catherine held the rock and brought it down with the intention of killing the sheep, the action was seen in long shot with no detail of the impact of the rock ever shown; indeed, even in the distant shot of the action, the camera cut away before the rock struck the animal. She noted that the violence was implied rather than shown.

The Adviser considered that the transcript of the sequence concerned, as set out by the ECU Complaints Director, made it apparent in the voice-over that Catherine did not want to kill the sheep and that she had tried in vain to find a vet who could tend to it. The voice-over dialogue also added to the information given to the viewer in the build-up to the outcome. The Adviser appreciated that the complainant considered that not all viewers would have heeded the voice-over in the dramatic sequence, or understood the "black comedy" element, but the Adviser had not seen evidence that would be likely, in her view, to lead Trustees to conclude that there had been a breach of the Editorial Guidelines.

She noted the complainant's concern about the editorial justification for the sequence and her view that the killing of the sheep was not pivotal to the storyline. She noted too that the ECU Complaints Director had addressed this point in his finding:

"You raised the question of whether the scene was editorially justified. Writers are entitled to include any scenes so long as they meet the BBC's editorial standards but it seems to me this sequence served a number of purposes: it demonstrated the pressures and responsibilities Catherine faced as a police officer; it demonstrated her attitude to her work and her use of humour as a coping mechanism; it established the bond she has with her sister; it established the tone of the programme from the outset; and it was a plot device to introduce a family who would prove pivotal in the story."

The Adviser noted that decisions about what stories to include in dramas were matters of editorial judgement that rested with the BBC Executive, as long as they met the BBC's editorial standards. She believed Trustees would be likely to conclude that these standards had been met, and that the responsibility for decisions about dramatic content rested with the *Happy Valley* programme makers.

She noted the complainant's request for further information regarding the ECU Complaints Director's references to a "likely percentage of viewers", but she considered that the Complaints Director had addressed this point in the final version of his finding by explaining that the references in his provisional finding to "many" and "most" to give a sense of the likely percentage of viewers who could reasonably be assumed to be aware of the tone and content of *Happy Valley* were not intended to imply that he held any quantitative data on the matter. She noted that the ECU Complaints Director had given a subjective general view on likely viewer numbers but she did not consider that putting a figure on the likely percentage of viewers who might reasonably be assumed to be aware of the tone and content of *Happy Valley* would have had a significant impact on the finding.

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

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

The complainant requested that the Trustees review the decision not to proceed with her appeal. She made 17 points including the following:

- The sheep was shown, after being mauled by dogs, with obvious bloodied injuries.
- Because of the graphic content of the previous series, it could be assumed that it was not going to end well for the sheep, being chased by a pack of dogs. Nothing was left to implication.
- It was intimated that the sheep was still alive and it was clearly in distress.
- Implied violence could still cause distress.
- The act being described by Catherine Cawood and shown, up to the point of the camera panning away, was still violence against the animal.
- The incident still happened, regardless of how far away it was, and the audience were in no doubt about what would happen when the rock was brought down even though the impact was not shown.
- There was no slow build-up.
- The sheep scene was not pivotal to the story line and not showing it would not have detracted from the family's importance.
- Catherine Cawood's intentions regarding killing the sheep were irrelevant.
- The editorial guidelines did not specify "live" animals or exclude "alluded to images or scenes".
- The Editorial Guidelines stated that "audiences could be distressed by the portrayal of fictional violence".
- Why did the ECU Complaints Director say he did not intend to imply that he had any quantitative data when he used the words "many" and "most" to back up his explanation? As noted by the Trust Adviser, this was the Complaints Director's assumption and general subjective view, not based on fact, so how could it be used as an explanation?
- The ECU Complaints Director acknowledged the complainant's point that a warning about the sheep could have been included.

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

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

The Trustees noted that the issue in front of them was whether the decision by the BBC that the Editorial Guidelines had not been breached was correct.

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

- This was the second series. It was reasonable to assume that many viewers were returning to see the new series and would be aware of the tone and sometimes challenging nature of *Happy Valley*. It was reasonable for the BBC to take audience expectations into account and it was not necessary to quantify those

members of the audience who would have an understanding of the tone and content.

- The moment of killing the sheep, which the police officer clearly regarded as necessary to end its suffering, was not shown.
- This was a drama and it was reasonable to expect a post-watershed adult audience to understand that this was acting and that the sheep had not been killed by the actress.
- There was a build-up to the scene which gave an opportunity for those who are distressed by dramatised violence to animals to look away. The content involving the injured sheep was adequately signposted and would not have been likely to exceed audience expectations for this well-established drama series. Trustees considered that, although an explicit warning might have been appreciated by some of the audience, the judgement that one was not necessary had not constituted a breach of the guidelines.
- The BBC had demonstrated a clear editorial purpose, taking account of generally accepted standards.
- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. "The direction of the BBC's editorial and creative output" was defined as a duty that was the responsibility of the Executive Board under Article 38, (1)(b). The responsibility for editorial decisions concerning storylines and dramatic content associated with those storylines rested with the programme makers.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

## Land of Hope and Glory – British Country Life, BBC Two, 4 March 2016

The complaint concerned a segment of the programme that looked at what could be done to stop the spread of bovine tuberculosis (bTB) in cattle. The complainant made the following points:

- The programme “gave only one unsubstantiated view of the responsibility for the infection of cattle by bTB i.e. that badgers were the sole cause”.
- Contributors were allowed to express views unsupported by evidence and so viewers were “left with the impression that these opinions were factual”.
- The omission of other facts and scientific evidence regarding the infection of cattle with bTB or the culling of badgers amounted to “deliberate bias in an attempt to wilfully and cynically mislead the public”.

BBC Audience Services made the following points:

- *Land of Hope and Glory* was not a current affairs programme but an observational documentary series looking at the people who live the rural life, with a particular focus on *Country Life* magazine, and this was made clear to the audience from the start.
- bTB is an issue of great importance to farmers and there was a strong editorial justification for including this story and the views of the farmer whose farm had been shut down because of it.
- The programme made clear that controversy surrounded how to tackle bTB particularly when it came to whether the culling of badgers was an effective and humane way of dealing with the disease.
- The BBC had covered the debate over the link between badgers and bTB extensively in its output over the past few years and reflected a wide range of different views on the issue.

At Stage 2 of the complaints process, the Editorial Complaints Unit (ECU) made the following points:

- The programme was clearly an observational documentary on *Country Life* magazine and the rural issues it covered rather than an exploration of the issues concerning the control of bTB or a debate about the pros and cons of badger culling. Given this, there was no necessity to give equal weight to both sides of the debate or to give a detailed explanation of the range of significant views on the spread and control of bTB.
- The audience would have understood it was hearing the views and opinions of people with a particular perspective on the issue of bTB and would not have assumed that these were incontrovertible facts rather than personal perspectives on an issue of direct concern.
- Scientific evidence regarding the infection of cattle and the arguments against culling badgers were not given the same weight as the views of those who contributed to the programme, but references in the programme to other approaches of tackling bTB beyond the culling of badgers were adequate and appropriate in the context.

## Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of his complaint that he considered that the programme had failed to be impartial when discussing bovine TB. He said that it had not reflected the full range of views on the issue – in particular that some scientists believe that a badger cull could increase rather than decrease bTB levels - nor given due weight to those views.

The complainant said he had not received an answer about what role the editor of *Country Life* had played in setting the agenda for the programme.

## Decision of the Trust Adviser

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

The Adviser began by clarifying that her role was to consider the material that had been broadcast or published by the BBC. She noted that discussions which may have taken place with contributors or potential contributors about the programme were matters of editorial judgement and so issues for the BBC Executive.

The Adviser noted that the programme was introduced as a three part series that went behind the scenes of a publication that had focussed on rural ways for the past century. The Adviser then noted that the narrator in the opening sequence set out that the programme had spent the past year filming with *Country Life* magazine "from muddy fields to stately homes" as it sought to capture the nature of rural Britain.

By doing so, the Adviser considered that the BBC had made clear to the audience from the start that this was an observational documentary series following the magazine, the rural issues it covered and the people living in the countryside who were involved with it. As a result, she believed that the audience would have been aware that the programme was focussing on certain individuals and their opinions rather than seeking to provide factual news analysis.

The Adviser noted the section of the programme that focussed on a West Country farmer who had run a dairy farm all his life. She noted that it had been shut down for four years as a result of outbreaks of bTB and that the farmer and his family spoke about the impact this had had on them as their cattle were tested for bTB. She noted that the editor of *Country Life* and the vet testing the cattle explained that there was widespread belief in the countryside that badgers, which have increased rapidly in number over recent years, were infecting cattle with bTB.

The Adviser noted that the programme then returned later to the farmer on the day he was to receive the results of his cattle's bTB tests. She noted that to set the scene a clip was played from Radio Four's *Farming Today* which stated:

"Good morning, well this week, as the second year of the pilot badger culls got under-way, we're looking at TB in cattle and how to tackle it. The disease is being fought on all sides, through tougher bio-security measures on farms, vaccination, cattle testing and movement restrictions and the controversial culling of badgers."

The Adviser considered that this gave the audience the necessary context to understand that the badger cull was controversial and that there were other means being used to try to tackle bTB.

The Adviser then noted that when it was confirmed by the vet that one of the cows had tested positive for bTB the programme stated:

“Most farmers believe badgers transmit TB to cows and trialled badger culls have begun. Many people are passionately against these efforts, which involve gassing or shooting to control the disease, maintaining they’re inefficient and cause unnecessary cruelty to wild animals. The only certainty is that any cow with suspected TB will itself be destroyed. Opinion remains deeply divided.”

Interviewer: So why not have a cull?

Vet: Why not? I can’t think of any reason not to have a cull and I think now with the momentum of disease that they’ve got, it’s the practicalities of funding it and what was supposed to be a trial cull, you know, provoked a major amount of public opinion, didn’t it? But as I say, what is emerging more and more, until something is done to reduce the numbers, they’re not going to make any progress.

Mark Hedges, Editor of *Country Life*: I think quite regularly, decisions are made in Westminster whereby if they’d asked some people in the countryside about what was the likelihood of it being successful, they would have, it would have been pointed out to them that it was pretty unlikely. These are wild animals who are extremely sensitive. If they find that their setts or whatever have been disrupted, they change their habits. And because there is this short window, there just wasn’t sufficient time to do it. So it was a disaster because it’s probably put some form of resolution to it backwards. It polarised, in some ways, town against country. You know last year 38,000 cows were killed because they had TB on their farms. That’s 38,000 heartbreaks for farmers.

The Adviser considered that this sequence again made clear that many people were opposed to culling badgers and that opinion on how to deal with bTB remained divided. Furthermore, she observed that it had explained that the earlier pilot badger cull had polarised opinion on the subject.

Given that this was an observational documentary rather than a current affairs programme, the Adviser considered that the requirement for due accuracy and impartiality had been met as it had been made clear that a range of views existed on badger culling beyond the opinions of those expressed in the film.

Furthermore, the Adviser noted that the BBC had reported extensively on badger culling, reflecting other perspectives on the issue and giving them due weight. In particular, she noted that the BBC had raised the question of whether a badger cull would increase rather than reduce incidents of bovine TB. A sample of some recent BBC reports on the issue can be found below:

<http://www.bbc.co.uk/news/science-environment-34089606>

<http://www.bbc.co.uk/news/uk-england-35121632>

<http://www.bbc.co.uk/news/uk-england-35611979>

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

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

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

He made the following points:

- The programme had been deliberately biased because the BBC had made a conscious decision not to broadcast the facts and scientific evidence, of which it was aware, regarding bTB and badgers.
- The world's leading experts on bTB were opposed to badger culling and the Adviser had devalued this and had not appreciated the weight and range of opinion against culling.

He also said that Trustees should look at the way his complaint about the influence that the editor of *Country Life* had had on the programme's editorial direction had been handled. This had not been dealt with.

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

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

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:

- This was an observational documentary series and the audience would have been aware from the start that the programme was focussing on certain individuals and their opinions rather than seeking to provide a detailed scientific analysis.
- The programme had made it clear that badger culling was a controversial issue that divided public opinion and had explained that there were alternative methods being used to tackle bTB. Given this and the nature of the programme, the Trustees considered that the requirement for due impartiality had been met.

Turning to the handling of the complaint about the role of the editor of *Country Life*, Trustees noted section 14 of the BBC's Editorial Guidelines which says that:

"Our audiences must be able to trust the BBC and be confident that our editorial decisions are not influenced by outside interests, political or commercial pressures, or any personal interests."

Trustees noted the complainant's concern about the influence that he believed the editor of *Country Life* had had on the programme's editorial direction. They noted the article he had referred to in his complaint which said:

"Mr Hedges said that Jane Treays, who directed the documentary *Land of Hope and Glory* — British Country Life, had originally proposed filming a debate between him and May, who strongly opposes the cull. 'I said it would be pretty boring

because he'd say what he thinks and I'd say what I think, but what's never been shown before is what happens to the dairy farmer,' he said. 'They [the badger campaigners] talk about some badgers being killed but nobody knows there's tens of thousands of cattle being killed'."

Trustees observed that discussions about how to portray a set of arguments on screen were a normal part of film making. The Panel also noted that the BBC had said at Stage 1 of the complaints process that editorial control for the programme had remained with its makers. The Panel saw no reason to believe this was not the case.

Given this, the Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

## Coverage of English council elections, May 2016: BBC News at Ten, BBC News at Six, BBC website: “England elections: Labour loses seats but holds councils”

The complaint concerned the BBC’s coverage of the results of the English council elections which were held on 5 May 2016. The complainant contacted the BBC with his concern that “the main story” was that the Conservatives had lost more seats than Labour, yet the BBC portrayed the result as “Labour is finished and Corbyn is on his way out”.

At Stage 1, the complainant referred to an online article which he believed was headlined “England elections: Labour loses seats” and which he felt showed bias.

BBC Audience Services said it had received a wide range of feedback to its coverage of the election results and, in order to make efficient use of the licence fee, it sent a wide-ranging reply. The pertinent points in relation to this complaint were:

- the BBC took its obligations to provide fair and impartial coverage very seriously and was confident that its reporting was balanced and in line with its published Editorial and Election Guidelines
- each of the election outcomes was reported separately and the BBC had made it clear that Labour had acknowledged doing badly in Scotland, but that they had had a good result in Wales and had exceeded their expectations in the English council elections, as well as winning the London Mayoral election
- many Labour councillors and MPs – including senior figures such as Shadow Cabinet members, the former Deputy Leader and the former Home Secretary – were unhappy at the party’s performance in the English council elections and BBC audiences rightly heard from them
- the last week of campaigning was dominated by internal Labour Party difficulties and the expulsion of the former Mayor of London, Ken Livingstone, so it was relevant that these issues be explored in BBC coverage.

At Stage 2 the complainant said that the majority of BBC television coverage on the evening of 6 May 2016 focused on Labour losing seats. He said this was inaccurate as the Conservatives had lost more seats than Labour. He said the BBC had broadcast opinions from Labour MPs who were dissatisfied with the party’s leadership but had failed to find any Conservative MPs who were displeased with their loss of seats, or their own leadership. He said that this resulted in bias.

The Editorial Complaints Unit (ECU) explained that its remit was to consider complaints about specific items broadcast and the complainant agreed with the ECU’s suggestion that it would consider his complaint against the *BBC News at Six*, the *BBC News at Ten* and coverage of the BBC News Channel after 6pm on 6 May 2016.

The ECU said it had been unable to find the online article mentioned by the complainant which was entitled “England Elections: Labour loses seats”, but it had found instead an article entitled “England elections: Labour loses seats but holds councils”<sup>8</sup>. The complainant was unable to provide a URL for the page he had seen (though he provided a partial screengrab of the page showing the headline he had described) and he said that this was “the main headline story when you clicked on the Election results page”.

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<sup>8</sup> <http://www.bbc.co.uk/news/election-2016-36220216>

The ECU said:

- those responsible for BBC content were entitled to decide what they considered to be the most significant or relevant news stories
- there was no requirement for the election coverage to focus on the party with the greatest losses or gains in terms of seats
- programme-makers were entitled to focus on a particular aspect of the results as long as there was an editorial justification for doing so
- the evidence of the television bulletins did not support the complainant's assessment that the majority of coverage dealt with Labour leadership issues: the bulletins led with the success of the SNP in Scotland and accurately reported Labour's performance in the English local elections, reflecting Jeremy Corbyn's assessment that the party had "hung on"
- the ECU had been unable to find any evidence of a BBC News website article which carried the headline suggested by the complainant
- the web page which appeared to be the main report of the results of the elections in England carried the longer headline "England elections: Labour loses seats but holds councils"
- this article gave a fair and balanced assessment of the results of the English council elections.

### **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.

The Adviser noted that the complainant believed the "main story" to be that the Conservatives lost more seats than Labour, yet the BBC portrayed the result as "Labour is finished and Corbyn is on his way out".

The Adviser noted that decisions about what news stories to cover and what angle to lead on were matters of editorial judgement that rested with the BBC and that the Trust only had a role where there was a potential breach of the BBC's Editorial Guidelines.

She noted that the coverage related to a number of different election results which comprised local elections in England, elections to the Scottish Parliament and Welsh Assembly, Mayoral elections in England and a Westminster by-election. She considered Trustees would be likely to decide that coverage of Labour's performance had to take account of these different contexts, whilst meeting the BBC's guidelines on due accuracy and impartiality.

The Adviser agreed with the complainant that the Conservatives had lost 48 seats in the English local council elections, compared to Labour's loss of 18 seats, and she noted that these results were prominently displayed on the BBC's online results page<sup>9</sup>.

However, she did not agree that the data created a narrative as simple as that suggested by the complainant. For instance, she noted that Labour had seen its share of the vote

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<sup>9</sup> <http://www.bbc.co.uk/news/election/2016/councils>

decline since 2012 (when the seats were last contested), whereas the Conservatives saw no change in share. She also noted that, outside general election years, opposition parties had tended to gain seats in local elections rather than lose them and that this was the first time since 1985 that the main opposition party had lost seats in such circumstances. She therefore decided that Trustees would be likely to consider that there was no requirement under the guidelines on accuracy for the BBC to follow a narrative that suggested the Conservatives were less successful than Labour because they lost more seats than Labour.

Nevertheless, the Adviser noted that Labour's losses were less than expected (some analysts had predicted substantial losses), and she considered that Trustees would consider it understandable that reporting of the results made reference to this context.

The Adviser noted that the complainant believed the BBC put undue weight on Labour's leadership issues. She noted that this was the first occasion on which Labour had faced the electorate across the country under Mr Corbyn's leadership. She considered that Trustees would be likely to conclude that BBC journalists and editors had legitimately exercised their editorial judgment.

### **Television coverage of results**

The Adviser watched the relevant television bulletins of 6 May 2016 and she disagreed that the BBC focused disproportionately on Labour's leadership issues. She noted that both the *BBC News at Six* and the *BBC News at Ten* had led with the SNP's historic victory in winning a third term in office. In her introduction to the *BBC News at Six* Fiona Bruce said:

"In the biggest test of political opinion since the General Election, the votes are still being counted but there have been already some notable and surprising results. In Scotland the SNP has won an historic third term to lead the Scottish Parliament but unexpectedly the Tories surged ahead into second place pushing Labour, once so dominant in Scotland, down into third. In England there's no dramatic change. The Conservatives lost some council sets, so did Labour, but it still won the most councillors overall. The Labour leader declared the party had "hung on" though some of his own MPs were far more critical. Labour fared better in the Welsh Assembly elections, still the dominant party, but UKIP had a good night, winning its first seats in the assembly, seven of them."

The Adviser considered that Trustees would be likely to conclude this summary of the results to be duly accurate. She noted that the complainant believed the BBC was required to find Conservative MPs who were critical of David Cameron's leadership in order to balance the views of those Labour MPs who were critical of their party's performance. However, she considered there was no requirement to do this in order to meet the Guidelines for Impartiality.

The Adviser also noted that during the *BBC News at Six*, John Pienaar (the BBC's Deputy Political Editor) reported that one member of the shadow cabinet was ready to stand against Mr Corbyn to "get things going" in a leadership contest. The bulletin also included an interview with Tim Roache, General Secretary of the GMB Union, who said "We're at the stage where we should be winning hundreds of seats" but also urged Mr Corbyn's critics to rally behind the leader because the electorate would not vote for a divided Labour Party.

The Adviser concluded that Trustees would be likely to decide that the BBC's television coverage did not portray the result as "Labour is finished and Corbyn is on his way out", nor did it give undue weight to Labour's leadership issues.

### **Online article: "England elections: Labour loses seats but holds councils"**

The Adviser noted that the complaint related to an article which the complainant believed was headlined "England elections: Labour loses seats". She noted that the complainant had provided the following partial screengrab of this page:



The Adviser noted that the ECU had been unable to find any evidence of any article carrying this headline. She noted that, in his appeal, the complainant accepted that the page which was headlined "England elections: Labour loses seats but holds councils" must be the correct page, although he believed that the words "but holds councils" must have been added "posthumously".

The Adviser noted that the ECU had carried out an investigation and had found that the article was first published shortly after 5am on 6 May 2016 and was amended four times during the day but that the headline remained the same.

The Adviser consulted the news website revision service News Sniffer<sup>10</sup> which confirmed the ECU's findings and showed that the last update was just before 6pm on 6 May 2016. She therefore decided that Trustees would be likely to consider the full webpage published by the BBC as giving the full title rather than the partial screengrab provided by the complainant.

She noted that the full headline was constant throughout all versions of the page, as was the subtitle:

**"The make-up of England's councils has remained stubbornly unchanged following Thursday's elections."**

The Adviser noted that each version reported upon the performance of the main parties, the results of the mayoral election in Liverpool, and the results of a by-election in which Labour held Sheffield Brightside "on a 5.8% swing from the Conservatives". She noted

<sup>10</sup> <https://www.newssniffer.co.uk/articles/1144977/diff/0/1>

that the original version of the article said “Labour’s vote share is down about 6% on average on 2012 – the last time the seats in England were contested – but BBC analysis suggests its share is up slightly on the general election in key wards.” She noted that comment was added to this assessment as the day went on, with Labour MP Emma Reynolds saying the party’s results were “not good enough” in the face of “Tories in disarray” and Deputy Leader Tom Watson describing the overall picture as “mixed”.

The Adviser decided that Trustees would be likely to consider that the headline (and the article itself) did not breach the BBC’s guidelines on impartiality.

### **Other online coverage**

The Adviser noted that in response to the ECU’s finding, the complainant had compiled a list of all of the published versions of this page:

<http://www.bbc.co.uk/news/election/2016/councils>

She noted that the complainant had categorised all of the stories as either negative or positive for Labour and the Conservatives and that he claimed that there was not a single negative story about the Conservatives yet there were many negative stories about Labour.

The Adviser decided that this was a new point of complaint. The original complaint had dealt with a specific online article and the complainant had agreed with the ECU’s decision at Stage 2 that its investigation would be limited to that article. She therefore concluded that Trustees would decide not to entertain this point of complaint.

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 re-stated his view that:

- television coverage had disproportionately focused on Labour’s “minor losses” and leadership issues when it should have examined the Conservative’s greater losses
- the BBC conducted two interviews with two Labour MPs vocalising their doubts about Jeremy Corbyn’s leadership. But the BBC did not examine the Conservative leadership issues (with the EU Referendum on the horizon which would cause divisions)
- the online article had been amended after publication to insert the words “but holds councils” and that the “original” version was evidence of bias. He argued the page the Adviser referred to post-dated the election
- the summary page the Trust Adviser had put forward makes no mention of the largest losses that night, which was the governing Conservative Party
- the BBC sought to portray the Government’s image in the best way possible whatever the results dictated
- even when they lost the most seats in this election the BBC did not mention this and instead focused on negative stories around the opposition. This was clear bias
- the BBC is supposed to be impartial. The final response to him had referred to newspapers which were biased and so these references should be invalid.

The complainant also criticised the BBC's political analysis with reference to events which post-dated the election. He raised an additional point about on-line articles in relation to the summary page mentioned by the Adviser. He argued that the updates contained negative stories about Labour but none regarding the Conservatives.

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

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

Trustees noted that in his request to review the Adviser's decision the complainant had also raised additional points about other online articles and had referred to later political analysis related to the EU Referendum. Trustees agreed that they could not consider them as they were new points of complaint. The BBC Agreement, clause 90(3), states that:

"The Trust should not have a role in handling or determining individual complaints in the first instance, except where the complaint relates to any act or omission of the Trust itself or of the Trust Unit."

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:

- the BBC was entitled to use its editorial judgement in describing the election results as long as the decisions were editorially justified
- whilst the complainant felt that "the main story" was that the Conservatives had lost more seats than Labour the narrative of Labour's fortunes in the elections was more complex than that. Labour's share of the vote had declined since 2012 whilst the Conservative share had remained the same, and this was the first time in over thirty years that the main opposition party had lost seats outside a general election year
- the bulletins conveyed the fortunes of the parties with due accuracy including Jeremy Corbyn's assessment that the party had "hung on"
- the impartiality guidelines did not require the BBC to examine leadership issues in the Conservative Party as a form of balance to its reporting of Labour's leadership issues
- and with regard to the online headline:
- the evidence put forward by the complainant appeared to be a screengrab of a section of the page, rather than the full page
- the evidence from a third-party tracking site was that the headline had been consistently shown as "England elections: Labour loses seats but holds key councils" until the last version published at 5.55pm on 6 May 2016, which removed the word "key"
- there was no persuasive evidence of the existence of the online headline as described by the complainant.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

## More or Less, BBC Radio 4, 1 April 2016

The complaint concerned an edition of *More or Less* which examined the history of the following much-quoted internet meme:

“Lord’s Prayer - 66 words, the 10 Commandments - 179 words, Gettysburg address - 286 words, EU regulations on the sale of a cabbage - 26,911 words”

The complainant made the following points:

- the programme had put up a “straw man” and then dismissed it. This left the listener with the impression that the meme was “just anti-EU smear and that the EU isn’t that type of beast – when the facts are totally different”
- it was inaccurate to assert that the EU regulations “on the marketing of produce are actually rather snappy: 263 words” when EU Regulation 543/2011 on the Marketing of Fruit and Veg is 64,784 words long.

BBC Audience Services made the following points:

- the programme focused on EU Regulation of the sale of cabbages because of the resurgence of people tweeting and reporting the statement in regards to the EU Referendum
- the programme looked at the history and accuracy of the statement
- the programme said that there are EU regulations on growing produce that are 32,000 words long.

The Editorial Complaints Unit (ECU) made the following points:

- this was not a programme about the potential benefits or drawbacks of EU regulation, or the extent of that regulation, and so there was, therefore, no requirement to consider wider issues about “red tape”
- the programme met the requirement for due accuracy by establishing that the 26,911-word claim was wrong, by explaining how the figure had emerged over time (and had been used in relation to numerous other products) and by clarifying how the EU regulations on cabbage had changed in the past decade
- the programme’s reference to EU regulations on the marketing of produce related to the General Marketing Standards which state that headed cabbages are “no longer covered by specific standards”
- there were other regulations which apply to the sale of fruit and vegetables but this was acknowledged by the presenter when he said “...there are broader regulations about growing farm produce. They’re long, about 32,000 words...”

### 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 that all BBC output was required to meet the standard of “due” accuracy and impartiality which, under the Editorial Guidelines, was defined as meaning that the accuracy and impartiality must be:

“adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.”

The Adviser noted the complainant’s view that:

“Whether by sloppy journalism or deliberate bias the listener was left with the impression that the EU doesn’t impose this sort of regulation on us - when it does. The ‘cabbage’ meme may have made an interesting opener to the topic but to focus narrowly on it to the exclusion of all the other fruit/veg regulations, for example, was totally wrong during a referendum campaign where ‘over regulation’ was a key issue. A few seconds on the internet will confirm to any searcher that this particular meme is wrong ... and that there were plenty of examples that could have been used accurately with a meme like this.”

The Adviser understood that the complainant would rather the BBC had explored the issue of “over regulation” and she agreed that there may have been other memes which may have illustrated a different perspective on the scope and scale of EU regulation in general. However, she noted that this was not the subject at the heart of the programme. The programme had taken as its starting point the internet meme which had been widely shared on social media, and this was clearly signalled by the presenter when he said “first, you may have seen some version of this list doing the rounds on the internet”, noting that “this cabbage statistic is proving very popular”.

Given the brief of *More or Less*, which was set out in the opening menu as “the programme that looks at the truth behind the numbers in news, in life and, yes, in politics”, the Adviser considered that listeners to this well-established programme would understand that it was going to look at the truth behind the much-quoted meme, rather than explore the subject of EU regulation in general.

The Adviser noted that the item went on to explore the history of the list, interviewing a Professor of Political Science at the University of California who had researched the origin of the claim, and had traced it to a 1940’s document which limited the price of cabbage seed. The Adviser noted the view of the complainant that it was easy to establish, with a little internet research, that the meme was inaccurate, but she noted that some commentators were choosing to take the list at face value.

The Adviser therefore decided that Trustees would not agree that there was any requirement for the programme to explore other memes, or the scope and scale of EU regulation more generally.

She noted the complainant’s view that listeners were given the impression that “the EU doesn’t impose this sort of regulation on us”. However, she noted that the programme had interviewed the technical director of the Brassica Growers’ Association, who explained that, in 2006, 36 crops were covered by specific EU marketing regulations; among them was a “standard at that point for cabbage, and that contained 3,720 words”. The interviewee explained that 26 of the 36 crop standards were repealed in July 2009 and there were no longer any specific EU regulations “dedicated to the sale of cabbage”. She noted that the presenter also said:

“Of course, there are still EU regulations about farm produce. The regulations on the marketing of produce are actually rather snappy, 263 words, shorter than the Gettysburg Address. But there are much broader regulations about growing farm produce. They’re long, about 32,000 words, half the length of a short-ish book. But they aren’t specifically about cabbage.”

The Adviser considered that listeners would be likely to understand from this that growing cabbages was not a regulation-free environment, and that the EU still set standards (at some length), but these did not relate specifically to the sale of cabbage, which was the subject of the meme.

She noted that the complainant believed the reference to the 263 words of regulation on the marketing of produce was misleading because there was a Regulation (543/2011) on the Marketing Standards for Fruit and Vegetables which ran to 64,784 words, but she did not agree that listeners would have been left with a misleading impression. She noted the programme was citing the EU’s General Marketing Standards for Fruit and Vegetables<sup>11</sup> which note that “headed cabbage” is no longer covered by a specific standard and that vegetables in this category should meet the general marketing standard which introduces a definition of “sound, fair and of marketable quality”.

She noted that the complainant felt strongly that the Specific Standards were lengthy (15 pages for apples, 6 pages for kiwi fruit) but she noted that the General Standard made it clear that these products were covered by Specific Standards, whereas cabbages – which were the subject of the report – were not.

Given that the presenter referred to other “long” EU regulations on the growing of farm produce, the Adviser considered that Trustees would be likely to disagree that listeners were misled into thinking that “if this sort of over regulation had existed it doesn’t any more”.

Finally the Adviser noted that the complainant briefly referred in his appeal to the “famous ‘bent banana’ Regulation”:

“A large proportion of 543/2011 is generic regulation that applies to all vegetables including cabbage and there are still plenty of daft rules within it e.g. the required shape of Kiwi fruit that are comparable with the ‘bent cucumber’ regulation also referred to in the programme.”

She noted that the programme mentioned the “bent cucumber” regulation in the following context:

- the reporter asked the interviewee what happened to the (3,720-word) EU cabbage marketing regulation
- the interviewee described how 26 of the 36 individual crop standards were repealed in July 2009, saying “Back at the time there was a lot of these sort of daft stories that came about, about some of these regulations. One of them was that the EU was saying how curvy a cucumber could be.”

The Adviser acknowledged that the interviewee appeared to be saying that such stories were “daft”, but it became clear that his meaning was that the regulation itself was “daft” (perhaps in addition to the stories): for instance, when the reporter asked, “Did they say

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<sup>11</sup> [http://ec.europa.eu/agriculture/fruit-and-vegetables/marketing-standards/index\\_en.htm](http://ec.europa.eu/agriculture/fruit-and-vegetables/marketing-standards/index_en.htm)

anything particularly silly about the size or curvature of a cabbage?" he could have understood "they" to be newspapers, but he said instead that "they did say that we couldn't sell cabbages which were less than 350 grams and back at that time there was quite a big thing for baby vegetables". The interviewee went on to say:

"I think it was all down to having this sort of standardised thing across Europe. But I think there was some common sense prevailed and they recognised that a lot of these things were perhaps a little bit daft."

This was a brief reference and was made in relation to the main subject which was EU regulations on the sale of cabbage, so the Adviser considered that Trustees would be likely to decide there was no requirement for the programme to have examined any current regulation containing "daft rules" about the "required shape of Kiwi fruit", as the complainant suggested.

In conclusion, the Adviser considered that Trustees would be likely to decide that the complainant had not raised evidence of a breach of the BBC's guidelines on due accuracy or impartiality.

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:

- it was wrong to focus narrowly on the cabbage meme during the EU referendum campaign because listeners would have been left with an inaccurate impression about EU legislation
- the programme stated that "This figure is often used by those arguing there is too much bureaucracy in the EU". It gave an example of a columnist who, having declared for "Remain", said that she found "the outers' arguments strangely compelling" and gave this meme as an example. The programme ran with this narrow theme (the EU and other bodies' cabbage regulations) for about nine minutes and dismissed it as a myth with the statement that EU "regulations on the Marketing of produce are a rather snappy 263 words". So the listener was left believing that this sort of EU over-regulation does not exist and presumably that the columnist was safe to return to Remain
- the assertion that the EU regulations on the Marketing of produce are a "rather snappy 263 words" (i.e. not just cabbages, but all produce) was wrong. It had been argued that the programme was referring to the "general standards" section of the Regulation that would apply to cabbages, but this is not what was actually said in the programme and it was a gross misrepresentation of the generic elements of a 64,784 word document that had to have been selectively picked to back up a point of view
- the meme was not "widely" used and in the overall referendum conversation it was a very minor feature among the general topic of over-regulation. At no point in the programme was the presence of any other EU regulation of this type referred to and at no point was the listener given any impression other than that if this sort of over-regulation had existed it does not any more. So by dismissing this

false meme they clearly left the impression that the idea behind it was also untrue which was demonstrably not the case

- if you were the proverbial “person in the street”, who knew little about the topic, you would not come away from this item with any other impression than that this meme was an incorrect “scare story” and that EU regulation was brief and “snappy”.

### The Panel’s decision

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

The Trustees noted that the issue in front of them was whether the BBC was correct to say that the Editorial Guidelines had not been breached.

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

- *More or Less* is a well-established programme and listeners would have understood that its remit is to examine the evidence behind specific topical uses of data
- the subject of the item was clearly signposted as “this list doing the rounds on the internet”. It was not a wider look at EU regulation
- the direction of the BBC’s editorial and creative output was defined in Article 38, (1)(b) of the Royal Charter as a duty that is the responsibility of the Executive Board and not the Trust. Deciding to focus on the cabbage meme was a matter for the editor of *More or Less*. The Trust would only have a role if the Panel considered that a potential breach of editorial standards had been identified
- listeners would not have been left with the inaccurate impression that EU regulation, as a whole was “brief and ‘snappy’”, given the programme pointed out there were broader regulations for the growing of farm produce and these were 32,000 words long.

In relation to this section of the script:

“Of course, there are still EU regulations about farm produce. The regulations on the marketing of produce are actually rather snappy, 263 words, shorter than the Gettysburg Address. But there are much broader regulations about growing farm produce. They’re long, about 32,000 words, half the length of a short-ish book. But they aren’t specifically about cabbage.”

the Panel agreed that they would not be likely to uphold the appeal, given that:

- from the contextual reference to the length of the Gettysburg address it was implicit that the “rather snappy 263 words” was referring to the limited wording that referred to cabbages in the EU regulations on the marketing of produce
- it would have been preferable if this had been made clearer, particularly given the length of the more general regulations
- however, given the programme had immediately made it clear there was much longer EU regulation (albeit on growing produce as opposed to marketing produce), this had not given a materially misleading impression about the length of EU regulation.

In relation to this section of the item where the presenter interviewed the technical director of the Brassica Growers' Association item:

INTERVIEWEE: Back at the time there was a lot of these sort of daft stories that came about, about some of these regulations. One of them was that the EU was saying how curvy a cucumber could be.

PRESENTER: Did they say anything particularly silly about the size or the curvature of a cabbage?

I: They did say that we couldn't sell cabbages which were less than 350 grams and back at that time there was quite a big thing for "baby" vegetables.

P: What. You mean as in, "I want a cool sort of fun cabbage" and it couldn't be that small? I mean that does sound like really silly regulation. I mean what's the point of saying it can't be that small?

I: I think it was all down to having this sort of standardised thing across Europe. But I think there was some common sense prevailed and they recognised that a lot of these things were perhaps a little bit daft,

the Panel also agreed that they would not be likely to uphold the appeal, given that:

- although the interviewee had initially given the impression that there were "daft stories" *about* regulations that set the curvature of a cucumber (whereas in fact there had been such a regulation), it was clarified by the end in that the interviewee said that (in his view) it was recognised that some of the EU regulation was "a little bit daft".

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

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

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

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

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

The Editorial Complaints and Appeals Procedure<sup>12</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>12</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 News website not to respond further to a complaint about BBC News Online – Vladimir Putin visits Mount Athos, all-male Orthodox enclave

The complaint concerned a BBC News Online article published on 28 May 2016 which reported on Vladimir Putin's visit to monasteries at Mount Athos in northern Greece, one of Orthodox Christianity's holiest sites. The article can be found at <http://www.bbc.co.uk/news/world-europe-36405480>. The complainant was concerned by the focus of the article on the exclusion of women from Mount Athos. The complainant made the following points:

- He felt there was too much focus on the exclusion of women from Mount Athos – and noted the different references to this subject within the article.
- He considered this implicitly portrayed Putin and countries not hostile to Russia as backward and medieval.
- He said the report ignored all other aspects that had made Mount Athos well-known, such as the architecture of the monasteries, the artistic treasures and ancient manuscripts preserved there, its role as a centre of learning during the Ottoman rule and the intellectual movements begun there.
- He did not feel Audience Services had addressed the points he made in his original complaint and stated that his complaint was about the exclusive focus on the issue that women were not permitted on Mount Athos at the expense of other basic information.
- He noted the response did not explain why the BBC had focused on the fact that women were not permitted on Mount Athos on the occasion of Putin's visit – yet other prominent people, including the Prince of Wales, had been regular visitors to Mount Athos for years.

BBC Audience Services made the following points:

- BBC News tried to educate and inform readers as much as possible, and felt that including information on why women were not permitted was an important part of the report.
- They did not believe the reporting of this was excessive; they acknowledged that the complainant disagreed and noted his feedback would be shared with the relevant teams.

BBC News website made the following points:

- There was no intention to portray Vladimir Putin or anyone else as backward or medieval.
- They noted that the article stated that "women have been banned for over 1,000 years", included a video feature on other sacred sites which women were banned from, and the article included a caption explaining that female domestic animals were also banned from Mount Athos.
- They said these references were included to add colour.
- They appreciated there were other aspects about Mount Athos that could have been reported, but did not consider there was evidence that the article was biased.

BBC News website 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 and handling of his complaint. He felt that the BBC's responses did not address the issues he had raised and he introduced new issues connected with the handling of his complaint. He made the following points:

- He considered the tone of the Stage 1b response was condescending and inappropriate. He also noted typographical mistakes (e.g. scared for sacred) and that a reference number had been left blank.
- He considered the responses he had received were contradictory – in that he had initially been advised that the information about women being banned was an important part of the story and the second response from the BBC had said the information had been added for "colour".
- He stated:

"The second response defended the impartiality of the piece by pointing to the video on exclusion of women from other sacred sites, whereas a key point of my complaint was exactly that the article failed to make clear that Mt Athos is not just a sacred site for a certain religious group. Its main and more universal importance is intellectual and artistic, and that was completely absent from the article."

- He considered neither response had addressed his complaint: firstly, the choice of occasion and timing for discussing the exclusion of women; secondly, the focus on this issue to the exclusion of appropriate context and basic information about Mount Athos and its universal importance.

## Decision of the Trust Adviser

The Trust Adviser (the Adviser) reviewed the correspondence that had passed between the complainant and the BBC. She decided that the point she should consider was whether the complainant's appeal against the BBC's decision not to correspond further had a reasonable prospect of success. She decided it did not.

The Adviser noted that the substantive complaint concerned the complainant's view that the article's focus on the exclusion of women from Mount Athos was excessive; he felt the article should have presented a broader historical and cultural picture which better reflected the many positive aspects of Mount Athos.

She noted that all BBC output was required to meet the standards set out in the BBC's Editorial Guidelines. She noted that all BBC output was required to meet the standard of "due impartiality", which was defined as follows:

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

She noted that this short article was about President Putin's visit to the monastery of St Panteleimon which was celebrating 1,000 years of monks at Mount Athos, the links between the Greek and Russian Orthodox church and Mr Putin's own Russian Orthodox

faith. She noted that, in this context, the all-male nature of the enclave was a key feature of the institution and BBC News had chosen to focus on this in its brief report on the visit.

She appreciated that the complainant had highlighted other significant aspects of the site – such as its architectural and historical importance – which he felt should have been focused on. However, she considered that decisions about what focus to take in news stories and what information to include were matters of editorial judgment that rested with journalists and news editors. She did not consider the item had to refer to other features of the site in order to meet the requirements of Editorial Guidelines for impartiality.

She noted that “the direction of the BBC’s editorial and creative output” was specifically defined in the Royal Charter as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC’s editorial standards.

The Adviser acknowledged the complainant’s dissatisfaction with the responses he had received from the BBC. She noted his comments about the standard of typing and agreed that it was regrettable that he had received a response which included typographical mistakes. However, having reviewed the correspondence that had passed between the complainant and the BBC, she considered that BBC News website had sought to explain that there had been no intention to imply that anyone was “backward or medieval” and that the fact the site did not allow women was one that would be of interest to audiences. She considered that BBC News website had acknowledged that the complainant was unhappy with the focus of the item but had informed him that it did not consider his complaint raised a matter that might be a potential breach of the BBC’s standards.

Taking this into account the Adviser considered Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees.

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

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

- The Trust Adviser had given a broadly accurate account of his concerns and of Audience Services’ responses but she had not justified her rejection of the points of his complaint.
- The Adviser had noted that the all-male nature of Mt Athos was a “key feature” in the context of President Putin’s visit, the links between the Greek and Russian Orthodox church and Mr Putin’s own Russian Orthodox faith. However, the complainant did not see at all what this “context” had to do with the all-male nature of Mt Athos.
- He noted the expression “key feature” for the all-male nature of Mt Athos. He felt this confirmed that the original piece was written from a subjective point of view and that the Adviser simply agreed with that specific point of view. An impartial report would allow for an at least fleeting reference to the reasons for the importance of Mt Athos (the architecture, the artistic treasures and ancient manuscripts preserved there, its role as a centre of learning, the intellectual

movements begun there etc.) and then let the readers decide for themselves which features were more key.

- The Adviser did not accept that the absence of any reference to the reasons for the importance of Mt Athos in the report amount to bias. She only stated that “the Trust did not get involved [in matters of editorial judgement] unless, for example, it related to a breach of the BBC’s editorial standards” but she did not indicate why there was no such breach of standards.
- He was puzzled by the unwillingness to see that, without a reference to the main reasons for the notability of a subject, a report on that subject could give a distorted impression. He gave an example of what such a report might look like.
- He said that, ironically, the absence of context on Mt Athos undermined the claim to importance of what the Adviser called the “key feature of the institution” (its all-male nature). It was one thing to read that women are not allowed in a random “holy site” and another to know that that site is a UNESCO World Heritage Site.
- It was not reasonable to view the subject of the report as a women’s rights issue. This status in Mt Athos was always meant to be an absolutely exceptional situation. On the other hand, serious discrimination was an everyday reality for women throughout the world. It was at best a distraction to focus on the situation in a tiny “enclave” instead of trying to confront the many problems faced by women in mainstream society.

### **The Panel’s decision**

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

The Trustees noted that the issue in front of them was whether the decision by BBC News website 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 the appeal, given that:

- The lack of a reference to the cultural reasons for the importance of Mount Athos in the context of a visit by the Russian President would not be likely to lead Trustees to conclude that BBC News had failed to meet the Guideline requirement for due impartiality.
- The direction of the BBC’s editorial and creative output was defined as a duty that is the responsibility of the Executive Board and not the Trust in Article 38, (1)(b) of the Royal Charter. The Trust would only have a role if the Panel considered that a potential breach of editorial standards had been identified. In this instance Trustees considered that responsibility for the content of the article rested with BBC News Editors.
- The complainant had received reasonable and reasoned replies from Audience Services and BBC News website.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

**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 BBC News, 26 June 2016

The complainant believed that BBC News had demonstrated a lack of impartiality by permitting Alastair Campbell to air his views without challenge on the subject of Brexit. He also complained that the BBC was biased against Brexit because of funding he believed was received by the BBC from the EU.

The complainant made the following points in two contacts with the BBC:

- Alastair Campbell had been given the freedom to air his views about Brexit for about 30 minutes and was not challenged by the presenter. Mr Campbell was unelected yet had criticised those who supported Brexit in a way that was unacceptable.
- The BBC was biased towards the EU and the reason for this was funding received by the BBC from the EU.

BBC Audience Services gave a substantive response which made the following points:

- BBC public service news programmes were not allowed to take any external funding, including from the EU.
- There were three areas that benefited from EU money: BBC Media Action (an international development charity, formerly known as the BBC World Service Trust); BBC Research & Development; and some independent production companies, particularly those producing drama.
- The complainant was given detailed information about the amount of money received from the EU in each of those three areas and how it was used.
- BBC editorial policy was not influenced by those areas which received EU money.
- In-house productions did not receive EU incentives and could not apply for EU grants.
- BBC News, Current Affairs and Factual programmes, whether in-house or independent productions, did not use EU incentives.

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

### Appeal to the BBC Trust

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

- The BBC had been taking EU money for many years and he considered this meant the BBC was not able to be impartial on the subject of the EU.
- He asked whether the Trust had made clear to the BBC Director General that the EU was not a valid place to obtain loans, for whatever reason.
- He demanded an end to any EU funding for the BBC.
- He said the BBC should issue an apology to all licence fee payers.
- He considered the BBC employed too many Scottish people.

## Decision of the Trust Adviser

The Trust Adviser (the Adviser) reviewed the correspondence that had passed between the complainant and the BBC. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided it did not.

The Adviser noted that the complainant had initially contacted the BBC about an interview with Alastair Campbell that he considered did not include sufficient challenge. She noted that this point had not been addressed by the BBC; however, she also noted that, before the BBC had sent its substantive response, the complainant had contacted Audience Services again and stated that the principal point of his complaint related to EU funding.

She noted that the time and date given by the complainant (BBC One, 17.51pm on 26 June 2016) did not relate to news output and that the news bulletin that ran from 6pm did not include an interview with Alastair Campbell. She noted that under the complaints procedure, complainants were required to provide information about the time, date and channel of the relevant output. She considered that, without the details of the time and date of broadcast, it was not proportionate to consider this element of complaint further.

The Adviser noted the complainant's principal point that BBC editorial policy may have been influenced by funds received by the BBC from the EU and that he considered the BBC's output was biased in favour of the EU.

She noted that all BBC output was required to meet the standard of "due impartiality" which meant that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. News output, in whatever form, should give due weight to events, opinion and main strands of argument.

The Adviser also noted that the BBC sought to provide a broad range of subject matter and perspectives over an appropriate timeframe across the output as a whole, so that no significant strand of thought was knowingly unreflected or under-represented.

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 under Article 38, (1)(b) of the Charter. She believed Trustees would be of the view that the responsibility for decisions about the content of BBC News interviews lay with BBC News Editors, not the Trust.

The Adviser noted the complainant's comments about EU money received by the BBC. She considered that Audience Services had given a clear and detailed answer to the complainant about which areas of the BBC received money from the EU and how much had been received. She also noted that Audience Services had given assurances that BBC public service news programmes were not allowed to take any external funding, including from the EU. They had also explained that BBC editorial policy was not influenced by those areas which were eligible to receive EU funding. The Adviser had not seen evidence to suggest that editorial policy had been compromised.

The Adviser noted that, in his appeal, the complainant had raised a number of new points relating to past political events and the number of Scottish people employed by the BBC.

These points had not been raised with Audience Services as part of the original complaint and it was therefore not appropriate for the Trust to address them as part of the appeal against the decision of Audience Services to stop corresponding with the complainant on the specific issues he had raised at Stage 1.

Taking this into account the Adviser considered Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees

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

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

- It was absurd for the Trust Adviser to state "There were three areas that benefited from EU money: BBC Media Action (an international development charity, formerly known as the BBC World Service Trust); BBC Research & Development; some independent production companies, particularly those producing drama".
- The BBC would have still had to pay for those areas if the EU had not subsidised them, so, in effect, the money, regardless of destination, was still the same "pot". So, in his view, the BBC still accepted money regardless of internal accounting decisions. Consequently, the Charter requirement for impartiality lay broken.
- This was absolute proof of EU financing of the BBC, which completely explained one of the reasons for the BBC's utter lack of impartiality regarding matters pertaining to the EU.
- He wanted an apology from the BBC for taking the loans and for the explanation given to him and others.

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

A panel of the Committee noted the points made by the complainant, the BBC and the Trust 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 had provided a significant amount of EU referendum and post referendum coverage with many differing views and opinions.
- The direction of the BBC's editorial and creative output was defined in Article 38, (1)(b) of the Royal Charter as a duty that is the responsibility of the Executive Board and not the Trust. The Trust would only have a role if the Panel considered that a potential breach of editorial standards had been identified.
- Audience Services had given clear information regarding EU money received by the BBC and had explained that BBC editorial policy was not influenced by those areas eligible to receive EU funding. Although the complainant did not agree that

the explanation he had been given was credible, there was no evidence to suggest that the BBC's editorial policy had been compromised.

Trustees also agreed that the complainant had received reasonable and reasoned replies from Audience Services.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

**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 Euro 2016, BBC One, 27 June 2016

The complaint concerned comments made about the EU Referendum by presenter Gary Lineker who had introduced a football discussion with pundits by saying:

“We have got three Europeans here and I think we are still allowed to ask you your opinion despite what happened in the referendum. How do you see this England side? What do you make of them?”

The complainant made the following points:

- Gary Lineker’s job on the programme was to present/discuss football, not to give his own opinion on the referendum.
- This was bias. It was not true to say that he did not understand the referendum result – as his Twitter feed also indicated.

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

- Gary had been trying to bring in some topical humour based on his lack of full understanding about what the EU referendum outcome meant.
- They acknowledged the complainant’s view that it was inappropriate.

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 and handling of his complaint. He made the following points:

- A BBC presenter was using a public service broadcasting platform to express his sadness at the referendum outcome. He should confine his views to his Twitter platform and not use licence fee payers’ money to express his views.
- His line manager should remind him of his duty to impartiality.
- His complaint had been poorly handled by the BBC and it gave the impression that the BBC can be flippant when taken to task over its use of licence fee payers’ money.
- The BBC was meant to be impartial, but was clearly not so where the referendum was concerned.

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided it did not.

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

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

The Adviser noted the comment which had been made within days of the referendum. She considered that the comment was a brief, light-hearted way of introducing the studio discussion and believed that this would be well understood by the audience. The Adviser did not believe Trustees would be likely to conclude that Gary Lineker's comment in Euro 2016 engaged the BBC's Editorial Guidelines on Impartiality - the threshold at which Trustees would consider becoming involved in a complaint.

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 under paragraph 38, (1)(b) of the Charter.

The Adviser noted that the complainant felt his concerns had been dealt with flippantly by Audience Services and they had given him the impression that the BBC could "do what it likes" with licence fee payers' money. Having reviewed the correspondence, the Adviser did not consider that the BBC response was flippant. She also noted that, under the terms of the Royal Charter, the BBC was entitled to make decisions about programme content as long as the output did not breach 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 made the following points:

- The fact remained that the presenter should not be using a public service platform to express his view.
- The BBC was meant to be an impartial unbiased public service broadcaster.

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

A panel of the Committee noted the points made by the complainant, the BBC and the Trust 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 the appeal given that:

- The direction of the BBC's editorial and creative output was defined in Article 38, (1)(b) of the Royal Charter as a duty that is the responsibility of the Executive Board and not the Trust. The Trust would only have a role if Trustees considered that a potential breach of editorial standards had been identified, which they did not believe would be their likely conclusion here. That being the case, they considered that responsibility for the content of Euro 2016 rested with the programme makers.
- The comment by the presenter had been a brief, and clearly light-hearted, way of introducing the Euro 2016 studio discussion. Contrary to the complainant's belief, the comment had given no indication as to the presenter's personal opinion of the referendum result.
- The complainant had received reasonable and reasoned replies from Audience Services.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

**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 Angela Eagle drops out of Labour leader race, BBC News online, 19 July 2016

The complaint related to an article which focused on the decision by the former shadow First Secretary of State, Angela Eagle, to withdraw her challenge to Jeremy Corbyn for leadership of the Labour party. In pulling out of the leadership contest, she announced her support for the remaining challenger, Owen Smith. The complaint related to the following paragraph:

“Mr Smith’s emergence as the sole challenger to Mr Corbyn comes after weeks of turmoil within the party following the UK’s vote to leave the EU, which triggered a mass walkout from the shadow cabinet and an emphatic vote of no confidence in Mr Corbyn by his MPs.”

The complainant made the following points:

- the article was inaccurate and misleading as the walkout was not triggered by the EU Referendum result
- the split and challenge to Jeremy Corbyn was planned before the referendum result and a decision for mass resignations made before the result
- newspapers including The Daily Telegraph and The Times had indicated this would be the case some weeks before. The Telegraph reported two weeks before the result that there would be a mass resignation immediately after the referendum.

BBC Audience Services made the following points:

- on the 13th June The Daily Telegraph did report that “Labour rebels believe they can topple Jeremy Corbyn after the EU referendum in a 24-hour blitz by jumping on a media storm of his own making.” (<http://www.telegraph.co.uk/news/2016/06/13/labour-rebels-hope-to-topple-jeremy-corbyn-in-24-hour-blitz-afte/>)
- the same article also explained that “there is no single plan for getting rid of Mr Corbyn and moderates are split on whether to launch a coup or bide their time until the party membership changes its mind” and that “while losing the EU referendum is seen as fatal by many to Mr Corbyn’s leadership, continued speculation remains about a challenge if the referendum brings an In vote.”
- given that the resignations followed an Out vote that was referenced by most, if not all of the shadow cabinet in their resignation letters, the BBC did not feel that referring to how the result “triggered a mass walkout from the shadow cabinet and an emphatic vote of no confidence in Mr Corbyn by his MPs” was inaccurate or otherwise inappropriate, or that there was anything within the article in question to seriously suggest otherwise.

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 5 August 2016 on the substance of his complaint. He referred to two other newspaper articles from July and November 2015 which he said showed that the mass resignations by Labour’s front bench had not been

triggered by the single event of the EU referendum result but which “had been planned and decided long beforehand”.

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

The Trust Adviser (the Adviser) 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 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 the timing of the vote of no confidence in Jeremy Corbyn’s leadership which followed the EU Referendum result and the subsequent resignations from the shadow cabinet. Given this context and timing she did not consider it inaccurate to refer to the referendum result as having triggered “a mass walkout from the shadow cabinet and an emphatic vote of no confidence in Mr Corbyn” and she did not consider that the use of the phrase would have misled the audience.

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:

- the Adviser’s response ignored the empirical evidence that the mass resignations by members of the Parliamentary Labour Party had been planned beforehand irrespective of the EU Referendum
- the BBC subsequently reported that the mass resignations were a “walkout in protest at Mr Corbyn’s leadership” and that “Hilary Benn’s sacking as shadow foreign secretary by Jeremy Corbyn in June led to a mass of resignations”
- the BBC provided different accounts but still did not mention the most important context that mass resignations were planned months before.

### **The Panel’s decision**

A panel of the Committee considered 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 would not be likely to uphold a breach of the Editorial Guidelines given that:

- the BBC had referred to the timing of the vote of no confidence in Jeremy Corbyn's leadership and the subsequent resignations of members of the shadow cabinet which had followed the Referendum vote to leave the EU
- the BBC had explained that the result of the vote had been referred to by most of the shadow cabinet in their resignation letters
- regardless of the extent to which the resignations had been "planned" it was not inaccurate therefore to refer to the EU Referendum result as having "triggered a mass walkout from the shadow cabinet and an emphatic vote of no confidence in Mr Corbyn by his MPs".

Trustees also agreed that the complainant had received a reasonable and reasoned reply from Audience Services.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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