

Editorial Standards Findings

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

October 2016, January and March 2017, issued March 2017

Decisions by the Head of Editorial Standards, Trust Unit
March 2017, issued March 2017

Contents

Contents	1
Remit of the Editorial Standards Committee	2
Serious Breach Findings	4
Britain on the Fiddle (filming for Series 2)	4
Reggie Yates – Hidden Australia Episode 1: Black in the Outback	14
Statement by the Editorial Standards Committee: 31 March 2017	20
Statement and clarification: Taking the Credit (a documentary programme produced by Rockhopper Productions Ltd.)	20
Request to review and revise an ESC finding reached in 2011 on the grounds that it contained a factual inaccuracy: Taking the Credit	22
Admissibility decisions by the Head of Editorial Standards, Trust Unit	29
BBC Two Newsnight transmitted 11 January 2017	29
Removal of article on the BBC News website, 2016	33
Decision of BBC Editorial Complaints Unit (ECU) not to uphold a complaint about The Now Show, Radio 4, 3 December 2016, 12.30	35
Decision of BBC Editorial Complaints Unit (ECU) not to uphold a complaint about Have I Got News For You, BBC One, 16 December 2016	39
Decision of BBC Editorial Complaints Unit (ECU) not to uphold a complaint about EastEnders, 19 August 2016, BBC One, 20.00	42
Decision of BBC Editorial Complaints Unit (ECU) not to uphold a complaint about The Real Marigold on Tour: Florida, BBC Two, 27 December 2016, 21.00	46
The use of the term 'women and children' in BBC online reports about incidents involving deaths	50
Just a Girl, CBBC Website	53

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

Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

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

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

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

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

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

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

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

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

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

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

It is published at bbc.co.uk/bbctrust.

Serious Breach Findings

Britain on the Fiddle (filming for Series 2)

Summary of finding

Britain on the Fiddle is a BBC One series that investigates benefit fraud. As part of the programme, the BBC films benefit fraud investigators.⁴ Following an approach by the production team to cover their work, in October 2014 a local authority informed the team of the case of a person who had allegedly committed multiple serious offences of fraud. The BBC subsequently accompanied the police and investigators on two raids of the subject's home.

During the first raid, in 2014, the BBC's digital video director (a role that combines shooting material and editorial responsibility) filmed inside the subject's home and then filmed the subject both in a police car and in a police cell. The programme team considered the subject had given consent for all this filming. Filming was also carried out by two police officers wearing body-worn cameras provided to them by the BBC, without the subject's knowledge.

During the second raid, four months later, the same digital video director accompanied the police and investigators. The subject claimed not to have consented to being interviewed by the BBC during the initial raid and said the BBC did not have the right to be inside the subject's home on this second occasion. The digital video director was present and filming initially, but he withdrew following a police request that he should leave. Police filmed with body-worn cameras throughout the second raid, again without the subject's knowledge.

The BBC subsequently received a letter from the subject's solicitors alleging that the Editorial Guidelines had been breached. The then series producer refuted these allegations. However, during a review of the filmed material by the BBC, it became clear that the filming did in fact raise significant legal and editorial concerns, including the subject's lack of informed consent to being filmed. The defence team applied to have the criminal proceedings stayed because of the conduct of the investigators, the police and the BBC. The judge ruled in favour of the defence and was highly critical of the way the search was conducted by the police and local authorities and of senior officers for their failure to give proper guidance to those conducting the search on how to behave when accompanied by TV cameras and journalists. The judge agreed that the BBC had also acted inappropriately but noted that it was for the prosecuting authorities to ensure the search was properly conducted and that the investigation was not jeopardised by their actions.

The material concerned was never broadcast. Once senior BBC staff were made aware of the potential legal and editorial difficulties, action was taken to strengthen editorial oversight of the series through personnel changes within the production team, including replacing the series producer. An investigation was also conducted by BBC Litigation and

⁴ We understand that the particular case which is the subject of this finding was originally investigated by the relevant local authorities but was taken over by the Department for Work and Pensions. However, the original lead local authority investigator continued to work on the case, although no longer as the lead, and was present on both of the searches that took place. That investigator and the local authority were the subject of judicial criticism – see below.

Editorial Policy. Since these incidents took place, the Director of Editorial Policy and Standards has published new guidance on the use of body-worn cameras with specific reference to the issues of privacy and consent and disseminated this within the BBC.

The Executive reported the matter to the BBC Trust. Trustees considered that the subject had not given informed consent to be interviewed by the BBC or to be filmed by the body-worn cameras during either raid. Thus Trustees concluded that this was a serious breach of the Guidelines for Fairness, Contributors and Consent.

Trustees also considered that the privacy of the person in question had been infringed without sufficient justification by the filming of the raids, including secret filming. Trustees therefore concluded that the gathering of material for *Britain on the Fiddle*, using secret filming, had also resulted in serious breaches of the Editorial Guidelines for Privacy.

There is a public interest in programmes which illuminate the work of government agencies and which reveal or report on fraudulent activity. In order to maintain the confidence of the public, the BBC must be able to demonstrate that it carefully weighs up its own right to produce output that is in the public interest with the right of individuals not to have their privacy infringed without sufficient reason. People asked to consent to appearing in BBC output are entitled to be given enough information about the proposed output to make an informed decision to take part.

Trustees noted that although the judge, in reaching his decision to stay the court proceedings, had reserved most criticism for the police, individual investigators and local authorities, he had also criticised the BBC. The Trustees considered that it was a matter of great regret that the actions criticised by the judge, which included the actions of the BBC, had led to the decision to stop the legal action in this case.

Executive report

The Executive's report made the following points:

Background

In October 2014 the *Britain on the Fiddle* production team were informed by a local authority⁵ of a case of alleged benefit fraud. The council investigators believed the alleged perpetrator was making claims from over 30 councils, with over-payments calculated as being at least £40,000. The council wanted to charge the alleged perpetrator with false representation.

The lead investigator at the council agreed that the BBC could follow them as they investigated the case. The BBC subsequently accompanied the police and investigators on two raids of the subject's premises.

What happened

On the first raid, the BBC provided two police officers with body-worn cameras. The BBC also entered the premises and filmed throughout the raid. The BBC then travelled in the back of the police car and filmed the subject there for about an hour. At the police station, the BBC's digital video director accompanied the subject into the holding cell and continued to film. On the second raid (about four months later), the BBC again provided

⁵ See footnote 1

the police with body-worn cameras. Initially the BBC was also filming but withdrew after the subject objected, and at the police's request.

In June 2015 the BBC received and responded to a letter from the defence solicitors expressing concern about the BBC's presence on the raids, alleging that the Editorial Guidelines had been breached and asking for all rushes to be retained. The solicitors asserted that the Britain on the Fiddle team had "breached BBC guidelines by refusing to stop filming when asked, gained entry without authorisation, [and] refused to leave when asked..."

The series producer at the time replied with a denial of the accusations having "carefully reviewed the footage". The series producer concluded by saying: "I hope this letter demonstrates to you that no BBC guidelines have been breached."

On 15 September 2015, the BBC was served with a court Order (on behalf of the defence team) to produce copies of all footage shot in the case. In consultation with BBC Litigation and Editorial Policy, the production team began to review the footage with a view to complying with the Order. It became clear that the filming raised significant legal and editorial concerns regarding informed consent and privacy.

An additional Executive Producer was appointed to the programme team. This Executive Producer began an internal investigation and a review of all the material that had been obtained across the series. Personnel changes were made to the production team, including bringing in a new series producer.

In March 2016 the defence team applied to have the criminal proceedings stayed because of the conduct of the investigators, the police and the BBC.

The Criminal Proceedings

The BBC was not present in court (having no legal right to make any representations) for the abuse application at the start of the criminal trial. The BBC has seen a transcript of the proceedings.

The judge was critical of the behaviour of individual investigators and police officers and of the agencies for which they worked. He identified systemic failures for which senior officials and police officers were responsible, deciding that the individuals leading the search were put in the position of acting without proper instruction from senior personnel on how to conduct themselves in the presence of a TV crew. He considered that those leading the search should have intervened and taken control of the situation before they did.

The judge expressed concern about the relationship the investigators and police had with the programme team, and said that they appeared to be acting as agents of the BBC in order to make a television programme, rather than focussing on the proper conduct of the search process as they should have done.

In respect of the BBC, the judge found that the BBC had not obtained properly informed consent for the filming during the first raid. The subject had specifically asked the BBC's digital video director if he had a right to be there. His response was that he did because

it was in the public interest that he should be allowed to film. The judge formed the view that he thereby knowingly misled the subject.⁶

No permission had been sought for the filming by the police officers carrying the body-worn cameras.

In respect of the second raid, the judge found that the digital video director's failure to expressly ask for permission to film (in the face of the subject's objection he simply asserted that he had a right to be there) was contrary to the Media Indemnity Agreement (MIA) he had signed (which stated that the BBC would seek consent and would withdraw if that consent was not forthcoming).

Conclusion

The BBC accepts that this sequence of events represented a serious breach of the Editorial Guidelines.

The gathering of the material by the police via the body-worn cameras without the subject's knowledge or consent, and in circumstances when no BBC camera was present, was clearly a breach of the Guidelines in respect of secret filming. In this regard it is unfortunate that the letter sent to the subject's solicitors gave assurances to the contrary.

The failure to obtain proper informed consent for the filming was also a breach in respect of Fairness, Contributors and Consent.

Action taken

As soon as senior staff were made aware of the potential legal and editorial difficulties with this programme, swift action was taken to strengthen editorial oversight of the series through personnel changes, including replacing the Series Producer.

The programme, in conjunction with Editorial Policy and BBC Litigation, carried out a thorough investigation of the exact circumstances, and fully complied with the court Order requesting the handover of all footage.

The Director of Editorial Policy and Standards has since published new guidance on the use of body-worn cameras with specific reference to the issues of privacy and consent.

The new guidance was discussed at May 2016's Editorial Standards Board. The TV representative subsequently relayed this to TV Editorial Group, and a reminder of the new guidance was sent out to all of TV Factual Commissioning.

BBC Editorial Policy also devoted a special session of their monthly editorial forum in July 2016 to looking at the numerous privacy and consent issues arising when using body-worn cameras.

⁶ But in response to this finding the digital video director (who, as noted, was not in court) stated that, in saying this, he acted in good faith, believing that he was complying with the Editorial Guidelines.

Trustees' finding in full

Trustees noted that the relevant Editorial Guidelines were those relating to Privacy and to Fairness, Contributors and Consent. The most relevant sections of these are attached as Annex 1.

Trustees understood that complex decisions were being made which involved balancing a number of different criteria, including:

- the requirement that a contributor should give informed consent about appearing in BBC output
- the rights of an individual (who has a reasonable expectation of privacy, particularly in their own home)
- the right of a broadcaster to have freedom to pursue stories where there is editorial justification for their broadcast
- the public interest in understanding generally how government agencies work
- the public interest of a series which examines allegations of specific illegal activity.

Consent

Trustees noted that in most situations, BBC programme makers are required to obtain informed consent from contributors. This is defined as follows:

“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:

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

Trustees noted that people recorded committing an offence or admitting to an offence or behaving in a way that was anti-social would not normally be asked for consent. However, they noted that the subject who had been filmed was not shown committing or admitting to any offence.

Trustees also noted the Guidelines for tag-along raids, which stated:

When we go on a tag-along raid on private property we should normally:

- Ensure people understand we are recording for the BB
- Obtain consent from the legal occupier and stop recording if asked to do so
- Leave immediately if asked to do so by the owner, legal occupier or person acting with their authority.

Trustees considered what the subject knew of the BBC's involvement in the raid, what consent the subject had given – if any – and on what basis it had been given. They noted the first exchange between the BBC's digital video director and the subject in the first raid. The digital video director explained they were there “to film the work of the investigators, carrying out their investigation.” The subject expressed doubt as to whether

they should really be filming and whether it was appropriate or even lawful for them to be on the scene of an arrest. A police officer said that “any conversations around that” should be with the BBC. The digital video director said:

“It’s definitely lawful, I mean, it’s in the public interest because I’m, I’m following their work.”

Trustees also noted further exchanges between the digital video director and the subject during the first raid. The subject again questioned the legality of the BBC’s presence and filming, to which the digital video director replied:

“I can assure you it’s not unlawful, it’s in the public interest, that’s the journalistic privilege I have. I can’t say any more than that, it isn’t unlawful, I’ve done, I’ve done a few of these, we’re filming with lots of local authorities and the Department of Work and Pensions.”

The subject referred to a right to silence and, when asked by the digital video director about what the police and officials had said, the subject replied that it seemed “a little bit odd” to be interviewed by the BBC before even speaking to a solicitor.

Trustees noted that, during the second raid, the subject was very clear about not wishing the raid to be filmed or to have the BBC present on the premises. The subject objected immediately to the BBC being present but the BBC did not leave until requested to do so by the police.

Trustees noted that the BBC’s digital video director said that he had the right to be there even though the BBC’s policy is that filming should stop on private property if the occupier objects and that the BBC should leave immediately if asked to do so. The digital video director again said the BBC had a right to be there because it was “in the public interest”; the subject said they did not have that right because it was not part of the terms of the search warrant. The digital video director responded by saying, “I don’t need permission.” But the subject clearly refuted this, stating, “You do need permission, I’ve spoken to [unclear] solicitors about it. You do. You shouldn’t be here.”

Trustees noted that, again, the subject was not aware that police with body-worn cameras had also filmed the raid.

Trustees noted that, according to the Executive’s report, the then Series Producer stated that the programme team had acted within the Editorial Guidelines. Trustees considered the words of the judge, who said that the digital video director⁷:

misled the defendant. Immediately at the outset of that conversation [the defendant] asked whether he had permission to stay and film. He did not know. He knew very well that if [the defendant] were to object, he would have to leave and he would not get the film he wanted and for obvious reasons he did not want that to happen. He was extremely alive and aware of that and extremely alive of the law of trespass. He would’ve been aware anyway because it would’ve been banged into him at the BBC, I have no doubt, even though he didn’t appear to have any specific guidance but not only that. Minutes before that he had gone through and signed the MIA which refers specifically to trespass. It is inconceivable that [the digital video director] did not have that in the forefront of

⁷ The point of view of the digital video director is explained in footnote 3, above.

his mind but what he said and what he continued to maintain was the following. "I have a right to be here because it is in the public interest." That is a most unfortunate comment. [The digital video director] knew that he was misleading the defendant.

Trustees also considered what the judge then went on to say:

[The defendant] kept asking for a short period of time and he continued to seek to persuade [the defendant] to put such concerns as [the defendant] might have about his right to be here on one side.

The judge considered that the fact that the digital video director succeeded in persuading the subject was shown by the way that the subject and the digital video director then conducted themselves with the police which led the police officer to assume that consent had been given.

Moreover, the Trustees considered that the subject had very clearly not consented to being filmed by the body-worn cameras that the BBC had provided to the police officers and about which the subject knew nothing.

During the second raid, the subject refused consent to being filmed. Trustees noted that the digital video director did not "leave immediately if asked to do so by the ... legal occupier", as directed by the Editorial Guidelines, but only after being urged by police to go. They noted that the body-worn cameras that the BBC had given to the police officers had continued to be used to film the raid, even after the subject's explicit refusal to give consent to filming and without the BBC present.

Trustees considered that, where there was ambiguity about what the potential contributor understood of the programme or the recording process, there was an onus on the BBC to respond to that uncertainty. They noted that the subject had repeatedly queried the right of the journalist to be in the subject's home on the first occasion and that the subject described it as 'a little bit odd' to be speaking to the digital video director before being able to consult a solicitor.

Trustees considered that the subject had not given informed consent to be interviewed by the BBC during either raid and had not given consent to be filmed by the body-worn cameras during either raid.

Privacy

Trustees noted the requirement under the Editorial Guidelines that: "The BBC respects privacy and does not infringe it without good reason". They noted too that broadcasters were required to consider a two-stage approach in terms of the infringement of privacy – firstly, they had to consider whether it was warranted to infringe privacy while gathering material and, secondly, they had to consider whether it was justifiable to broadcast that material.

Trustees noted that in this instance, the material had not been broadcast and therefore the infringement of privacy related to the gathering of material.

Trustees noted that individuals have a legitimate expectation of privacy and this expectation is increased if they are in their own home. They noted too that an individual's behaviour could have an impact on their entitlement to privacy – so that

someone involved in criminal or anti-social behaviour would have a lower entitlement to privacy. Trustees also noted there was a public interest in bringing some private behaviour into the public domain – for example, exposing or detecting crime.

Trustees noted that the BBC had a long history of investigative journalism which had brought anti-social and illegal actions by individuals into the public domain and which was of significant public interest.

Trustees considered that, generally, it was in the public interest to follow the work of investigators and police in their pursuit of people who were thought to have carried out a significant level of fraud.

Trustees noted that the Editorial Guidelines for tag-along raids state:

A tag-along raid is when we accompany police, customs, immigration, environmental health officers or other public authorities on operational duties. We should only go on tag-along raids when there is a public interest and after careful consideration of editorial and legal issues including privacy, consent and trespass.

Trustees noted that the programme-makers were following an investigation into fraud, rather than uncovering fraud themselves. They considered that the public interest in following an investigation was lower than the public interest in uncovering fraud.

Trustees noted that the definition of a tag-along raid referred to journalists who “accompany... public authorities on operational duties”. However, instead of the authorities and the journalists carrying out their own discrete functions, in this instance, by giving police officers body-worn cameras, the BBC had blurred the distinction between them so that the police and investigators were acting on behalf of the BBC at the same time as they carried out their work. As the judge had remarked in relation to one of the officials present at the second raid:

He’d lost control of his own judgmental process in the sense that he was no longer conducting a search and in his mind that was not his primary purpose. His primary purpose was to help the BBC make a film.

Trustees noted that this blurring of roles meant the infringement of the subject’s privacy was significantly greater.

Trustees noted the Editorial Guidelines for Privacy which related to Secret Recording defined secret recording as including: “The general use of audio-visual equipment including... small video cameras...and radio microphones, when people are unaware they are being recorded”.

Trustees noted that the filming by the body-worn cameras without the knowledge of the subject was secret recording.

Trustees noted the stipulation that: “Any proposal to carry out secret recording must be referred to Editorial Policy prior to approval by the relevant senior editorial figure in the division”. Trustees considered that the referral process was one that allowed complex editorial matters to be carefully reviewed and was an important safeguard for individual programme-makers and also for the BBC’s reputation generally. Trustees noted that this had not taken place in this instance. Trustees considered the privacy of the subject had been infringed without sufficient justification by the filming of the raids. They considered

the failure to comply with the secret recording guidelines led to a further breach of the Editorial Guidelines for Privacy.

Trustees concluded that the gathering of material for Britain on the Fiddle had resulted in serious breaches of the Editorial Guidelines for Privacy. They also concluded that the failure to give clear information to the subject being filmed meant the subject was not in a position to give 'informed consent' and was a serious breach of the Guidelines for Fairness, Contributors and Consent.

Conclusions

Trustees consider that maintaining the trust of the public is vital to the BBC. There is a public interest in programmes which illuminate the work of government agencies and which reveal or report on fraudulent activity. However individuals have a right to privacy, and intruding upon that privacy when recording material that might be used for broadcast should be done only after a careful assessment is made of the public interest in the matter so that it is clear that the intrusion is justifiable. In order to maintain the confidence of the public, the BBC must be able to demonstrate that it carefully weighs up its own right to produce output that is in the public interest with the right of individuals not to have their privacy infringed without sufficient reason. Similarly, people asked to consent to appearing in BBC output are entitled to be given enough information about the proposed output to make an informed decision to take part.

Trustees considered that, in this instance, the use of body-worn cameras amounted to secret recording. However, the programme makers had not followed the Editorial Guidelines for secret recording. Trustees noted that the body-worn cameras filmed inside the home and took footage of the subject in two early morning raids and considered that this was a significant infringement of privacy. They did not consider that the public interest in following the investigation was sufficient to outweigh the privacy which the individual would have reasonably expected within the home.

In terms of the consent given by the interviewee to be filmed by the BBC, they did not consider that the subject had given informed consent to be filmed. They noted that, although the subject spoke to the BBC's digital video director during the first raid, the subject had repeatedly queried why the filming was taking place and the right of the BBC to film. They considered that, in a situation where a potential contributor was apparently unclear about the filming, the onus was on the BBC to give adequate information to allow a contributor to make an informed decision about taking part.

Trustees noted that the judge, in reaching his decision, had reserved most criticism for the investigating authorities, yet he had also made criticisms of the BBC. The Trustees considered that the actions criticised by the judge, which included the actions of the BBC, were a matter of great regret, as they had led to the decision to stop the legal action in this case. Trustees also noted that the judge made explicit that his criticisms pertained to this specific sequence of events and were not a criticism of this type of programme, or production arrangements between the BBC and other public bodies, in general:

I am mindfully aware of my legal obligation not to ... make findings that could have wider implication beyond this case ... In the specific and highly unusual and exceptional circumstances, I find that an abuse did take place and I stay the prosecution.

The Trustees noted the action that had been taken by the Executive in terms of strengthening the editorial oversight of the series, and of producing new guidance about the use of body-worn cameras and related issues of consent and privacy. They also noted the measures that had been taken to ensure that the guidance was shared across television production departments. While they considered the action was appropriate, they noted this was an area where advances in technology meant secret filming and recording was likely to become easier and that the BBC had to be vigilant to ensure it maintained its editorial standards and kept pace with technological change.

Trustees concluded that the gathering of material for Britain on the Fiddle had resulted in serious breaches of the Editorial Guidelines for Privacy. They also concluded that the failure to give clear information to the subject meant the subject was not in a position to give 'informed consent' and that this was a serious breach of the Guidelines for Fairness, Contributors and Consent.

Reggie Yates – Hidden Australia Episode 1: Black in the Outback

Summary of finding

Reggie Yates – Hidden Australia, Episode 1: Black in the Outback was the first in a two-part series Reggie Yates – Hidden Australia. It was made for the BBC by Sundog Pictures. Episode 1 was broadcast on BBC Three and iPlayer on 16 January 2017. It was also made available on BBC Three's YouTube channel.

The series was described as follows:

“Reggie Yates travels down under to explore the issues facing young Australians in the 21st century. He first heads into the outback to spend time in an Aboriginal community, ravaged by alcohol addiction, and trying to find its place in modern Australia. Reggie then travels to Melbourne, to investigate why Australia's second city is in the grip of a dangerous epidemic, caused by the drug known as Ice.”

The description of Episode 1 read:

“Travelling to Australia, one of the richest nations on earth, Reggie Yates investigates why the country's indigenous people suffer such extreme social deprivation and inequality. He travels into the outback to one of the country's largest but most deprived Aboriginal communities, and finds a marginalised people suffering from an addiction to alcohol and generations of institutionalised racism. With one foot in the past and one in the present, can the community's next generation see a better future for themselves than those who have gone before?”

This episode included footage of the presenter attending what was portrayed as a single party attended by members of the Aboriginal community in the town of Wilcannia, New South Wales. The sequence showed heavy drinking and drunken behaviour. The episode focuses on extreme drinking among indigenous people in Australia, which is portrayed as rife.

In February 2017, following enquiries from a journalist at ABC in Australia, the BBC became aware that the 'party scene' was in fact a composite of four separate gatherings held on four separate days. The footage was edited together in such a way that it was portrayed as showing heavy drinking and drunken behaviour at a single event. This section of the programme lasted around 5 minutes in total. It included footage from a barbecue held at the home of a member of the Aboriginal community in Wilcannia as well as a wake which took place the day before the barbecue at the same house. The host was a relative of the person who had died. It is not described either in script or actuality as a wake, and the behaviour is portrayed as being for no reason other than through the excessive consumption of alcohol. Of the other two gatherings, one took place before the wake, the other took place after the barbecue. Funerals and wakes are culturally very sensitive to the Aboriginal people. The host of the barbecue and the wake, having seen the programme on broadcast contacted ABC saying the sequence was misleading.

The BBC Executive subsequently met with representatives from Sundog Pictures, agreed the company would submit a report on what had happened, and removed the programme from iPlayer. The BBC Executive indicated, at that point, that it would not be commissioning any new programmes from Sundog Pictures until further notice.

Trustees recognised that the BBC has a high reputation for accuracy and that audiences expected the BBC to take the greatest care to ensure that the highest standards on accuracy are upheld. These are standards that underpin the trust in which the BBC is held.

Trustees considered that the sequence in question was a serious breach of the Editorial Guidelines on Accuracy. However the episode was delivered and broadcast with the BBC unaware that there was a problem.

Trustees considered that, once the BBC was made aware of the problem, they dealt with it swiftly and thoroughly.

Trustees also acknowledged the importance of the independent production sector and the significant and growing role it plays in providing content for the BBC. As such, it is vital that the BBC Executive and the independent sector both do all they can to ensure adherence to editorial standards for independent commissions.

Finding in Full

The sequence

The top of the sequence in question showed the presenter arriving at a party at the host's house. This was shot on Saturday 23rd July 2016.

Presenter: So is this every Saturday then [NAME]? Is this every Saturday?

Host (subtitled): This is anytime, anytime.

The scene showed more drinking at the party (shot on Saturday 23 July) and then there's a line of voiceover, and darker music.

Voiceover: As more alcohol is consumed, the mood begins to shift.

The footage shown at this point was filmed at the wake, which took place the evening before on Friday 22nd July. Also included were shots from a third gathering, a week earlier, and a fourth gathering held several days later. No mention was made that the sequence is composed of footage from different occasions, one of which is an emotionally charged wake.

Children were then shown walking through a very large pile of cans, there are drunken people and children looking confused. An old man says to camera "get fucked!" and then says, "Come to Wilcannia and you'll see all the beautiful people". This was footage from the filming at a party the week before.

The next sequence shows the host inside his house (shot on Friday 22 July) demonstrating to the presenter how he blows the yolk out of Emu eggs and then paints them. The presenter observes '[the host] has been drinking heavily for hours'. Children are shown crowding round as the host pulls out an almost fully developed emu chick from the egg. The host says he will 'kill it'. Children are then shown lying asleep on the floor as the party continues.

The sequence ends with the presenter saying in voiceover: 'The people of Wilcannia are trying to hang onto their traditions, but sometimes they're hard to keep sight of, through a haze of alcohol'.

Executive report

The Executive, in its report to the BBC Trust, made the following points:

The programme was made by Sundog Pictures. Two team members from Sundog Pictures were Executive Producers on the series, with one of the Executive Producers taking the lead on this programme. The presenter was also an associate producer on the series.

The team on the ground in Wilcannia was comprised of a producer/director, a producer, a local hire fixer, and the presenter/associate producer. The producer/director suffered an injury during the filming period and was unable to continue filming. Therefore two temporary cameramen were hired from Sydney. The producer/director subsequently left the production on his return to the UK.

During the edit there was no-one present who had been on the shoot. The presenter/associate producer viewed one full cut when he came in to record his voice over, but footage may have been spooled through quickly in those circumstances. He also viewed a rough cut sent to him unofficially by the editor. He did not view two fine cut versions he was sent. He has said that he did not notice that footage from separate occasions had been edited together nor that the wake was not identified as such.

The Executive Producer, the lead executive producer on this episode, had not been present on the shoot and was also not available to supervise the early stages of the edit.

The Sundog team has told the Executive that the absence of anyone at the edit who had been present on the shoot contributed to the gatherings being linked together as one occasion.

Although he had left the project, the producer/director on the shoot was sent a cut to view in order to give feedback. He subsequently emailed the two Executive Producers at Sundog pointing out that the cut as it stood was misleading because of the editing together of separate sequences. He highlighted the 'extremely sensitive nature of the subjects the programme deals with'. The email was received before the programme had its online edit and before it was delivered to the BBC. It was not discussed with anyone at the BBC or with the presenter.

The two Executive Producers discussed the producer/director's comments over email. The lead Executive Producer asked the other Executive Producer for advice saying "I didn't realise that was a different day". The other Executive Producer asked if they could 'write our way round the running order with [NAME] and be more accurate?'

The lead Executive Producer subsequently changed the script lines:

"Tonight, I've been invited to a party at [NAME'S] house" became: "I've been invited to a party at [NAME'S] house"

"As the day draws on and more alcohol is consumed the mood begins to shift" became: "As more alcohol is consumed, the mood begins to shift."

Sundog, in their report, said that: "The sensitivities surrounding some of the footage having been filmed at a wake, and the fact that the cut made no reference to this, were unfortunately not realised at the time".

The programme edit was completed later that day.

No concerns about this "composite" sequence were raised with anyone at the BBC and the programme was delivered and broadcast in January 2017.

Questions were raised by ABC the following month.

The BBC Commissioner subsequently spoke to the lead Executive Producer at Sundog, questioning him about the sequence. Senior BBC executives were informed of the serious breach including the Director of Content, Controller BBC Three and Director of Editorial Policy and Standards.

Senior executives met with Sundog about the incident and the rushes (unedited footage) from the shoot were handed to the BBC. The Executive has reported that it took the following actions:

- Sundog was asked to find out if there are any other issues in any programme they have made for the BBC, and Sundog offered to put together a report on what happened and send it to the BBC. This was subsequently submitted and confirmed as the definitive version of how the breach had happened
- Sundog was also informed that all current productions would be reviewed to ensure compliance with the BBC's Editorial Guidelines and that all processes were robust.
- The production company was required to fund an experienced person to review rushes and processes for the second part of the series and another Sundog programme that had been delivered to the BBC but had not, at that stage, been broadcast.
- Sundog was also asked to provide a written confirmation that all of its other programmes previously broadcast by the BBC met its compliance obligations in full.
- Sundog was told that on the basis of the information given in its report the BBC would not commission any new programmes from Sundog until satisfactory completion of the above identified remedial steps and compliance assurances and until further notice. Sundog was told that a report based on the information they had given would be sent to the BBC Trust. A decision would be taken subsequently about whether further action was required based on that report and the outcome of the other measures.

The story broke on ABC on 7 March 2017. The BBC issued a statement in which it apologised for the incident.

Editorial Guidelines

The relevant Editorial Guidelines were those on Accuracy (the individual guidelines of particular relevance are listed at the foot of this document).

Trustees' finding in full

Trustees were deeply troubled by this incident, which they considered showed a grave lack of judgement by those concerned with production of the programme and a lack of care in ensuring rigour and continuity of editorial oversight within Sundog.

Trustees noted that no-one who was on the shoot was present during the editing of the programme. The lead Executive Producer was not available during the early stages of the editing. The presenter/associate producer viewed only a rough cut of the edit and did not view two fine cut versions, despite the fact that they were sent to him and that as an associate producer he carried some editorial responsibility for the programme.

Trustees also noted that when concerns were raised by the former producer/director about the misleading edit they were not dealt with appropriately. The BBC was not made aware of these concerns. The script was adjusted but it did not resolve the problem – that is, that the sequence in question was edited so it appeared to be a single event although in fact it was comprised of four separate events. Nor did the commentary make it clear that a wake had been filmed.

Trustees noted that the BBC only became aware of the problem with the sequence once ABC contacted them. Once the BBC was alerted to what had happened, they swiftly investigated the matter and took appropriate action. They also brought the matter to Trustees' attention.

Trustees' conclusions

Trustees recognised that the BBC has a high reputation for accuracy and that audiences expect the BBC to take the greatest care to ensure that the highest standards of accuracy are upheld. These are standards that underpin the trust in which the BBC is held.

Trustees agreed that the sequence in question breached Editorial Guidelines on Accuracy. The sequence 'knowingly and materially' misled the audience about the 'reality of the narrative or events.' The Editorial Guidelines specifically state that news and factual content should not "inter-cut shots and sequences to suggest they were happening at the same time, if the resulting juxtaposition of material leads to a misleading impression of events". Further, "commentary and editing must never be used to give the audience a materially misleading impression of events...". These guidelines had been breached in this instance.

Trustees also considered that the breach was exacerbated by the fact that concerns about the sequence were brought to the attention of senior staff at Sundog who, in response, contributed to the misleading nature of the sequence rather than resolving it. Further, the BBC was not informed about the matter and the episode was delivered and broadcast with the BBC unaware that there was a problem.

Trustees considered that once the BBC was made aware of what had happened they dealt with it swiftly and thoroughly. The BBC's actions sent a clear signal to independent production companies – and to content makers within the BBC – that this had been a

serious and unacceptable failure of BBC standards with significant consequences.

Finally, Trustees acknowledged the importance of the independent production sector and the substantial and growing role it plays in providing content for the BBC. Independent production companies regularly produce programmes for the BBC of a very high quality. As such, it is regrettable that this incident took place and it is therefore vital that the BBC Executive and the independent sector both do all they can to ensure adherence to editorial standards for independent commissions.

Trustees considered this was a serious breach of the Editorial Guidelines on Accuracy

Editorial Guidelines of particular relevance:

Accuracy

3.4.11

We must not knowingly and materially mislead our audiences with our content. We may need to clarify the nature of some content by labelling (for example, verbally, in text or with visual or audio cues) to avoid being misleading.

3.4.16

There are very few recorded programmes that do not involve some intervention from the production team, but there are acceptable and unacceptable production techniques. Consideration should be given to the intention and effect of any intervention. It is normally acceptable to use techniques that augment content in a simple and straightforward way, for example by improving clarity and flow or making content more engaging. This may include craft skills such as some cutaway shots, set-up shots to establish interviewees and asking contributors to repeat insignificant actions or perform an everyday activity. It is usually unacceptable to use production techniques that materially mislead the audience about the reality of the narrative or events. For news and factual content, unless clearly signalled to the audience or using reconstructions, we should not normally:

- stage or re-stage action or events which are significant to the development of the action or narrative
- inter-cut shots and sequences to suggest they were happening at the same time, if the resulting juxtaposition of material leads to a misleading impression of events.

Commentary and editing must never be used to give the audience a materially misleading impression of events or a contribution.

Statement by the Editorial Standards Committee: 31 March 2017

Statement and clarification: Taking the Credit (a documentary programme produced by Rockhopper Productions Ltd.)

Taking the Credit was a documentary made by Rockhopper TV about a carbon trading project. It was broadcast by BBC World News in 2009. Envirotrade was a company involved in the project. A charity called the Africa Carbon Livelihoods Trust (“ACLT”) funded the documentary. At the relevant time, the Chief Executive Officer (“CEO”) of Envirotrade was also the Managing Director (“MD”) of ACLT.

In 2011 the ESC found that—

- the programme was a sponsored current affairs programme, and
- the funding for the programme created a conflict of interest, which risked damaging the BBC’s reputation,

but the programme’s editorial impartiality and integrity had not in fact been compromised.

In November 2016, submissions and new information were provided to the Trust by Rockhopper TV who complained about (among other matters) the statement in the 2011 finding that—

“Global News’s investigation into the programme drew the following conclusions:

the allegation that [Taking the Credit] had been financed in full or in part by Envirotrade via the ACLT was true, since there was a link between the documentary’s funder (ACLT) and the organisation featured in the programme (Envirotrade).”

The ESC considered the submissions and new information at its meeting on 5 January 2017. The complainant’s evidence persuaded Trustees that—

- ACLT raised funds from individuals and organisations as well as from its own commercial activities and was never funded solely or exclusively by Envirotrade; and
- funding for Taking the Credit was provided to Rockhopper by ACLT, and such funding could not be attributed directly to Envirotrade.

Accordingly, Trustees concluded that, on the balance of probabilities, ACLT had had several funding sources, and while that had likely included funds from Envirotrade, no ACLT funding for the documentary could be shown to have been directly referable to funds received by ACLT from Envirotrade.

Even accepting that, however, Trustees did not consider it necessary to change the substantive conclusions of the 2011 finding. They considered that the following were key passages in the 2011 finding—

“While this programme should not have been sponsored, the Committee went on to consider whether the sponsorship would otherwise have been in accordance with the [Sponsorship Guidelines and Editorial Guidelines]...The Committee judged the programme’s content to have been sufficiently close to the funder’s activities to be problematic. The ESC was of the view that it was highly unlikely that the programme would have been made if the funding from the ACLT had not existed...Envirotrade is represented as a stakeholder on [sic] ACLT due to its status as an investor in the Mozambique project. The Committee was of the view that there was an inextricable link between the funder organisation and the project featured in the programme. Even though the BBC was unaware of the link between the funder and the subject of the programme, the Committee concluded that it appeared that for a contribution the company, which was closely linked to Envirotrade, had been able to promote its activities...”

Trustees considered that “the company” in the final sentence of the extract above must mean ACLT, and that it might have been clearer had the finding referred specifically to ACLT or to “the charity” instead. In addition, it was not clear whether, in the last line, “its activities” was a reference to ACLT’s activities or those of Envirotrade. Nevertheless, while the finding might have been expressed more clearly, it seemed to Trustees that in 2011, the ESC had concluded that ACLT’s funding of the programme enabled it to promote its own activities or those of Envirotrade (or both) or any other direct or indirect interest of ACLT, which satisfied the applicable definition of sponsorship. Further, in 2011 the ESC appeared to have concluded that there was a conflict of interest involved in the funding arrangements for the documentary for the same reason, and/ or because its MD was the CEO of Envirotrade, and/ or because the interests of ACLT and Envirotrade were aligned.

Trustees regretted the lack of clarity in the finding and the concern it had caused to the complainant. Nevertheless, they were satisfied that it remained reasonable to conclude that the programme had been sponsored, and that the funding arrangements in place also raised a conflict of interest.

Request to review and revise an ESC finding reached in 2011 on the grounds that it contained a factual inaccuracy: Taking the Credit

Introduction

1. Taking the Credit was a documentary broadcast on BBC World News on 23 October 2009. The programme followed the Sunday Times Environment Correspondent as he explored the issue of carbon trading and centred on a specific project involving Envirotrade, a carbon credits business founded by a British entrepreneur. Taking the Credit was acquired by BBC World News (a BBC commercial service) at low or nominal cost⁸ from Rockhopper TV, an independent production company specialising in making documentaries on development, health and the environment.
2. In February 2010, a freelance journalist contacted the BBC and made allegations that:
 - a) the programme had been financed by Envirotrade via the Africa Carbon Livelihoods Trust (ACLT), a non-governmental organisation;
 - b) the Chief Executive Officer (CEO) of Envirotrade was also the Managing Director (MD) of the ACLT, establishing a link between the funder and the organisation featured in the programme; and
 - c) the programme was uncritical of Envirotrade and its activities in Africa.
3. BBC World News investigated the allegations and the BBC Executive reported the programme to the Trust's Editorial Standards Committee ("ESC") as involving a serious breach of the BBC's Editorial Guidelines. As a result, the ESC requested that the Executive carry out an audit of BBC World News sponsored or funded documentary or feature programmes broadcast, commissioned or in production between 28 February 2011 and 7 August 2011 which had been acquired at low or nominal cost.
4. Further allegations were published in The Independent newspaper on 17 August 2011. These concerned programmes made by FBC (FactBased Communications) Media (UK) Ltd and broadcast on BBC World News. The newspaper alleged that the company had links with the Malaysian Government and had been paid to conduct a "Global Strategic Communications Campaign" on its behalf. FBC Media (UK) Ltd had produced 20 programmes for BBC World News, eight of which contained sections about Malaysia, the Malaysian Government's policies or Malaysian industries (especially its palm oil industry). In light of these allegations, BBC World News suspended programming made by FBC Media (UK) Ltd and launched a further investigation.

⁸ This arrangement was typical of the funding agreements made by the service at the time.

5. In November 2011, the ESC published its finding on Taking the Credit, and on six programmes out of 39 covered by the audit, and eight programmes out of 20 supplied by FBC, which raised potential issues.⁹
6. As regards Taking the Credit, the ESC's finding concluded that:
 - a) the funding of the programme amounted to sponsorship and therefore the Sponsorship Guidelines applied¹⁰. As the programme was a current affairs programme, it should not have been externally funded and therefore was in breach of the Sponsorship Guidelines for BBC commercial services with respect to 'Content which may not be sponsored';
 - b) even if sponsorship had been permitted, the ESC judged the programme's content to have been sufficiently close to the funder's activities to be problematic and was of the view that it was highly unlikely that the programme would have been made if the external funding from the ACLT had not existed;¹¹
 - c) further, the ESC was of the view that there was an inextricable link between the funder organisation and the project featured in the programme and concluded that "it appeared that, for a contribution, the company, which was closely linked to Envirotrade, had been able to promote its activities."¹² This would further breach the Sponsorship Guidelines with respect to 'Content of sponsored programmes'. Moreover, as the programme's content was sufficiently close to the funder's activities to be problematic, it gave rise to a suggestion of a conflict of interest (whether or not one actually existed) in breach of the Editorial Guidelines;
 - d) there was no suggestion that the ACLT had been aware of the relevant regulation or BBC Guidelines when providing the sponsorship or that the ACLT, Envirotrade or any personnel connected to them had acted improperly; and
 - e) editorial impartiality and integrity in respect of the programme had not in fact been compromised.

The ESC further noted that Rockhopper TV had:

⁹ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/world_news.pdf

¹⁰ The programme was judged against the Guidelines for Sponsorship and Advertising on BBC International Television Channels (April 2007; updated April 2008) which were the Guidelines applicable at the time.

¹¹ In this regard, the independent production company states that if they had realised there was a conflict of interest, they would have developed the film at the company's own expense

¹² The meaning and effect of this phraseology is discussed below.

- actively assisted BBC Global News in coming to a resolution and had engaged fully with the process before the ESC;
- provided full training to its staff regarding safeguarding trust to ensure full compliance with BBC procedures going forward; and
- resumed its status as a supplier of independently produced programmes to BBC World News in April 2010.

Subsequent correspondence

7. On 17 August 2015 Ofcom found that a number of programmes broadcast by a range of broadcasters had breached its prohibition on the sponsorship of current affairs programmes, including Taking the Credit.¹³ Ofcom's decision, however, did not specify who had funded Taking the Credit, referring only to funding by "a third party", which they decided was sufficient basis for a finding that the programme had been sponsored.
8. Following Ofcom's decision, a director of Rockhopper TV complained to the Trust that (amongst other things) the ESC's finding contained false allegations regarding the role of Envirotrade in funding the programme. The complainant sought the removal of those allegations by the ESC in its finding¹⁴.

Consideration by the Trust Unit and Trustees

9. The Trust Unit reminded the complainant that the issue complained of was considered in 2011 with detailed input from Rockhopper TV and its lawyers prior to publication of the ESC's finding (including confirmation from Rockhopper TV and its lawyers that they believed the BBC World News report to now be factually accurate). The Trust Unit further informed the complainant that if relevant new evidence was presented, Trustees would be invited to consider it and decide whether there were grounds to revisit the 2011 finding. Substantial further correspondence between Rockhopper TV and the Trust Unit continued in respect of the same issue, including amongst other things, a freedom of information request being made of the BBC by Rockhopper TV.
10. On 9 November 2016, the complainant made a further submission to the Trust. In summary, the complainant set out four points that had been included in a letter from the Trust Unit to the complainant on 5 November 2015 and that he alleged were false:

¹³ See *Ofcom Broadcast Bulletin*, issue 285, 17 August 2015, at page 30:

https://www.ofcom.org.uk/_data/assets/pdf_file/0021/50079/issue_285.pdf

¹⁴ The complainant also expressed concern that in the published finding, Taking the Credit appeared first, ahead of the ESC's views on other programmes that were also in breach, and thereby gave undue prominence to Taking the Credit when (in the complainant's view) greater criticism should have attached to BBC World and to other programmes that he said contained more serious breaches. Trustees regretted if this was the impression given. It had not been the Trust's intention to highlight Taking the Credit, which appeared first in the Bulletin simply because it was the first to have been adjudicated upon by the ESC.

- i. ACLT ran projects to plant and protect trees in order to generate "carbon credits" that Envirotrade could then sell;
- ii. The Committee was of the view that there was an inextricable link between the funder organisation and the project featured in the programme;
- iii. The Committee concluded that it appeared for a contribution the company, which was closely linked to Envirotrade, had been able to promote its activities; and
- iv. The ESC noted the conclusion of the Global News report that "the allegations that the documentary had been financed in full or in part by Envirotrade via ACLT was true, since there was a link between the documentary funder (ACLT) and the organisation featured in the programme (Envirotrade)".

The submission also included the following additional information: —

- a) e-mails from a professor at Edinburgh University about the management of the project featured in the programme, specifically confirming that "ACLT did not run the project";
- b) a 2010 Project Design Document about the project (without the annexes); and
- c) a letter dated 13 August 2015 from ACLT.

11. Trustees considered the submission and additional information at its meeting on 5 January 2017.

Trustees' conclusion as to statements in correspondence that the project featured in the programme was managed by ACLT (paragraph 10 (i) above)

- 12. Trustees noted that in the Trust Unit's letters to the complainant in August and November 2015 the Trust Unit had stated that the project was managed by ACLT.¹⁵ However, this statement did not feature in the 2011 finding itself.
- 13. Trustees concluded that the statements in the 2015 letters were inadvertent errors made by the Trust Unit when they summarised the history of the matter to the complainant, four years after the finding was first published. Accordingly, the Trustees instructed the Trust Unit to write to the complainant and the relevant professor who confirmed that the ACLT did not run the project to acknowledge that this was an error in their letters and to apologise.

¹⁵ These statements came into the public domain when the Information Commissioner published a Decision Notice in September 2016 concerning a freedom of information request made to the BBC by the complainant. See <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625107/fs50632593.pdf>

14. The Trustees further concluded that, as the erroneous statement did not feature in the 2011 finding, the error in the letters did not call for changes in the finding itself.

Trustee consideration of the complaint that the documentary was not funded by Envirotrade (paragraphs 10 (ii) to (iv) above)

15. Trustees then turned to consider the complaint that, contrary to what was stated in the finding, the documentary was not funded by Envirotrade.

16. The finding included a summary of a report by Global News, which stated—

"Global News's investigation into the programme drew the following conclusions:

- the allegation that the documentary had been financed in full or in part by Envirotrade via the ACLT was true, since there was a link between the documentary's funder (ACLT) and the organisation featured in the programme (Envirotrade)...
- although editorial impartiality and integrity were not, in fact, compromised and BBC World News maintained editorial control over its output, there was a conflict of interest which risked bringing the reputation of the BBC into disrepute due to links between the funder and the company featured in the programme, which were unknown to the BBC commissioner. This meant that the funding was contrary to the BBC Guidelines and inappropriate..."

The ESC's own conclusions in the original 2011 finding are summarised in paragraph 6 above.

17. Trustees noted from the correspondence between the Trust Unit and the complainant that there was a conflict of evidence over what the shared CEO/MD (of Envirotrade/ACLT respectively) had said to the BBC about ACLT's funding during a particular meeting with BBC World News employees. The BBC maintained that the individual in question had made it clear to the BBC in the meeting that Envirotrade had been the sole or principal source of funds for ACLT. Rockhopper TV said that no such statement was ever made; nor was it true.

18. The complainant's e-mail of 9 November 2016, however, included a letter from the Manager of ACLT dated 13 August 2015, who stated—

"... since its inception, the African Carbon Livelihoods Trust has raised funds from individuals and organisations as well as from its own commercial activities. It has never been funded solely or exclusively by Envirotrade.
Second, the funding for the documentary "Taking the Credit" was provided to Rockhopper by ACLT, and not by Envirotrade. Envirotrade was not the source of funding for this contribution."

19. The Trustees decided that they would consider this letter from the ACLT and its impact on the 2011 finding. In doing so, they bore in mind that the ESC had been differently constituted when it took its decision on Taking the Credit, and that they

could not be certain what reasoning lay behind the then committee's decision, beyond what was set out in the 2011 finding.

20. Taking this letter from the ACLT to Rockhopper TV into account, the Trustees concluded that on the balance of probabilities, ACLT had had several funding sources. While it seemed it had not been funded solely or exclusively by Envirotrade, the letter did not say that Envirotrade provided no funding, and it could be inferred that Envirotrade, amongst others, had provided some funding to ACLT. Further, the Trustees concluded that the ACLT's funding for the documentary could not be shown to have been directly referable to funds received by ACLT from Envirotrade.

21. Trustees therefore considered whether, on the basis of the ACLT's letter, they should review the 2011 finding.

22. They noted that the rules prohibiting sponsorship of current affairs programmes against which the programme (broadcast in 2009) then stood to be judged stated—

“A sponsored programme, which includes an advertiser-funded programme, is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another's name, trademark, image, activities, services, products or any other direct or indirect interest.”¹⁶

23. Trustees considered that, although only the summary of the finding records that the documentary “had been financed in full or in part by Envirotrade”¹⁷, the following were key passages in the body of the 2011 finding—

“While this programme should not have been sponsored, the Committee went on to consider whether the sponsorship would otherwise have been in accordance with the [Sponsorship Guidelines and Editorial Guidelines]...The Committee judged the programme's content to have been sufficiently close to the funder's activities to be problematic. The ESC was of the view that it was highly unlikely that the programme would have been made if the funding from the ACLT had not existed...Envirotrade is represented as a stakeholder on [sic] ACLT due to its status as an investor in the Mozambique project. The Committee was of the view that there was an inextricable link between the funder organisation and the project featured in the programme. Even though the BBC was unaware of the link between the funder and the subject of the programme, the Committee concluded that it appeared that for a contribution the company, which was closely linked to Envirotrade, had been able to promote its activities...”

24. Trustees considered that “the company” in the final sentence of the extract above must mean ACLT, and that it might have been clearer had the finding referred specifically to ACLT or to “the charity” instead. In addition, it was not clear whether, in the last line, “its activities” was a reference to ACLT's activities or those of Envirotrade. This lack of clarity in the drafting of the original finding presented a difficulty for the current Trustees given that they were not the same Trustees who reached the original finding.

¹⁶ See Ofcom's 2008 Broadcast Code.

¹⁷ See page 2 and foot of page 9.

25. Nevertheless, while the finding might have been expressed more clearly, it seemed to Trustees that in 2011, the ESC had concluded that ACLT's funding of the programme enabled it to promote its own activities or those of Envirotrade (or both) or any other direct or indirect interest of ACLT, which satisfied the applicable definition of sponsorship. They considered this a reasonable conclusion, because its MD was the CEO of Envirotrade and/ or because its interests and those of Envirotrade coincided. Further, in 2011 the ESC appeared to have concluded that there was a conflict of interest involved in the funding arrangements for the documentary for the same reason, and/ or because its MD was the CEO of Envirotrade, and/ or because the interests of ACLT and Envirotrade were aligned.
26. Thus, even accepting that it could not be shown that the funding provided by ACLT for the programme had been directly referable to funds received by ACLT from Envirotrade, Trustees did not consider it necessary to revise the 2011 findings since they were satisfied that it remained reasonable to conclude that the programme had been sponsored (as Ofcom also found), and that the funding arrangements also raised an actual or apparent conflict of interest. Further, and in any event, it would not be appropriate, proportionate or cost effective to revisit the finding more fully because—
- a) at this distance in time it would be very difficult to establish the disputed facts, since the memories of key individuals who were involved in the process in 2011 are likely to have faded, some files and drafts of documents from the time may no longer be available and information which may have been available online at the time concerning the different organisations is no longer easy to find (amongst other issues); and
 - b) as to the substance, for the reasons given above, it is very likely that the ESC would reach the same conclusion as to the actual breaches of Guidelines that had occurred, as had been reached in 2011.
27. However, the Trustees also decided that they would publish an accompanying statement and clarification to the 2011 finding to reflect Rockhopper TV's further submissions on the funding issue including the information provided in ACLT's letter.

Admissibility decisions by the Head of Editorial Standards, Trust Unit

The Director, BBC Trust or the Head of Editorial Standards, Trust Unit may decide whether any editorial appeal qualifies for substantive consideration by the Trustees from 1 January 2017 and their decision is final.

BBC Two Newsnight transmitted 11 January 2017

The complaint concerned an item on BBC Two's Newsnight about the future funding of the National Health Service. The programme broadcast a filmed report about the so-called winter crisis, which included a statement from the Chief Executive of NHS England requesting more money. This was followed by a studio discussion with Dr Dan Poulter (the former Health Minister); Dr Clare Gerada (the former Chair of the Royal College of General Practitioners); and Ali Parsa (the businessman and the CEO of Babylon Healthcare – a digital healthcare company). The presenter of Newsnight opened the discussion with the question "Does it all come down to money?" the two relevant sections were as follows: (Emily Maitlis (EM), Ali Parsa (AP), Dr Clare Gerada (CG) and Dr Dan Poulter (DP))

EM So, does it, Ali, do you think it all comes down to money? Is it really that obvious?

AP I don't know whether it comes all to money or not. What I do know that certainly money is not the only solution. We have to deploy better technology. We have to see people better. Emily, this holiday one of my children got sick over the weekend. I had the option, my GP was not available, I had the option of taking that child to emergency, dragging it on a bus or whatever, adding to the over crowdedness, spending hours, putting a burden on doctors so on and so forth or I picked up my phone and made an appointment in seconds. I saw a doctor, waiting minutes. My prescription was sent to a GP.

EM When you say you picked up your phone. What are you talking about? A private clinic?

AP I just used an app, which is the app that we have, Babylon, as you referred to it and made all of that went away within a matter of an hour.

EM But you pay for it?

AP I pay five pounds a month subscription fee, which is a fraction of the price that it costs...

CG That is about the same we get per annum for general practice for an entire care.

EM Would you be happy if your government was the one that started pushing people gently towards this as an alternative to A&E? Say this is the way to relieve...?

DP Well, clearly there is no doubt that investing in technology is a very important part of improving the delivery of care and helping people.

EM But it's not just the app, it's the extra payments. If people say that's going to be the way we have to solve this.

DP I believe in a health service free at the point of need, and free at the point of care. I don't believe in co-payments, I believe that the health service should be funded from general taxation.

EM ...if you lose even the sort of the idea of the service, it is something you regret, you never get back. Do you think that, in a sense, that is inhibiting the NHS trying new or radical ideas, because there is so much iconography, if you like, about the NHS, it doesn't dare disturb itself too much?

AP I mean, I think in that respect you are right. Look, we provide the same service in Rwanda. And in Rwanda in fifteen weeks since we launched we signed two and a half per cent of the population of Rwanda, two hundred and fifty thousand people. We deliver seventy thousand consultations over the phone to the people of one of the poorest more economically challenged countries in the world. They have more access to those people almost than I sometimes feel I have. This is not, and we have to be careful about this, this is not whether this should be private or public...In Essex we have the same arrangement with the NHS, where we do this for the National Health Service.

EM But what are the other solutions that you're looking at, because if you see yourself as a pioneer in this, it's not just about an app on your phone. Where else are the solutions?

AP You look at almost everything, Emily. Ten years ago, it would've cost me a million...pounds to do a top to toe diagnostics on you. Today I can do that for ten thousand pounds. A ninety nine per cent reduction in the cost of diagnostics and I can throw in your genome sequencing. What is happening with healthcare, what is happening with technology and its effect on healthcare is significant - we need to embrace it as well as keep our old system.

The complainant made the following points:

- Ali Parsa, the CEO of a digital healthcare company, was allowed to promote his healthcare app.
- He was not "challenged...by anyone and was allowed basically to advertise his business" (what the complaint referred to as "free advertising for his product")

- A seller of private healthcare services should not have been involved in the discussion about the funding of the NHS.

Audience Services responded and made the following points:

- It was appropriate to invite Mr Parsa into the studio discussion since he is already working with some NHS GPs.
- Mr Parsa briefly referenced his own business having been asked by the presenter about his personal experiences on the role technology can play providing healthcare when there are limited resources.
- Mr Parsa was able to provide insight into alternative approaches.
- Simply briefly referring to a brand name or product/service does not constitute advertising or product placement and the BBC does not receive money from manufacturers to promote their products on-screen.

The complainant was unhappy with the above response. He believed that to present Mr Parsa as “some kind of neutral expert was completely misleading” as he is a businessman and the programme allowed him to promote his services. The BBC Executive responded saying, in summary:

- Who programmes decide to interview is an area of legitimate editorial judgement.
- BBC output must reflect the real world and therefore will involve references to commercial products and services.
- However, the BBC must ensure that there is no impression of endorsements of products and services and on this occasion this did not occur.
- The item would not have been misleading since viewers would have been in no doubt about his commercial interests
- It would have been better and more interesting to viewers had Mr Parsa limited his contribution more strictly to the matter at hand, nevertheless viewers would have understood that he was not giving a neutral appraisal of the benefits of technology.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He stated that Mr Parsa did much more than “refer” to his product or service in the programme, but “sang the praises” of it while telling a story about how he used it on his own two children. The complainant also stated that he disagreed with the BBC Executive and believed that the programme would be seen as an endorsement because he was allowed to “plug” his product.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Standards 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 standards set out in the BBC Editorial Guidelines and, in particular, in this case on ‘Editorial Integrity and Independence from External Interests’. This says, among other things:

...we must avoid any undue prominence which gives the impression that we are promoting or endorsing products, organisations or services.

The programme's discussion focussed on the future funding of the NHS but also looked at alternative ways of delivering services using, for example, new technology. It was on this point that Mr Parsa was invited to contribute to the programme. Who a programme decides to interview is a matter of editorial judgement and not one that concerns the Editorial Guidelines.

It is the view of the Head of Standards that the audience would have been fully aware that Mr Parsa was not an independent voice of the use of technology in the NHS. He was introduced, by the presenter, as the "founder of digital healthcare provider, Babylon" (with an accompanying caption which stated he was the CEO). Further the fact that he spoke about his own app, as a businessman, and spoke about its use abroad as well as in the UK made it abundantly clear to viewers that Ali Parsa was not independent. The audience would not have believed that he was "part of the NHS" or a "neutral expert".

At no stage in the discussion was there any third party endorsement of Mr Parsa or his products. In particular, the BBC and the programme made no such endorsement or could have left viewers with such an impression. Mr Parsa was challenged on the cost of his product and whether such payments were appropriate. The presenter pointed out his app had to be paid for by monthly subscription. Dr Gerada also interjected with the fact that the cost of his app per month was the same as GPs received per year "per care". Dr Poulter also put the payment for technology in context, by stating that he did not believe in co-payments and considered it should be paid through general taxation and free at the point of use. The discussion also appropriately developed into a discussion on the use of technology and innovation in the NHS in general. Taking the above into account, it is the view of the Head of Standards that the audience would have understood that Dr Gerada and Dr Poulter were experts in terms of the medical background and the politics of the NHS while Mr Parsa was a businessman.

The Head of Standards also noted that, in comparison with the other two experts, Mr Parsa's contribution was relatively limited and was not the focus of the overall discussion. In fact, it provided a springboard for a wider conversation about technological development in the NHS.

The Head of Standards considered that, when taken as a whole in the context of a discussion about the future funding of the NHS and the potential use of technical developments the Trustees would be likely to be of the view that the references to the app was not unduly prominent.

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

Removal of article on the BBC News website, 2016

The complaint concerned an article which reported the dismissal of a police officer (the complainant) following a misconduct hearing.

The complainant wanted the article removed. He made the following points:

- He asked that the article be removed
- the article had a very negative impact on the complainant's good name and employability.
- He was not guilty

In later correspondence he added that

- his MP had asked the Independent Police Complaints Commission (IPCC) to investigate the case
- the article should be removed from the website or updated to reflect these facts

BBC News website made the following points at stage 1:

- the BBC's policy was to remove material from its archive only in exceptional circumstances. That applied particularly to court and disciplinary hearings, which were both on the public record and in the public interest
- BBC News website provided a link to more information about this policy:

<http://www.bbc.co.uk/editorialguidelines/guidance/removal-online-content/guidance-full>

- the BBC treated panels such as this one as properly constituted bodies and respected their findings
- the fact that, for example, his MP had asked the IPCC to investigate the case did not render the story inaccurate as the verdict of the panel still stood
- it was not the BBC's practice to change pages to say an appeal was happening, but if and when the appeal had reached a finding, it would be happy to add an update or cover the outcome as a separate story.

BBC News made the following points at stage 2:

- BBC News regretted the fact that the continued existence of the website article was causing distress
- however the BBC would not normally remove or alter online content as it considered that in doing so it would effectively be erasing the past and re-writing history
- in turn this might cause severe damage to the BBC's reputation for integrity.

Appeal

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

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards decided that the complainant's appeal did not have a reasonable prospect of success.

She noted the BBC's Editorial Guidelines on Accuracy which, in relation to the removal of online content stated that:

Unless content is specifically made available only for a limited time period, there is a presumption that material published online will become part of a permanently accessible archive and will not normally be removed.

For news stories, the archive is intended to act as a permanent public record.

She noted that the BBC had explained to the complainant why it was not able to remove the online article and had provided a link to the BBC's Editorial Guidance on the Removal of BBC Online Content. This guidance also explained that:

The archive of the BBC's online content is a matter of public record and its existence is in the public interest.

Removing online content, particularly news items, risks the accusation that we are erasing the past or altering history. The archive should be maintained in as complete a state as possible.

Where information about the complainant is available in public records... we should normally refuse requests to remove.

She noted that the BBC had also explained that to remove the article ran the risk of damaging the BBC's integrity.

The Head of Editorial Standards noted that the complainant felt that the failure to update the article rendered the article as it stood inaccurate. She noted that the BBC had explained that it was not its policy to update web pages to change a story in this way. The story was accurate when written and the panel ruling remained in place. The BBC had explained that the BBC would not update a report because further investigations were being carried out but would consider amendments if any subsequent hearings came to a conclusion.

The Head of Editorial Standards considered that Trustees would conclude therefore that the BBC had acted appropriately in not acceding to the complainant's request to remove or amend it.

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

Decision of BBC Editorial Complaints Unit (ECU) not to uphold a complaint about The Now Show, Radio 4, 3 December 2016, 12.30

The complaint concerned an item on The Now Show when guest comedian Nish Kumar, took a satirical look at the way Britain's pro-Brexit MP's had reacted to the economic projections included in the Chancellor's Autumn Statement 2016. Philip Hammond had highlighted warnings from The Office for Budget Responsibility (OBR) that said the uncertainty surrounding Britain's exit from the European Union meant the UK economy faced a difficult few years. Jacob Rees-Mogg, a Conservative MP on the Treasury committee, was one of the people who dismissed the forecasts. In an interview on BBC's Newsnight on 23 November 2016 he compared the projections of economic experts to mystic predictions saying:

There is a great line from Cicero about there's nothing so absurd that it hasn't been said by some philosopher and I think suspicion of experts goes back into antiquity and it's a very healthy thing to have. Experts, soothsayers, astrologers are all in much the same category.

In The Now Show Nish Kumar picked up on Mr. Rees Mogg's Newsnight interview in the following way:

And Jacob Rees-Mogg was on Newsnight. Now truly he is a fascinating personality. I almost can't believe he's real. The only way Jacob Rees-Mogg makes any sense, is if it turns out he's being played by Sacha Baron Cohen the entire time and his whole career has been one long Borat style prank. Rees-Mogg was on Newsnight blasting the doom mongers he said "There's a great line from Cicero 'there's nothing so absurd that it hasn't been said by some philosopher'" before going on to say "experts, soothsayers, astrologers are all in much the same category." Definitely a strange turn of phrase there, putting experts in the category of soothsayers and astrologers. It does suggest that if Rees-Mogg requires any dental work he visits Russell Grant and that Mystic Meg does his taxes. I am just surprised at this venom. The OBR and IFS are not political organisations they're just reacting to data that's been placed in front of them. .

...I'm surprised, Jacob Rees-Mogg of all people, is so hostile to this fact based analysis, given that he's an admirer of Cicero. I've found two quotes by Cicero that I think are very interesting. "The wise are instructed by reason, average minds by experience, the stupid by necessity and the brute by instinct." And "do not listen to Jacob Rees-Mogg that guy is a total arsehole". Very wise man Cicero, wise and specific. Let's face it he was really playing the long game with that second quote. I imagine at the time people were baffled. Now everyone's like, what Cicero, yeah, legend.

The complainant made the following points:

- This was plain abuse
- It was gratuitous, offensive and an expression of contempt to call a named politician an 'arsehole' on Radio 4 on a Saturday lunchtime.
- There are no circumstances under which it is acceptable for individuals or organisations to abuse other individuals in this way and the fact that the abused

person was a 'public figure' or (in the BBC's own deplorable words) 'fair game' is irrelevant.

- Comedians should explain why they disagree with a politician rather than being cowardly and vile by calling him an 'arsehole' in his absence.
- The BBC's inappropriate behavior has contributed to a poisonous environment where the vile personal abuse of a political opponent is not just acceptable, but it is something to be applauded and laughed at.
- In the week that the murderer of Jo Cox MP was convicted and imprisoned the BBC should have reflected on what it had done to create the environment in which an MP can die on the streets in the UK.
- It was not humorous or ironical
- It was not justified by the fact that the audience laughed
- This was offensive
- The fact that the politician appeared a week later was not material
- The BBC was not entitled morally or legally to abuse someone just because they disagreed with his views

Audience Services made the following points:

- Nish Kumar's stint on the show was taking a light-hearted look at the comments made by some politicians about experts.
- The joke may not have been to everyone's taste but there was no intention to offend.
- Jacob Rees-Mogg appeared on Have I Got News For You the following week on BBC One and more than proved he had a sense of humour and dry, satirical wit.
- BBC Radio does not operate a watershed policy in the same way as television and research shows that the number of children or young people listening to Radio 2, 3 or 4 is so minimal as to hardly register.
- This is a difficult area of judgement informed by the BBC's experience of public reaction to its output and its understanding of the kind of audiences drawn to particular programmes.

The Executive Editor of BBC Radio Comedy made the following comments at Stage 1B of the complaint's process:

- This was not about calling random people 'arsehole' indiscriminately. This was a satirical piece about Jacob Rees-Mogg and his claim that 'experts' were in the same category as 'soothsayers and astrologers'. Nish Kumar felt this was a preposterous statement from an MP and picked up on Rees-Mogg rather pretentiously quoting the Roman philosopher and politician Cicero on Newsnight to support his argument.
- Nish Kumar provided a genuine quote from Cicero in return, countering Rees-Mogg's argument and ended with a comic undercut in the form of the made-up quote from Cicero saying, "the guy is a total arsehole".
- This concluded a sophisticated argument by using anachronistic modern terminology, which also satirised Rees-Mogg for his pretension. Rees-Mogg is fair game in this context as a public figure he often plays up to the image of being old-fashioned and more comfortable with classical allusions than modern ones.

The Editorial Complaints Unit (ECU) at Stage 2 of the BBC's complaints process made the following points:

- The editorial guidelines recognise that creative risk-taking is a vital part of the BBC's mission and as such it has a right to broadcast innovative and challenging material that risks offending some of the audience provided this falls within generally accepted standards and has a clear editorial purpose.
- The reference fell within the programme's remit for satirical comment and matched Google's definition of satire: "the use of humour, irony, exaggeration, or ridicule to expose and criticise people's stupidity or vices, particularly in the context of contemporary politics and other topical issues."
- The BBC's adult comedy output cannot be constrained by a commitment never to offend and the use of the word 'arsehole' was editorially justified. The word itself is in fairly common usage and doesn't register among the most offensive language in any of the research that the BBC relies on to keep abreast of generally accepted standards. The use of the word, or the context in which it was used, would not have exceeded the expectations of the programme's regular audience.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. This was abuse. He asked: Do you think that we should live in a society where it is acceptable to shout 'arsehole' at each other as we go about our lawful business? He also alleged that the BBC had claimed this right by the way it had responded to his complaint.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust decided that the complainant's appeal did not have a reasonable prospect of success.

The Head of Editorial Standards noted that BBC output was required to meet the Editorial Guidelines for Harm and Offence, which say:

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.

The Head of Editorial Standards also noted that the guidelines on radio scheduling were applicable in this case, they say:

5.4.12

Radio does not have a watershed. Our scheduling decisions should be based on the audience expectations of each radio service and informed by our knowledge of when children are particularly likely to be in our audience. We must take extra care when different generations may be listening together. This typically applies during the morning and afternoon school runs or during school holidays. Unexpected or challenging material should be clearly signposted to avoid causing unjustifiable offence.

The Head of Editorial Standards noted that in this episode of The Now Show, Steve Punt, Hugh Dennis and guests, presented the news of the week, about Donald Trump, Ed Balls, the current state of Brexit negotiations and UKIP's new leader via satirical comments, topical stand-up and comedy sketches. The programme was first broadcast at 18.30 on 2 December 2016 in Radio 4's Friday Night Comedy slot. It was repeated on Saturday 3 December at 12.30pm. She also noted that The Now Show launched in 1998 and is still running 50 series later.

The Head of Editorial Standards noted that the word 'arsehole' had been used to ridicule Jacob Rees-Mogg's use of a Cicero quote in a Newsnight interview and that the word was itself delivered in the form of a 'quote' from Cicero – made up by comedian Nish Kumar and read out in the programme by a female presenter. She also noted that the word was not delivered in an aggressive, malicious or angry way.

The Head of Editorial Standards noted that Ofcom's most recent research into potentially offensive language¹⁸ had categorised 'arsehole' as a general swearword with medium impact. It described 'medium words' as those more often employed as stronger insults, as well as some words considered more distasteful, depending on how they were used.

The Head of Editorial Standards also noted the reply from the Executive Editor of BBC Radio Comedy when she said:

This was a satirical piece about Jacob Rees-Mogg and his claim that 'experts' were in the same category as 'soothsayers and astrologers'. Nish Kumar felt this was a preposterous statement from an MP and picked up on Rees-Mogg rather pretentiously quoting the Roman philosopher and politician Cicero on Newsnight to support his argument.

The Head of Editorial Standards also noted the reply from Audience Services when it said:

"BBC Radio does not operate a watershed policy...and research shows that the number of children or young people listening to Radio 2, 3 or 4 is so minimal as to hardly register."

The Head of Editorial Standards considered that the use of the word 'arsehole' in this satirical context was within audience expectations for this long running Radio 4 comedy programme on an adult speech network. The term was not to be taken seriously and its use was within generally accepted standards.

¹⁸ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

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

Decision of BBC Editorial Complaints Unit (ECU) not to uphold a complaint about Have I Got News For You, BBC One, 16 December 2016

This is a consolidated complaint concerning a comment made by Gary Lineker when he was hosting Have I Got News For You.

The comment came at the end of an exchange between the host and panellists about the cool reception Prime Minister Theresa Mary received when she attended an EU summit in Brussels. Her visit occurred in the same week as it emerged that Britain's ambassador to the EU had privately told the Government that a new trade deal might take ten years to finalise and might then still fail anyway if the other twenty seven member states don't individually approve it.

The presenter's comment concerned voting statistics, which show that the over-65's were more than twice as likely as under-25's to have voted to Leave the European Union. The YouGov weighted final poll showed that 64% of over 65 year olds voted Leave compared with 29% of 18 – 24 year olds¹⁹. In analysing the data YouGov stated:

Age is the other great fault line. Under-25s were more than twice as likely to vote Remain (71%) than Leave (29%). Among over-65s the picture is almost the exact opposite, as 64% of over-65s voted to Leave while only 36% voted to Remain. Among the other age groups, voters aged 24 to 49 narrowly opted for Remain (54%) over leave (46%) while 60% of voters between the ages of 50 and 64 went for Leave.

This is a transcript of the comment:

Gary Lineker: Meanwhile Britain's ambassador to the EU Sir Ivan Rogers has announced that a Brexit deal could take ten years. That's not fair. Most of the people who voted for it will be dead by then.

Ian Hislop: Young people applauding.

Gary Lineker: Responding to claims that Brexit could take ten years Theresa May said, "We don't recognise this timetable" A problem she shares with Southern Rail commuters.

The complainants made the following points:

- The guest presenter of Have I Got News For You made an offensive 'joke' about Brexit, which was disrespectful to older people, particularly those who had fought and died for this country's freedom.

¹⁹ <https://yougov.co.uk/news/2016/06/27/how-britain-voted/>

- The comment was a derogatory statement that promoted ageism and left older people feeling vulnerable and more likely to fear becoming victims of hate crime. The comment could also be perceived as an incitement to hatred of a minority group.
- The comment did not compare age groups it specifically referred to 'most of the people who voted for it will be dead by then'.
- It was not only the older generation who voted to leave: stats were 18-24 - 25%;
- Ian Hislop's remark 'young people applauding', which followed Gary Lineker's comment, was in very poor taste as it set young up against old, and further promoted the programme's unfair treatment of older people.
- Gary Lineker's remarks should be seen in the light of everyday moral behavior and not just BBC guidelines.

The complainants received responses from BBC Audience Services at Stage 1 of the complaints process. Audience Services made the following points:

- Gary Lineker's comment was not meant to cause offence but was in reference to the EU Referendum polls, which showed that the majority of those aged 65+, were Leave voters.
- The joke plays upon what has become a well-worn stereotype about Leave voters, which has clearly been and often is exaggerated for comic effect.
- Such comments are permitted by the BBC's Editorial Guidelines when they're within audience expectations and Have I Got News For You has a firmly established reputation of over 20 years for dealing in this sort of satirical humour.
- The suggestion that the inclusion of such a joke amounts to a genuine implication that all Leave voters are 65+ is wide of the mark.

Complainants received responses from The Editorial Complaints Unit (ECU) at Stage 2 of the BBC's complaints process made the following points:

- The BBC's Harm and Offence guidelines recognise that programme-makers can produce challenging material, which may offend some members of the public.
- There is no automatic ban on humour, which some sections of an audience may find inappropriate or offensive. In such cases the material must be editorially justified, meet the expectations of the audience, and fall within generally accepted standards.
- Have I Got News For You is a long-running comedy series, which has built a reputation for irreverent humour, and satire, which regularly makes fun of individuals and groups in the news.
- In this case Mr. Lineker was reflecting the fact that those over 65 years of age were more than twice as likely as those under 25 to vote to Leave the EU.
- There was no need for a balancing joke or comment about young people. That is not what the editorial guidelines for due impartiality seek to achieve or require.
- Some viewers may have considered this comment to be in poor taste but it did not go beyond what the audience might reasonably expect on a programme of this kind or beyond what might be considered generally acceptable.

Appeal

Two complainants appealed to the BBC Trust on the substance of their complaint.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust decided that the complainants' appeal did not have a reasonable prospect of success.

The Head of Editorial Standards was sorry that the complaints had been offended by this joke. She noted that both pointed out that this was a misguided comment aimed at older people and it was derogatory

The Head of Editorial Standards noted that BBC output was required to meet the Editorial Guidelines for Harm and Offence and specifically in this case the guidelines on portrayal which say:

We aim to reflect fully and fairly all of the United Kingdom's people and cultures in our services. Content may reflect the prejudice and disadvantage, which exist in societies worldwide but we should not perpetuate it...

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

The Head of Editorial Standards noted that Have I Got News For You is clearly billed on the BBC website as a "Comedy quiz show that grills celebrity contestants on the week's top stories and news", that it launched in 1990 and is still running 52 series later.

The Head of Editorial Standards considered that the guest host's comment, linked with a team captain's ironical acknowledgement of the 'Young people applauding' and followed by Mr Lineker's remark that 'Theresa May did not recognise the ten year Brexit timetable' were within audience expectations for this satirical programme. She also considered that the two additional comments served to give context to the original 'joke', which was not to be taken seriously. The segment would not perpetuate prejudice against older Leave voters and was within generally accepted standards.

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

Decision of BBC Editorial Complaints Unit (ECU) not to uphold a complaint about EastEnders, 19 August 2016, BBC One, 20.00

The complaint concerned an episode of the long running soap, EastEnders, which finally revealed that fictional character, Dean Wicks, had been found not guilty of attempted rape. He was charged with the crime late in 2015 after attacking his on-off screen girlfriend Roxy Mitchell. Dean's trial took place off-screen throughout the week beginning 15 August 2016, although this episode offered snapshots from the courtroom in the form of voiceovers. Those most affected by Dean's crimes waited at the Old Vic together for news of the verdict. Dean's storyline began in October 2014 when he raped Linda Carter at the Queen Vic.

This episode began with a scene in which EastEnders characters were discussing what would happen in the court that day, how both sides would make their closing arguments, the judge would sum up and the jury would then go out to make its decision. A minute into the programme, over scenes of that morning's life in Albert Square, viewers heard a voiceover from the court of the judge summing up the case. This is the transcript of the voiceover:

Please be seated. Ladies and gentleman of the jury, this is not an easy case to decide. Some of the testimony you've heard has been highly emotive. But you must ignore emotions. You must decide, based on the evidence you've heard, what the facts of this case are. Which evidence you accept or reject. This alone must be the basis for your verdict.

So what are the facts? What is not in dispute is that sexual activity took place. Neither side has sought to deny that. What is in question is the issue of consent. Did the defendant really believe consent had been given? Was he justified in doing so? It may be felt by some of you that rape or attempted rape cannot exist in the context of a relationship, but this is neither the law nor sufficient basis for a not guilty verdict.

You have heard that the defendant is of previously good character. Good character is not a defence but it is relevant to his credibility. You have also seen photographs of bruising sustained by the alleged injured party, the Prosecution would have it as part of a brutal attack at the hands of Mr. Wicks. The Defence counter that these injuries were sustained during rough, but consensual foreplay.

You have heard from the prosecution that Mr. Wicks' own mother heard the alleged injured party shout 'No' only moments before walking in and finding him on top of her. However, the Defence have suggested that this testimony is unsafe - the product of a troubled and unhealthy, mother-son relationship.

Finally, I must emphasise that the burden of proof is upon the Prosecution. It is for them to establish in your mind that, beyond reasonable doubt, the defendant is guilty of this offence.

The complainant made the following points:

- In his summing up the judge used the term 'rough but consensual foreplay'.
- It was inappropriate to use such language in a pre-Watershed programme when its meaning might need to be explained to young viewers.
- It would be impossible for any parent to try to explain to a child of 7, 8 or 9 the concept of 'rough but consensual foreplay', so by definition this was adult material that should not be aired before the 9pm watershed.

Audience Services made the following points:

- Programmes shown before 9pm are not necessarily intended for the young to watch alone, but rather for family viewing.
- The general tone and content of *EastEnders* is widely recognised and parents can make an informed decision as to whether they want their children to watch it.
- The content and placing of *EastEnders* has been carefully considered at a senior level and storylines are structured so that they can be appreciated on different levels according to the age and experience of the viewer.

The Editorial Complaints Unit (ECU) at Stage 2 of the BBC's complaints process made the following points:

- The BBC's Harm and Offence guidelines recognise that the BBC aims to reflect the world as it is, including all aspects of the human experience, but say it must be sensitive to, and keep in touch with generally accepted standards and audience' expectations of the content in question.
- *EastEnders* is an established cornerstone of the BBC One schedule and the audience is aware the series regularly features sensitive and potentially upsetting themes.
- The trial featured in this episode was the culmination of a long-standing storyline about rape and consent, in the course of which a number of conversations on the subject took place between various characters.
- The phrase 'rough but consensual foreplay' would not have piqued the interest of younger viewers, particularly as it formed part of a rather dry summing up by the judge.
- The phrase did not amount to prurient or explicit language and while it could conceivably have generated a question some parents might prefer not to address it did not have the potential to 'seriously impair the physical, mental or moral development of children', which the guidelines are in place to safeguard against.

Appeal

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

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust decided that the complainant's appeal did not have a reasonable prospect of success.

The Head of Editorial Standards noted that BBC output was required to meet the Editorial Guidelines for Harm and Offence, which say:

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.

we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted.
was defined as follows:

The Head of Editorial Standards also noted that the guidelines on television scheduling and the watershed were applicable in this case, they say:

5.4.6

Television scheduling decisions need to balance the protection of young people and particularly children with the rights of all viewers, including those without children, to receive a full range of subject matter throughout the day. They must be judged against the requirements of the watershed.

The 9pm television watershed is used by broadcasters to distinguish between programmes intended mainly for a general audience, and those programmes intended for an adult audience. However, parents and carers share in the responsibility for assessing whether programme content is suitable for their children, based on their expectations of that content.

5.4.7

Programmes broadcast between 5.30am and 9pm must be suitable for a general audience including children. The earlier in the evening a programme is placed, the more suitable it should be for children to watch without an older person. Programmes in later pre-watershed slots may not be suitable for the youngest children or for children to watch without an older person.

The Head of Editorial Standards noted that EastEnders was first broadcast on 19 February 1985 and had just celebrated its thirty-second year on the BBC. She also noted that over the years it had regularly featured sensitive and potentially upsetting themes and the trial

featured in this episode was no exception and was the culmination of a long-standing storyline about rape and consent.

The Head of Editorial Standards noted that this episode of *EastEnders* was introduced in the following way:

Now on BBC One - will justice be served? An anxious and emotional wait for the verdict in Dean's trial, on *EastEnders*.

The Head of Editorial Standards noted that the summing up by the judge at the start of the programme would not have surprised regular viewers of *EastEnders* as this episode had been well publicised, both in BBC trails and in the press, as the one which would reveal the outcome of Dean Wicks trial for the attempted rape of Roxy Mitchell. She also noted that the Dean Wick's storyline began in an episode broadcast on 6 October 2014 when he raped Linda Carter and culminated in this programme, more than twenty months later, with the shock trial verdict, when he was found not guilty.

The Head of Editorial Standards noted the Harm and Offence guidelines recognise that programmes broadcast in later pre-watershed slots may not be suitable for the youngest children or for children to watch without an older person and that parents and carers share in the responsibility for assessing whether programme content is suitable for their children based on their expectations of that content.

The Head of Editorial Standards noted that the programme was broadcast at 20.00 when parents have a greater responsibility to make judgements about the suitability of content for their children to view.

The Head of Editorial Standards noted the response from the ECU which said that the phrase 'rough but consensual foreplay' did not amount to prurient or explicit language and that it was unlikely to have attracted the attention of younger viewers given it formed part of a rather dry summing up by the judge. She noted that the ECU also said that while it could conceivably have generated a question some parents might prefer not to address it did not have the potential to 'seriously impair the physical, mental or moral development of children', which the guidelines are in place to safeguard against.

The Head of Editorial Standards considered that the audience for *EastEnders* would have been aware of the high profile trial of a well-known *EastEnders* character for attempted rape and that it was to be resolved in the episode broadcast on 19 August 2016. She concluded that even if viewers had come to this episode unaware of the content, that it was very clear, by the continuity announcement preceding it and in its opening moments that this programme was dealing with the final stages of a highly charged trial, and that the subject matter was clearly signalled by the judge when he talked about 'sexual activity...rape and attempted rape' in advance of his use of the phrase 'rough but consensual foreplay'.

The Head of Editorial Standards concluded that the judge's use of the term 'rough but consensual foreplay' was within generally accepted standards and would not have challenged the audience's pre-existing expectations of the content, taking account of the high profile nature of both the attempted rape storyline and the soap itself, and the fact that this episode marked the dramatic end to Dean Wick's trial, the tension for which had been building up across the whole week of *EastEnders* output.

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

Decision of BBC Editorial Complaints Unit (ECU) not to uphold a complaint about *The Real Marigold on Tour: Florida*, BBC Two, 27 December 2016, 21.00

The complaint concerned a Christmas special in which four of the cast from the award-winning series *The Real Marigold Hotel* were reunited to road-test retirement in Florida. Actress Miriam Margolyes, dancer Wayne Sleep, darts champion Bobby George and chef Rosemary Shrager joined Americans who were seeing out their retirement in the sunshine state's gated communities - a new kind of suburbia for the over 55s, with healthy activities, 24-hour security and no children.

The group visited two different retirement villages in Florida from opposite ends of the affordability scale. The first, north of Orlando in Oak Run, was an affordable community for 7,000 residents. The second, an hour north of Miami, with annual membership charges of \$85k, was home to some of the richest senior citizens in the states. The group's experience of the residents' idyllic lifestyle led to some heated exchanges between Miriam Margolyes and American retirees.

The complainant made the following points:

- Miriam Margolyes was gratuitously offensive to members of The Polo Club in Palm Beach County and her offensive comments showed political bias.
- Ms Margolyes was ill mannered when talking to a kinder transport survivor and it was wrong for her to compare Donald Trump to Hitler and offensive of her to say that 'Trump opens his mouth and out pours shit'.
- Ms Margolyes was a national disgrace and showed a complete lack of manners towards her American hosts, who preferred to end their conversation with her, than react in a similar manner.
- The BBC should have edited out this content that showed Ms Margolyes expressing her views in such a vile manner.

Audience Services raised the complaint with the production team who said:

- They were sorry the complainant had been offended by some of the sequences in *The Real Marigold on Tour: Florida*, but that was never their intention.
- The programme was an immersive, observational documentary, following famous OAPs reacting spontaneously and honestly to the sometimes-uncomfortable fish-out-of-water situations they found themselves in.
- They hoped it was clear that the group of four were programme contributors, not BBC presenters, and as such were openly allowed to express their opinions or challenge where necessary.
- Some of the exchanges with some of the elderly residents of the Polo Club were uncomfortable, but they did not exceed general audience expectations for this type of series, shown post watershed on BBC Two.
- The uninhibited and outspoken views of Miriam Margolyes were established in the

previous series, *The Real Marigold Hotel*, so they hoped most viewers would not have been taken completely unawares and would have welcomed seeing a range of honest and frank opinions on the BBC.

The Editorial Complaints Unit (ECU) at Stage 2 of the BBC's complaints process made the following points:

- The complaint was considered against the BBC's Editorial Guidelines on Harm and Offence. These do not say that BBC content should never offend. They say that where content is aired, which may offend, it must be editorially justified.
- The Harm and Offence guidelines also place great weight on context, including when the programme airs, the expectations audiences may bring to it and any signposting.
- The programme aired in a post-watershed slot, with a warning of strong language. The fact that Ms. Margolyes was outspoken, held strong views on political and other matters, and was given to swearing was apparent from the outset – as well as from previous programmes. Given this context, the language used by Ms. Margolyes did not exceed audience expectations and therefore did not breach the guidelines.
- The guidelines do not demand that people appearing in programmes always act in a civil manner. The object of a documentary is to accurately capture what happened and in real life people exchange heated views in intemperate language – particularly where, as here, the context is an election, which generated very strong opinions. It does not follow that because people might find Ms. Margolyes' conduct objectionable, or her language offensive, it is necessarily unsuitable for broadcast. The guidelines explain that as well as being mindful of the need to avoid causing unnecessary offence, the BBC retains the right to reflect the world as it is, and that's what happened in this case.

Appeal

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

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust decided that the complainant's appeal did not have a reasonable prospect of success.

The Head of Editorial Standards noted that BBC output was required to meet the Editorial Guidelines for Harm and Offence, which say:

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.

The Head of Editorial Standards noted that the programme was filmed in September 2016 when the American Presidential Election was being hotly contested between the Republican candidate, Donald Trump and the Democratic candidate, Hillary Clinton and that the election took place on 8 November 2016. The programme was broadcast seven weeks after the US presidential election She also noted that the complainant said he was offended by various comments Miriam Margolyes had made on several occasions in the programme about Donald Trump and his supporters. She also noted that there was a pre broadcast warning about strong language.

The Head of Editorial Standards noted the section of the programme in which Ms. Margolyes and Bobby George visited a Florida Pawn and Gun shop, when Ms. Margolyes talked to the shop owner, telling him how she felt about guns and Donald Trump:

Miriam Margolyes: I don't like them. I don't approve of them. I don't want one.

Are you a Trump supporter?

Gun shop owner: 98% of the people who live in this area are all Trump supporters.

Miriam Margolyes: I know it.

Gun shop owner: These are some Trump socks, we even have his er "You're fired" famous words. Trump cologne, which I use every day. He is a good person, going to surround himself by good people and he's going to do the best for the country.

Miriam Margolyes: I think he is a total piece of shit. That's what I would say. Anyway.

Gun shop owner: That's OK, I respect you, I respect you.

Miriam Margolyes: Gotta go, take care.

Gun shop owner: We love every body.

Miriam Margolyes: Thanks very much.

Gun shop owner: We're Trump supporters and we love everybody.

The Head of Editorial Standards noted that although Miriam Margolyes had been very blunt when she referred to Donald Trump as a "total piece of shit", the gun shop owner had responded saying he respected her views and they parted in a friendly way.

The Head of Editorial Standards next noted the section of the programme when the group attended the members' cocktail party at The Polo Club and Ms. Margolyes, whilst conversing with a fellow Jewish woman, likened Donald Trump to Hitler:

Miriam Margolyes: Where were you from originally?

Lady one: Berlin in Germany. I came on the Kinder transport to the UK and I'm very involved in everything to do with the Holocaust, and the world that we're living in right now is a very very frightening world.

Miriam Margolyes: The only people that I cannot talk to are the Republicans.

Lady one: (Laughs) Well, you've got a Republican right here. (Laughs)

Miriam Margolyes: Are you, are you a Trump supporter?

Lady one: I am. (Miriam visibly shocked) Its not for Trump but I absolutely hate Hillary Clinton, absolutely.

Miriam Margolyes: (disbelievingly) You're. You would vote for Trump?

Lady one: Oh, no question.

Miriam Margolyes: If you compare Trump and Hitler you'll find a huge number of similarities.

Lady one: I'm sorry, I really, I really, this woman is so bad for this country I just, I can't talk about it I really can't. Let's leave it.

Miriam Margolyes: I don't want to upset you.

Lady one: You are upsetting me.

Miriam Margolyes: I don't want to do that.

Lady one: It has been lovely meeting you.

Miriam Margolyes: You too.

Lady one: You are a very nice person. Let's leave it at that, OK?

Miriam Margolyes: All right. (Lady one walks away amicably).

Lady two: You're in the minority here. But I'm with you a hundred percent.

Miriam Margolyes: Is that an American problem now that people don't want to discuss politics?

Lady two: People want to, but they've had such heated arguments this time, never before. But this time that it's become, it's divided the community, so it's a subject we don't talk about so we can all have a good time.

The Head of Editorial Standards again noted that Ms. Margolyes had been very direct in expressing her dislike of Donald Trump and the lady with whom she had been talking clearly did not want to get drawn into a political discussion and moved on. The Head of Editorial Standards then noted that politics was raised once again when Rosemary Shrager introduced Miriam to two Hilary Clinton supporters, a chat that ended in a heated exchange between Ms. Margolyes and a male Trump supporter:

Rosemary Shrager: Miriam. (Hello) My two democratic friends here and they are shocked (horrified) to the core (we are), shocked to the core.

Lady three: He's a misogynist, con artist,

Lady four: Narcissistic. There are a few people who are willing to stand up right and say what they believe. Right.

Rosemary Shrager: Hello. And how long have you been here for.

Man one: Nineteen years. And how long have you been here?

Rosemary Shrager: I've been here one, for half an afternoon. Not even that.

Man one: So you know nothing about the Club at all.

Rosemary Shrager: I know nothing about the Club.

Man one: And you know nothing about politics at all. I've spent six years in the service lady. So I've paid my dues. Don't you dare talk about people running for president (that is my right) unless you know what the hell you're talking about? I was shot twice and I don't need stupid people like you trashing the candidates.

Lady four: I have a right. I have a right.

Lady three: Excuse me

Miriam Margolyes: We weren't talking to you big shot. You open your mouth and a pile of shit comes out.

Lady two: Who asked you? (comment addressed to man one).

Man one: Does it really.

Lady two: Who asked you?

Man one: I don't need to be asked to get your permission.

Miriam Margolyes: Just be quiet, but this lady was talking. You interrupted. Don't push in. We were in a conversation. You be quiet.

Man: Let's do one at a time.

Miriam Margolyes: Don't you bully me. I won't have it.

Man one: I'm not bullying you.

Miriam Margolyes: I won't have it.

Lady five: Don't yell. Don't yell.

Lady three: He interrupted the conversation.

Man one: She has a right to her opinion but she's talking like she has diarrhoea of the mouth.

Man Two: When I hear opinions like that I always say 'God forgives'.

Miriam Margolyes: I think everybody has a right to say whatever they want. But they mustn't interrupt. He interrupted.

Man One: We're not here to discuss politics. (I agree) You guys are here to find out about what this club's about. It's a playground. It's an adult camp.

The Head of Editorial Standards considered this exchange illustrated on a personal, supporter level that the 2016 campaign was one of the most negative and acrimonious in US presidential history. She agreed that Ms. Margolyes had been very forceful in her responses to the male Republican supporter.

The Head of Editorial Standards also noted the reply from the ECU which had said the guidelines do not demand that people appearing in programmes always act in a civil manner and the object of a documentary is to accurately capture what happened and in real life people exchange heated views in intemperate language – particularly where, as here, the context was an election, which generated very strong opinions.

The Head of Editorial Standards noted this was a returning series, which had previously established expectations of the use of strong language and the expression of frank and sometimes challenging views by its contributors. She noted that the complaint had been particularly offended by the comparison of Trump with Hitler to someone who had been on the Kinder transport and understood the level of offence that caused. She considered however that, taking account of the subject and nature of this factual observational documentary and its likely audience post-Watershed on BBC Two, the content was editorially justified, reflected the world as it is and was within generally accepted standards.

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

The use of the term 'women and children' in BBC online reports about incidents involving deaths

The complainant contacted the BBC to express her concern that, in incidents where deaths had occurred, news reports invariably stated that the dead included women and children. The complainant found this insulting to the men who had died as she felt that reports suggested their deaths were less significant than those of women.

Audience Services requested information about "names of programmes, channels, online URLs, dates and time that this was broadcast" so that they could investigate. The complainant said that the particular report that triggered her complaint appeared on the BBC's digital text service on television. She could not remember the actual date but believed this to be a regular occurrence. She said the term has been used again on 13 December 2016 in a story about the situation in Aleppo.

Audience Services said that the BBC's Red Button text service mirrored the content on the BBC News website. Based on the information provided by the complainant, Audience Services considered it likely that the following was the article in question:

<http://www.bbc.co.uk/news/world-middle-east-38301629>

Audience Services said the article was quoting the United Nations when it stated:

"Syrian pro-government forces in eastern Aleppo have been killing people, including women and children, on the spot in their homes and on the street, the United Nations says."

The complainant made the following points:

- the term was not in inverted commas and was not a direct quotation
- even if a third party had used a sexist phrase, the BBC did not have to republish it
- the frequency of its use suggested that it was a deliberate policy of the BBC to be sexist.

The complaint was escalated to the Style Editor of the BBC News website, who made the following points:

- he considered the complainant to have made "a reasonable point" although he thought she had overstated the frequency with which the expression appeared
- there were occasions when the expression added useful information. In the case of Aleppo, it indicated that government forces were not targeting rebel fighters but were killing a range of people
- he had discussed this issue with BBC teams in the past and he was happy to remind writers to ensure it should be used when appropriate
- he did not consider that there had been a possible breach of editorial standards.

Appeal

The complainant appealed to the BBC Trust on the substance of her complaint. She also complained that her complaint had not been investigated properly because the BBC's responses had related to one article rather than her over-arching point.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards decided that the complainant's appeal did not have a reasonable prospect of success.

She noted that the complainant believed the BBC to have handled the complaint incorrectly by at first "ducking the issue" and asking for details of reports on specific dates. When the complainant provided an example, all subsequent responses dealt with this article but failed to deal with the complainant's point about the "regular occurrence of this type of objectionable sexism".

The Head of Editorial Standards noted that the BBC's editorial complaints process was designed to deal with complaints about specific pieces of broadcast or online content and the complaints framework²⁰ states that complaints should include:

- "2.5.1 the name / title of the broadcast or publication you are complaining about;
- 2.5.2 the date and time of the broadcast or publication;
- 2.5.3 the channel or service on which it was broadcast, or the web address on which it was published"

She noted that a failure to provide these details may mean that the BBC was unable to look into a complaint.

She therefore considered that it had been appropriate for the BBC to ask for details of a specific report and, when one was provided, it was also appropriate for the BBC to investigate and respond in specific terms.

The Head of Editorial Standards noted that the complainant had referred Audience Services to an article about the situation in the last rebel-held neighbourhoods in eastern Aleppo. The article was entitled "Aleppo battle: UN says civilians shot on the spot".

She noted that the complainant believed that the article's reference to the deaths of women and children was sexist because it suggested their deaths were more significant than the deaths of men.

The Head of Editorial Standards noted that the complaint engaged BBC editorial guideline 5.4.38 on Portrayal:

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

She noted that the article quoted a number of United Nations [UN] sources:

- the article opened as follows: Syrian pro-government forces in eastern Aleppo have been killing people, including women and children, on the spot in their homes and on the street, the United Nations says.
- the UN's human rights office spokesman said that the streets were full of bodies
- later in the article the spokesman was quoted more fully as saying that 82 civilians had reportedly been killed by pro-government forces, of whom 11 were women and 13 children
- the UN children's agency quoted a doctor as saying that a building housing as many as 100 unaccompanied children was under heavy attack
- the UN's humanitarian adviser on Syria spoke of "massacres of unarmed civilians, of young men, of women, children, health workers."

²⁰http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2017/complaints_fr_work_ed_complaints.pdf

She disagreed with the complainant that the article suggested that the deaths of women were more significant than the deaths of men. Instead, she noted that the UN appeared to be contradicting the pro-government view in emphasising the deaths of civilians: women, children, (including unaccompanied children), health workers, people shot summarily (“on the spot”), in their own homes and on the street.

She did not agree, therefore, that the article had perpetuated a stereotype, but had instead reported accounts which offered useful detail of the situation in eastern Aleppo. She also noted that BBC News Online’s Style Editor had stated that he would remind journalists that the term should be used when appropriate and she considered that Trustees would consider this a reasoned and reasonable response and would not be likely to consider that the article had breached the BBC’s editorial standards.

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

Just a Girl, CBBC Website

The complaint concerned a drama series posted on the CBBC website which reflected the fictional story of 11-year old Amy Jones, who was born a boy, but identified as a girl. It formed part of an Anti-bullying Week collection on CBBC and its listing on the homepage said:

“A CBBC Drama - Amy has a secret and she’s scared that it will come out at her new school. Follow her story as she tries to make sense of the world”

The drama was in the form of a fictional audio diary recorded by the transgender character, Amy, on her mobile phone. It was made up of twenty-five ‘micro-episodes’, the shortest being just under thirty seconds and the longest about ninety seconds. The on-screen graphic for the audio content depicted the outline of a smartphone and detailed the number of the episode, its title and an appropriate emoji. An emoji being a small digital image used to express an idea or emotion in a text message.

The first episode was called ‘I Have a Secret’ in which Amy introduced herself and explained that she was leaving her old primary school to go to secondary school. She said:

“I’m excited but panicky. Well my life’s been different to most peoples since the day I was born. (whispering) Oh no my lovely mum’s heading upstairs don’t want her to hear me.”

The second episode was called ‘My Big Secret’ and included Amy using the word transgender for the first time, although she didn’t go into any detail:

“The thing is, I’m just a girl but different to most. I started to tell you but ...oh no! Oh no I’ve just splashed toothpaste on the mirror and on my phone. No, wait I’ll be back when I wipe it off...Today I’ll finally talk a bit about me being transgender. There. Got it? Good. Going to do it in the style of a big speech.”

It was only in the third episode, called ‘Being Amy’, that Amy explained her ‘secret’:

“OK world so it’s me again. Get this Amy Jones, soon to be famous concert pianist. Come in a bit closer. You see when I was born mum said dad was so pleased he had a boy to take to the football but mum knew I was different. She realised early on that I was born in the wrong body. I didn’t mind kicking a ball around with my dad but all I really wanted to do was get my very own Barbie and dress like a fairy tale princess. It took my dad ages to understand it, does now though. My mum supported me when I did a PowerPoint presentation to my class about transitioning; that I wasn’t going to come to school wearing boy’s clothes anymore, but girls clothes. I wasn’t Ben I was Amy. In year 6 a few people were silly about it when I transitioned, but lots of my friends just accepted it, Tashi was first. Just normal, I was still me. But now I’m going to Secondary I’m wondering if this will all change and that’s when those butterflies come flying back.”

In episode 5, called ‘My Mum’s a Dragon’ there was a transgender reference when Amy received a text:

“Oh its my friend Josh. He’s kind of the opposite to me, born a girl but identifies as a boy. Now do I tell him I’m so mad because my dragon of a mother won’t let me wear ruby red lipstick for school – what a surprise... (text) Josh. ‘How long do you wait for hormone blockers?’ ‘Ages. Loads of tests and talks at clinic. Once they knew I was trans for real, got them.’ (text) Josh again. ‘So intense. Been waiting six months.’ Me. ‘Ouch. Pain Face.’ OMG it’s my mother.”

The drama went on:

“So how’s this going to work? To my old friends I’m Amy who used to be Ben. My worry is that one of the new kids will find out that I’m transgender, makes a big deal of it, tells everyone about me and it freaks them all out. Alls I want to do in my new schools is fit in like all the other new girls not to be picked on or bullied out of fear or ignorance...”

In the subsequent episodes Amy was bullied by Connor, who’d been at primary school with her, and who revealed her ‘secret’ to her new secondary school friends. He was suspended from school for his actions and on his return he apologised to Amy for what he had done. The drama concluded with Amy playing her first musical composition for piano, called ‘Just a Girl’.

There was a link from the *Just a Girl* page to a video called “Leo’s Anti-Bullying Advice”. This was a factual video presented by Leo, who looks like a boy, but was born in a girl’s body. He gave his top five tips for coping with bullying. In turn it linked to a programme called “My Life I am Leo”.

There was also a link from the *Just a Girl* to supporting information to help users understand the context of the drama. By clicking through to ‘What does Transgender mean?’ they were able to read the following:

“The word ‘gender’ is about being male or female. Most people are happy with their gender. For example, a baby born male will be happy to be known as a boy as he grows up.

“But some people might not feel that is right for them. Some feel that they were born into the wrong body, or that the way they were born is (sic) does not fit who they are. So for example, sometimes a person born a girl might feel that they are male, or not fully a girl or boy.

"People who feel this way are known as transgender, or trans. Other people may just feel they don't quite 'fit' with typical boys and girls but this doesn't mean they are trans. Everyone can play around with different clothes, toys or hairstyles and have fun!

"As people get older and are more sure that they are trans, they might choose a new name or wear different clothes.

"No matter what, everyone deserves to be treated fairly and kindly.

"If you feel you're affected by this issue, you are not alone. You could speak to a family member, a friend, a guardian or a teacher. If there is no one you feel you can speak to then there are advice helplines here²¹.

"Try to talk to someone as soon as possible. It might surprise you how much better it feels when you share a problem."

The complainant made the following points:

- It was inappropriate for CBBC to cover the issue of transsexuality and present it to children as young as six years old, without some form of parental control. This amounted to the BBC directly courting/grooming young children for cultural change.
- *Just a Girl* may have put confusing thoughts and ideas about transition into the minds of some vulnerable children, that were absent before they listened to the drama.
- The subject was too complex and weighty for children to tackle alone because of the permanence of transitioning and inherent alterations that might result.
- The drama covered transition in adult detail. It attempted to 'give prestige and cool' to transsexuality and promoted it as exciting and exotically different, which was wholly unsuitable for formative and impressionable children to access.
- The transitioning character 'Amy' was pretty, middle class, had high ambition for the arts, and took on the role of 'hero' and a kind of 'martyr' for her beliefs. This made the idea presented 'high status' and appealing to a very susceptible audience. If there was no intention to promote transsexuality why wasn't it based on a more complex scenario, involving poverty, an unattractive child, and someone with lesser goals in life.
- The content was a one-sided and therefore inaccurate presentation of the issue, which played on a "bourgeois, idealised and sophisticated concept of transgender, where the outcome was set for the bright lights and a happy ending".
- There are thousands of ways to discuss identity that would not require a child's parental involvement or stir up anger amongst parents who feel their right to parental responsibility was undermined by the BBC.

BBC Audience Services made the following points following:

- *Just a Girl* was only accessible online. It was not broadcast on the CBBC TV channel. It was posted in a slightly more sheltered part of the output where it was complemented by support material that explained gender dysphoria.
- *Just a Girl* was a drama about a young transgender girl trying to find her place in the world as she moved from primary school to year 7. Her worries about fitting in and being bullied are relevant to all children at this time of their lives, but one

²¹ There was a hyperlink to the following site: <http://www.bbc.co.uk/cbbc/findoutmore/advice-helplines>

of the reasons this piece was commissioned was because transgender children are more likely to be bullied.

- *Just a Girl* was about identity not sexuality. One of the reasons the content was made was because of the high incidence of suicide attempts amongst gender variant individuals and because experts advise that early intervention is key to good long-term outcomes. The aim was to help viewers to understand some of the difficulties faced by those who feel similar and/or present as transgender.
- Not everyone agrees with the way gender dysphoria in children is treated but it is a recognised condition and this piece was an accurate reflection of the experiences of children who present with the condition.
- CBBC aims to reflect its audience across its content. This sometimes means it features topics that some parents object to. As a public service broadcaster it is CBBC's role to represent all children in the UK and to help children to feel heard and accepted for who they are.

The Editorial Complaints Unit (ECU) at Stage 2 of the BBC's complaints process made the following points:

- Children would not have been able to stumble across the content without a clear understanding of the subject matter because it was clearly signposted as a drama that tackled the fears and concerns felt by some when they move up to senior school and that it was likely to include an element of bullying.
- The supporting information gave a clear explanation of what it is to be transgender and children were encouraged to discuss issues raised by the content and a link to informed, online help and advice, was provided.
- The aim of the programme was to help children understand why it can be difficult for a child who is different to be accepted in the world. The subject on this occasion was gender identity but the content raised much broader themes such as isolation, loneliness, anger, bullying, parental relationships, the importance of friendship and coping with adversity.
- The script was reviewed word by word to ensure everything was relevant and appropriate for children, and the programme-makers considered how the unfolding storyline might affect children who had experienced any of the emotions or situations, particularly bullying. The aim was to ensure there was always hope for the main character, Amy, and to emphasise the importance of the support of her friends. Particular emphasis was placed on the positive outcome.
- This was a drama and so the writer was entitled to create a narrative of his own choosing. There is no requirement in fiction to reflect every aspect of a situation or set out all the possible consequences of an event or action.
- The value of presenting a positive message to children in relation to bullying and discrimination, and in the context of safeguarding their physical and mental wellbeing, outweighed any requirement to reflect negative issues highlighted by the complainant, such as "the high incidence of suicide attempts among gender variant individuals".

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He emphasised that it was wrong for the BBC to post *Just a Girl* on the CBBC website when it dealt with a sex education topic that would be accessed by children as young as six or seven without any parental oversight or consent.

Decision of the Head of Editorial Standards, BBC Trust]

The Head of Editorial Standards decided that the complainant's appeal did not have a reasonable prospect of success.

The Head of Editorial Standards noted that the points raised by the complainant engaged the Harm and Offence section of the Editorial Guidelines and in particular the following sections:

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

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

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

The Head of Editorial Standards also noted the section in the Harm and Offence guideline about the scheduling of Online content which says:

"Any content immediately accessible on the BBC Home Page must be suitable for a general audience, including children. Any content immediately accessible one click from the Home Page should normally be suitable for a general audience, including children.

"Otherwise, the nature of the content we make available should be based on the audience expectations of the specific online service and informed by our knowledge of when it is likely to appeal to a significant proportion of children. This applies equally to content we create ourselves, user generated content, material brought in from third party websites and links to third party websites.

"Unexpected and challenging content, especially content which might be unsuitable for children, should be labelled to avoid causing unjustifiable offence. Content labelling should be clear and factual, but not inappropriately explicit. We should be mindful of the effect on users if they arrive at challenging content by following links on third party sites that bypass the BBC Home Page or other contextualising pages.

The Head of Editorial Standards noted that the commissioning of a drama on the topic of gender dysmorphia and the storylines reflected were not matters which the Trust were able to consider because the choice of subject matter and treatment is generally a matter of editorial judgement and beyond the remit of the Trust.

The Head of Editorial Standards noted that the consideration in this case was whether the BBC had taken proper account of the relevant requirements of the Harm and Offence guidelines, particularly:

- was the content appropriately signposted?
- had the BBC demonstrated a clear editorial purpose taking into account the pre-teen target audience, and the likelihood that some people would consider the subject matter to be challenging?
- was the subject matter handled with sensitivity and care?
- was the appropriate balance struck between the BBC's right to broadcast such content and its duty to protect the vulnerable?

The Head of Editorial Standards concluded that:

- there was adequate and appropriate labelling of the *Just a Girl* audio diary to ensure a potential listener was broadly aware of its subject matter before accessing it.
- the BBC provided appropriate context for the content, which formed part of an Anti-bullying Week collection on CBBC. It also directed users to additional information on transgender issues and allowed them to post comments about it, which were moderated.
- the comprehensive responses at stages one and two of the complaints process demonstrated that serious consideration was given at each stage of the production to the editorial purpose of the programme, and to the BBC's duties under the Editorial Guidelines to protect children.
- the fact that the content was for listening to, rather than viewing, meant that it would have been less likely to engage the youngest of the CBBC's target audience
- there was no evidence to support the complainant's assertion that the treatment of the issue suggested the BBC had taken a "position" on gender dysphoria
- there was no evidence to support the complainant's assertion that the BBC had directly courted or groomed children as young as six with the aim of promoting "cultural change".

The Head of Editorial Standards acknowledged that the subject of gender dysphoria was a very sensitive one. She also recognised that the complainant had been offended by the fact that it was featured in CBBC drama output targeted at 6 to 12-year olds and that he felt the BBC had undermined his right to parental responsibility. Nevertheless, the Head of Editorial Standards was satisfied that the fictional drama was within generally accepted standards and its publication on the CBBC website had not breached guidelines.

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