Editorial Standards

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

January and February 2017, issued March 2017

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

Getting the best out of the BBC for licence fee payers
## Contents

1

**Remit of the Editorial Standards Committee**

2

**Summary of Appeal Findings**

4

- Watchdog, BBC One, 11 and 18 June 2015
- The Film Review, BBC News Channel, 5 June 2016, 17.45
- Today, BBC Radio 4, 7 June 2016

10

**Appeal Findings**

12

- Watchdog, BBC One, 11 and 18 June 2015
- The Film Review, BBC News Channel, 5 June 2016, 17.45
- Today, BBC Radio 4, 7 June 2016

68

**Requests to review the Trust Unit’s decisions on appeals**

72

- The Kaye Adams Programme, Radio Scotland, 27 April 2016
- Thought for the Day, BBC Radio 4, 7 March and 17 May 2016

77

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

82

- Decision of BBC Audience Services not to respond further to a complaint about a segment on the Jeremy Vine Show, BBC Radio 2, 21 June 2016
- Decision of BBC Audience Services not to respond further to a complaint about Manchester-centric bias vis-à-vis Liverpool
- Decision of BBC Audience Services not to respond further to a complaint about an article on the BBC Sport website
- Decision of BBC Audience Services not to respond further to a complaint about Hillsborough, BBC Two, 8 May 2016

99

**Admissibility decisions by the Head of Editorial Standards, Trust Unit**

109

- Decision of BBC Audience Services not to respond further to a complaint about Rillington Place, BBC One, November and December 2016
- Question Time, BBC One, 30 June 2016
- Bias in favour of anti-EU MEPs on Question Time, BBC One
- Decision of BBC Audience Services not to respond further to a complaint about Today, BBC Radio 4, 10 November 2016
- Decision of BBC Audience Services not to respond further to a complaint about News Briefing, BBC Radio 4, 17 September 2016
- Decision of BBC Audience Services not to respond further to a complaint about Today, BBC Radio 4, 1 December 2016
- Decision of BBC Audience Services not to respond further to a complaint about Brexit and US election ‘among anxious young’s concerns’, BBC News website, 31 October 2016
- The Andrew Marr Show, BBC One, 13 November 2016
- Decision of Audience Services not to respond further to a complaint about Casualty, BBC One, 10 December 2016
- Request to remove name from BBC online article, published in 2014
- Decision of BBC Audience Services not to respond further to a complaint about the Political Editor’s question to President Trump at a press conference in Washington on 27 January 2017

147

144

137

134

131

128

123

119

113

109
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.

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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/](http://www.bbc.co.uk/annualreport/). In line with its duty to consider topics of editorial concern to the Committee, whether or not such concern arises from a formal complaint, and to commission information requests from the Trust Unit or Executive to support such consideration, the Committee also from time to time requests the Executive to report to the Committee regarding breaches which have been accepted by the Executive and are therefore not subject to appeal to the Committee. The bulletin also may contain findings relating to such cases.

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

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

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

Watchdog, BBC One, 11 and 18 June 2015

Summary of finding

This was a first party appeal by a law firm on behalf of the pet store chain Pets at Home. The complainant contended that a segment in an edition of the consumer affairs programme Watchdog which made allegations concerning the health and welfare of animals in some Pets at Home stores was inaccurate and unfair to its client.

The eight-minute segment comprised primarily of footage shot undercover by Watchdog researchers in spring 2015 at eight of the more than 370 Pets at Home branches across the UK.

Watchdog was accompanied on some of the visits by Mike Jessop ("Mr Jessop"), a vet and former President of the British Small Animal Veterinary Association. He provided commentary and analysis both during the filming and afterwards in an interview with a Watchdog reporter.

The appeal raised 15 points of issue. The Committee found that the item overall was not duly accurate and that there had also been individual failures of the guidelines on Impartiality, Privacy and Fairness. A total of eight points were upheld. Together these constitute a serious breach of the Editorial Guidelines and warrant an appropriate broadcast summary of the Trust’s findings. The summary will also be published on the Watchdog home page.

To summarise with regard to the upheld matters.

With regard to whether the programme observed due accuracy in relying solely on its designated expert vet to support the diagnosis of diseases in fish, the Committee concluded on balance that it had not:

- the BBC’s statement that the evidence was “clear and obvious” was contradicted by the strong contrary analysis of the expert aquatic vet engaged by the Trust to advise for this appeal
- it was unfortunate that the programme appeared to have either not retained or not recorded adequate video or other evidence to reliably support its claims to have diagnosed specific diseases in fish in all eight stores, particularly given the claim that white spot in particular was “prevalent in many stores” and “appeared on numerous fish in the same tank or blocks of tanks”
- *Pets at Home* had previously disputed Mr Jessop’s diagnosis of white spot, and had alerted *Watchdog* to their concerns again prior to this broadcast, good practice would have been for the programme to seek a second expert opinion on the diagnosis of white spot - and of the other diseases it proposed to highlight in the programme
- the programme was therefore not duly accurate in respect of this point

With regard to whether the programme failed to observe due accuracy by exaggerating the scale of the problem in the fish department:

- the impression which the audience would be likely to have taken, that the
problems in the fish department were serious and widespread, could not be justified

- the methodology did not allow for this conclusion: fewer than 2% of the stores were visited, and the stores in the sample had not been selected at random so could not reliably be said to be representative of the Pets at Home chain as a whole

- notwithstanding that a pre-condition for secret filming is the existence of prima facie evidence, had the audience been aware that the stores visited were ones that had attracted complaints, viewers might have been less likely to infer that there were serious failings more widely across the chain

- alongside this, the allegations in the programme regarding the number of dead fish failed to inform the audience that two of the stores accounted for more than half of those found, and that in the remaining six stores the number of dead fish found was in line with what might reasonably be expected in any store with a similar stock of fish on sale

- viewers would have been led to believe that in all eight stores – and therefore, by extension, perhaps in other Pets at Home stores – there was a systemic problem in the fish department

- this could not be justified on the evidence gathered and therefore the item was not duly accurate in how it presented the extent of any problem in the fish department of Pets at Home.

With regard to whether the programme observed due accuracy in how it reflected temperature advice about keeping bearded dragons:

- it was accepted that there was a general consensus around the recommended temperature range for hotspots, but noted the conflict of veterinary opinion as to the risks, if any, of a hotspot of 50°C

- the two independent vets who were consulted for the appeal agreed with the complainant’s view that such a hotspot would not constitute a serious threat to the lizard, provided that it had sufficient space to move to a cooler area

- in the only evidence available for scrutiny, from which the clip used in the programme was taken, the Pets at Home staff member was recorded as having gone to considerable lengths to emphasise that 50°C would only be acceptable if there were also cooler areas

- in giving her advice, the assistant also advised the “customer” to read the detailed advice on the company’s website and said that she would not be able to sell the customer a lizard until the vivarium had been up and running for several days to achieve a consistent temperature range

- none of this good advice was reflected in the programme

- it had not been helpful that the BBC had said it had not felt it necessary to show the rushes to Mr Jessop, which would have given him the opportunity to take the wider context of the sales assistant’s comments into account when he made his comments

- it was not clear that a hotspot of 50°C would open the lizard up to a range of diseases or was unacceptably hot

- in view of the weight of veterinary expert opinion to the contrary, and in the absence of any reliable evidence of poor advice from visits to the other stores, the programme’s failure to reflect the full context of the advice given in the Filton store had led to a failure to achieve due accuracy
With regard to whether it was duly accurate to claim that Pets at Home had failed to meet its promise to conduct a point-of-sale check on every animal:

- it was evident from the company’s training video that an experienced assistant would be able to complete the required health check in around a minute
- Pets at Home’s training procedures did not require that the customer be explicitly advised by the sales assistant that he or she was doing a health check
- it was possible that the *Watchdog* researchers might have failed to detect that the health checks shown in the video were, for the most part, being carried out.
- the footage reflected diligent staff who offered thorough advice and appeared on the whole to show care for and familiarity with the animals in their care
- the statement in the programme, that there were no visible signs of a health check in four of the eight stores visited, would have led audiences to doubt whether there had been such checks on the footage seen from six stores - including the four where Watchdog had said that there were no visible signs of a health check
- Trustees were satisfied that checks had probably had taken place, albeit in ways which might not have been evident to the *Watchdog* team
- in this respect the programme therefore failed to be duly accurate

With regard to whether the programme achieved due accuracy in checking and verifying the material/content which was broadcast:

- there was no audio recorded during undercover filming on certain occasions
- the BBC did not take steps to retain the still images captured by their researchers on mobile phones, upon which the BBC sought to place some reliance
- it would have been helpful had the BBC sought a second opinion in relation to the diagnosis of white spot and tumours in fish, the appropriate size for a vivarium housing a bearded dragon, or the risks which might be associated with a hotspot of 50°C
- given the advice of the independent experts consulted for this appeal, it was likely that had the BBC done so, other experts may have offered a different opinion
- in the light of the Committee’s findings on various points of accuracy, it was evident that the programme should have done more to corroborate more of the claims it made, and to ensure that the expert it did seek to rely on had access to all necessary material to form his view
- in gathering the evidence to supports its claims, *Watchdog* should have ensured that adequate records were made, and that those records, particularly where they related directly to allegations in the broadcast item, were retained
- in these respects the programme failed in its obligations to achieve due accuracy

With regard to whether the programme observed due accuracy overall in how it presented allegations relating to the health and welfare of animals in Pets at Home stores:

- despite *Watchdog* having clearly set out that they had visited only some of the company’s stores” the audience might reasonably have inferred that these stores constituted a representative sample and that the conditions described in the programme were likely to exist more widely and that the chain generally was in certain respects not delivering on welfare standards promises it made in 2012.
- this impression was not adequately supported by the evidence, as illustrated by the number of failures of due accuracy identified
- the item overall could not be regarded as duly accurate
With regard to whether the programme was fair to Pets at Home in how it presented allegations relating to the health and welfare of animals in Pets at Home stores:

- with the exception of Pets at Home’s right of reply statement which was read out in the studio, the broadcast item was wholly negative in respect of Watchdog’s findings
- when undercover journalists seek evidence of wrongdoing or of poor practice, they are not obliged to highlight all other instances where they discover good practice too
- nonetheless, the BBC expects undercover research to be presented in a way that paints a fair and accurate picture overall
- the two independent experts chosen by the Trust expressed unprompted approval of the high standards of advice given by various members of Pets at Home staff in the untransmitted undercover recordings
- Trustees themselves noted instances in the rushes of good practice by Pets at Home staff
- a noteworthy occasion featured Watchdog’s attempt to buy a rabbit; on inspection, the Pets at Home staff member had identified illness in the animal, had refused to sell it and removed it for treatment
- irrespective of the relative strength or weakness of the individual cases where the programme claimed to have found poor standards or poor service, the relentlessly critical nature of the programme and the failure to reflect the incidence it discovered of good standards, best practice and good service led to unfairness to Pets at Home
- the point was upheld as a breach of the guidelines on Fairness, Privacy and Impartiality

With regard to whether the programme observed due impartiality with regard to the expert who appeared in the item:

- it is up to the BBC who takes part in their programmes and it is for the BBC to assess a contributor’s suitability for a role
- Mr Jessop’s experience as a vet and his prominence in the British Small Animal Veterinary Association would suggest a high level of expertise in the care and health of small animals; the Committee did not disagree with the BBC’s view as to his suitability to be the programme’s expert
- Trustees saw no evidence to suggest that Mr Jessop’s contribution to the programme, and in particular his professional assessment of the material gathered, were affected by any opinions he may have held or expressed about the sale of animals in pet shops or the suitability of creatures such as lizards as household pets
- Trustees did consider that in the specific circumstances of this particular broadcast, the nature and content of Mr Jessop’s published views were relevant, given that the item dealt specifically with animals which were being sold in pet shops and the keeping of lizards as household pets
- Trustees therefore decided without making any judgement as to views actually held by Mr Jessop, that the programme was required to present his contribution in a context which allowed the audience to take proper account of his relevant previous comments and published views in informing their judgement.
- The programme’s failure to do this was, in Trustees’ opinion, a breach by Watchdog of guideline 4.4.14.

With regard to whether the trail broadcast on 11 June 2015 breached the requirement
that those criticised in BBC output should be given a fair opportunity to respond to the allegations:

- audiences hearing the trail would have been in no doubt that *Watchdog* had gathered evidence of a critical nature about *Pets at Home* which amounted to a "strong and damaging critique" of the company
- it would have been entirely straightforward to have composed a trail that did not jeopardise fairness
- given that *Watchdog* were aware that *Pets at Home* planned to challenge all of the allegations the trail could have retained an element of open-mindedness by being formulated as a question rather than stating that *Watchdog* had gone undercover "with shocking results"
- the content of the trail was at odds with the assurances which had been given to Pets at Home just a few hours earlier.
- when writing a trail about an item where there is a right of reply process underway or anticipated, programme makers should judge whether the trail needs to be written in such a way that the trail itself does not call for a right of reply process
- in the circumstances of the programme, and taking into account the exchanges which had already taken place between the programme and the complainant, the trail should have been expressed differently or should have indicated that *Pets at Home* intended to rebut the evidence
- the point was upheld as a breach of fairness

Trustees decided not to uphold the remaining 7 points.
The Film Review, BBC News Channel, 5 June 2016, 17.45

Summary of finding

The complaint concerned an edition of the programme which featured a review by a critic of the film The Nice Guys. One of the clips featured in the review included a character in the film deliberately breaking the arm of another character. The complainant said the BBC News Channel had not provided a content warning and that his six-year-old child, with whom he watched the programme, had been extremely upset.

The Committee concluded that:

- the use of the clip in The Film Review had involved nuanced judgments about the portrayal of fictional rather than real-life violence in the context of the BBC News Channel

- in considering the film critic’s introduction to the clip, firstly, parents watching with their children could have been lulled into a false sense of security when the film was described as a “comedy caper”; and secondly, the audience was not given sufficient warning that they might hear something violent or see implied violence even though the introduction had said: “When they first meet, Russell Crowe’s character is actually hired to beat up Ryan Gosling. Let’s have a look.”

- while acknowledging that the clip did not show the arm being broken, the noise of the “break” and the screaming (which adults might well have found to be comic) could be distressing to a young child who would not have understood that the scene was meant to be humorous.

- parents might regard a pre-watershed film review segment as a relatively safe time to allow children to watch alone a channel (ie the BBC News Channel) which, by its nature, would otherwise often deal with real-life violence

- there was no exceptional reason in this case for broadcasting pre-watershed news items which were not suitable for children. The clip was shown at 17.45, which was a time when a young child might see it and, in any event, the introduction was insufficiently clear to constitute a warning that the clip would contain implied violence

- there had been a breach of the harm and offence guidelines in this case because the clip was not suitable for broadcast at this time.

Finding: upheld
Today, BBC Radio 4, 7 June 2016

Summary of finding

The complaint concerned an interview with Lord Heseltine on BBC Radio 4’s Today, which coincided with the publication of his report “Tees Valley: Opportunity Unlimited”. The interview was broadcast during the EU Referendum campaign.

The Tees Valley had experienced significant job losses when the SSI (Sahaviriya Steel Industries) steelworks at Redcar were closed in 2015. At the time of broadcast, there was also uncertainty about the future of Port Talbot's steelworks.

The sequence began with the presenter, John Humphrys, interviewing a former SSI worker who was now driving a bus, and who expressed his view that the Chinese and the UK government were to blame for the closure of SSI – the Chinese for dumping cheap steel, and the UK government for saying they were unable to help. He said that he thought Britain should leave the EU because “charity begins at home”.

Lord Heseltine (a Remain campaigner) was asked to respond to the former SSI worker’s observations. Lord Heseltine expressed his view that there would be serious consequences for the UK if it left the EU.

John Humphrys said to Lord Heseltine:

“But isn’t there quite an important point here that we mightn’t have had to lose Teesside... if we had been able to impose the sort of tariffs against Chinese steel that the Americans had imposed for instance. But the European Union doesn’t allow that.”

The complainant said that the question was inaccurate and misleading because it gave the impression that the UK’s membership of the EU was to blame for the fact that the UK had not raised higher tariffs, and it failed to mention that the EU had wanted to raise tariffs further but had been prevented from doing so by the UK government.

The Committee concluded that:

- they regretted that there was a degree of ambiguity about the meaning of the question, as it was possible that some listeners may have inferred that the UK had wanted to impose punitive tariffs on Chinese steel but had been prevented from doing so by virtue of its membership of the EU
- they understood the question to be, however, an attempt to take the points of the former SSI worker (who had already expressed his view that Britain should leave the EU) and pose them to Lord Heseltine in the form of a challenging statement
- in reply, Lord Heseltine chose to stress the potentially negative effects of countries acting independently in applying punitive tariffs, rather than stating that the EU was able to impose higher tariffs under its existing rules
- the statement itself had been factually accurate, reflecting both that no one member country could impose tariffs unilaterally and that, under its current rules,

the EU could not impose punitive tariffs
• on balance therefore, the item had been duly accurate and not materially misleading.

The complaint was not upheld.
Appeal Findings

Watchdog, BBC One, 11 and 18 June 2015

Background

This was a first party appeal by a law firm on behalf of the pet store chain *Pets at Home*. The complainant contended that a segment in an edition of the consumer affairs programme *Watchdog* which made allegations concerning the health and welfare of animals in some *Pets at Home* stores was inaccurate and unfair to its client.

The eight-minute segment comprised primarily of footage shot undercover by *Watchdog* researchers in spring 2015 at eight of the more than 370 *Pets at Home* branches across the UK.

*Watchdog* was accompanied on some of the visits by Mike Jessop ("Mr Jessop"), a vet and former President of the British Small Animal Veterinary Association. He provided commentary and analysis both during the filming and afterwards in an interview with a *Watchdog* reporter.

A trial for the item said undercover filming had produced "shocking results". The item was broadcast a week later alleging that *Watchdog's* investigation had uncovered the following:

- dead, dying and diseased fish in all eight stores
- promised health checks at point-of-sale were not being undertaken
- a lizard being kept in a tank which was too small for it
- customers given incorrect temperature advice which could lead to a lizard’s death.

*Watchdog* originally investigated *Pets at Home* in 2012. On that occasion the programme reported finding animals that were unwell and underweight, and showed footage of dead and diseased fish in display tanks.

Archive footage from the 2012 report was rebroadcast in the 2015 report and comparisons were drawn between them.

In the 2015 item *Watchdog* reported that after the original programme *Pets at Home* had "promised to improve” but that since then the programme had received "more than a thousand further complaints“ and had gone back "undercover”.

Broadcasters intending to allege serious wrongdoing are generally required to warn the subject about the nature of those criticisms and afford a right of reply, but broadcasters are not generally required to provide the subject with copies of recorded material, whether or not it is intended to form part of the broadcast report. In this case the complainant contended that refusing to supply *Pets at Home* with the underlying material constituted a failure of due process because it had put it at a disadvantage in compiling its right of reply response prior to broadcast and defending itself against the allegations made in the programme.

In hearing an appeal, the Trust endeavours, as far as possible, to put the complainant on an even footing with the BBC. To achieve this in relation to this complaint the Adviser who
compiled the background note for Trustees viewed the relevant rushes with the complainant’s points of appeal in mind, and also sought external expert input from two specialist vets.

Summary of Appeal to the Trust

Pets at Home raised, amongst other things, the following heads of complaint on appeal:

- Allegations made by Watchdog regarding the health and welfare of animals were inaccurate and misleading
- The programme was not duly impartial: it relied on expert advice from a biased source and dismissed, out of hand, evidence which was brought to its attention prior to transmission
- The programme failed to give Pets at Home a fair opportunity to respond to the allegations prior to transmission
- The Editorial Complaints Unit summary of its finding which appears on the BBC website is misleading.

The complainant attached to the appeal a schedule of the relevant correspondence which had passed between themselves and the BBC. The complainant asked "that the Trust reviews all of the material and all relevant material held by the BBC in relation to the broadcast and the trailer".

The complainant requested an on-air apology for what it asserted had been breaches of sections 3, 4, 6 and 7 of the Editorial Guidelines.

Applicable Editorial Guidelines

The following BBC Editorial Guidelines are applicable to this complaint:

- Accuracy
- Impartiality
- Fairness, Contributors and Consent
- Privacy

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

Points of Appeal

The Trust’s Editorial Standards Committee ("the Committee") noted the points which the complainant had asked to be considered:

**Point (A)** – Whether the programme observed due accuracy in how it presented allegations relating to the health and welfare of animals in *Pets at Home* stores

**Point (B)** – Whether the programme was fair to *Pets at Home* in how it presented allegations relating to the health and welfare of animals in *Pets at Home* stores

**Point (C)** – Whether the programme observed due impartiality with regard to the expert who appeared in the item

**Point (D)** – Whether the programme gave a fair opportunity to *Pets at Home* to respond to the allegations
Point (E) – Whether the programme obtained the appropriate permissions for the gathering and transmission of secretly recorded material

Point (F) – Whether the Editorial Complaints Unit’s summary of its finding which appears on the BBC website is appropriate

Point (A) – Whether the programme observed due accuracy in how it presented allegations relating to the health and welfare of animals in Pets at Home stores

The nature of watchdog’s investigation

The complainant contended that Watchdog portrayed a “misleading and inaccurate picture of Pets at Home” which:

“…did not reflect the true position in relation to the company or how it operates. This was especially the case given some of the sensationalist statements that were made in the broadcast which in no way could be supported by the evidence”.

The Watchdog item noted commitments made by Pets at Home following the 2012 broadcast:

- to review health check training
- to do a better job of monitoring the fish tanks in its stores
- to improve staff training.

Watchdog filmed undercover in eight of the 28 stores about which it had received complaints. The item reflected what Watchdog said it found when it investigated the following:

- whether Pets at Home was doing a better job of monitoring the fish tanks in stores
- whether Pets at Home was carrying out the six-point health check promised on the company’s website when animals were sold
- whether staff training had improved, which the programme tested by asking for advice on keeping bearded dragons, a type of lizard
- whether the housing provided and recommended for the bearded dragons met recommended industry standards.

For the undercover filming of the fish tank checks, and of conditions in store for rabbits and reptiles, Watchdog researchers were accompanied by Mr Jessop, the same vet who had featured in the 2012 report. For the point-of-sale health check and the lizard advice Mr Jessop was told about what the researchers had found and his comments in the programme were based on that information.

The approach taken by the Adviser with the independent expert vets

The BBC and the complainant were notified in advance of the Adviser’s intention to consult with Dr Robert Jones (fish) and Dr Shane Simpson (reptiles) and were provided with the respective vets’ credentials. Both parties confirmed that they were content with the Adviser’s choice of independent experts, who were selected because of their evident expertise in their respective fields.

The Adviser had prepared a series of video clips from the rushes to show each vet, relevant to their respective specialisms. The clips they were shown included, in context, the underlying material for all the sequences used in the programme, along with a small
selection of additional clips to enable a wider understanding of the nature and scope of Watchdog’s investigation.

The two vets were told that they would be shown the broadcast item and that the nature of the complaint would be explained to them at the end of the session but they would be asked for their opinion on the rushes clips without any foreknowledge of the allegations.

Accuracy Sub-points

The sub-points considered in respect of this allegation were as follows:

Point (A) 1 – Fish tank checks
Whether the programme observed due accuracy in how it reflected the effectiveness of Pets at Home’s checks on fish tanks

Point (A) 2 – Fish diseases
Whether the programme observed due accuracy in relying solely on Mr Jessop’s diagnosis of diseases in fish when, the complainants alleged, he had previously misdiagnosed such diseases in the 2012 broadcast

Point (A) 3 – The fish department
Whether the programme failed to observe due accuracy by exaggerating the scale of the problem in the fish department

Point (A) 4 – Bearded dragon temperature advice
Whether the programme observed due accuracy in how it reflected temperature advice about keeping bearded dragons

Point (A) 5 – In-store conditions for bearded dragon
Whether the programme observed due accuracy in claiming that a lizard in store was being kept in conditions which were too cramped

Point (A) 6 – Health checks
Whether it was duly accurate to claim that Pets at Home had failed to meet its promise to conduct a point-of-sale check on every animal

Point (A) 7 – Customer complaints
Whether the item failed to observe due accuracy by misleading the audience about the level of consumer dissatisfaction with Pets at Home

Point (A) 8 – Gathering of evidence
Whether the programme achieved due accuracy in checking and verifying the material/content which was broadcast.

The issues raised under the umbrella of Point (A) engage the Editorial Guidelines’ requirement that content must be duly accurate. The Committee considered in particular these extracts from the Accuracy Guidelines:

- All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don’t know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.
The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences’ trust in our content.

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

We must take accurate, reliable and, wherever possible, contemporaneous notes of all significant research and other relevant information. We must keep records of research including written and electronic correspondence, background notes and documents. They should be kept in a way that allows double-checking, particularly at the scripting stage, and if necessary by another member of the team.

Point (A) 1 – Whether the programme observed due accuracy in how it reflected the effectiveness of Pets at Home’s checks on fish tanks

Trustees noted the relevant extracts from the broadcast segment:

REPORTER
Our first task was to check if Pets at Home was delivering on its promise to do a better job of monitoring the fish tanks in its stores. It’s done to ensure sick or dead fish can be identified and removed to prevent the spread of bacteria. So, had the situation improved since 2012?

MIKE JESSOP, FORENSIC VET
(on-screen caption: Chatham)
That’s a seriously diseased fish in there. It’s an ulcer disease, it’s a huge area affected, it’s eaten into it almost like a cancerous disease.

REPORTER
Our expert Mike found sick fish in all eight stores, affected with conditions such as fin rot, white spot and ulcer disease. We found dead fish in every one of the eight branches, 53 in total. In the Chatham store alone, we found 17.

MIKE JESSOP
(on-screen caption: Chatham)
In fact, in this tank is another tank of death and destruction. They shouldn’t have fish in this store. They don’t know how to look after them.

REPORTER
When a fish dies it can immediately start to rot and spread germs meaning it should be removed as quickly as possible.

MIKE JESSOP
(on-screen caption: Brislington)
He’s been dead for a good long while.

(on-screen caption: Chatham)
A fish that’s been dead for a long time. That’s partially decomposed and has been half eaten.

REPORTER
So it seems that not much has changed at all in the fish department.
MIKE JESSOP
Dead fish aplenty, much like we had in 2012. It just really is appalling.

REPORTER
So in our expert’s opinion there were clearly still problems with how Pets at Home dealt with the fish in its store.

MIKE JESSOP
They have seriously let down on their promises. The fish department was particularly bad. We saw as much problem this time around as we saw in 2012. Just truly awful.

Trustees noted the right of reply response from Pets at Home regarding the fish allegations, which was read out at the end of the item by a Watchdog presenter in the studio:

"[Pets at Home] says that since 2012 it’s doubled the frequency of fish tank checks and has robust procedures to ensure fish are dealt with properly if they’re ill or die. It also says that a dead fish can decompose within an hour."

Trustees noted also the following comments from the complainant’s correspondence:

- since 2012 Pets at Home had doubled the frequency of fish health checks from hourly to every 30 minutes and had records to prove this was occurring, including at the stores which featured in the broadcast item and during the timeframes covered by the filming
- fish decompose rapidly, and within the 30-minute window will show signs of decomposition
- such fish would be identified as part of the routine fish health check and removed
- claims made in the broadcast are only accurate to the extent that the person viewing the fish made the correct assessment of them.

Trustees noted the complainant’s citation of the opinion of an aquatic expert engaged by Pets at Home:

"[The expert] has confirmed that the rate at which fish autolyse (decompose) is extremely fast; decomposition begins within 15 minutes of death and signs of serious decomposition would be visible within 30 minutes. A small fish of the size typically kept in aquariums at room temperature would be completely decomposed such that there would be no sign of it within 8 hours; at tropical temperatures (such as in our client’s tanks) this would take only about one hour.

"It is also the natural behaviour of fish to quickly consume other dead fish around them. Any fish found to be decomposing, therefore, will have been dead only for a very short period of time, most likely a matter of minutes."

The Committee noted that at Stage 2 of the BBC’s complaints process the Editorial Complaints Unit (ECU) said the allegation was not whether Pets at Home were conducting half-hourly checks of their fish tanks but whether the steps they had taken since 2012 were proven to have been effective.

The Committee noted the BBC had rejected Pets at Home’s assertion regarding the length
of time it takes for fish to decompose, and that in correspondence for this appeal Watchdog's expert Mr Jessop said:

"(As noted in the wide range of responses solicited by the programme) decomposition has not been properly studied and there is a range of opinion. The problem is the variation of tissues. The soft tissues will disappear relatively quickly. My opinion is that there will be little left in 36hrs. However, the skeleton is more robust and will linger longer. The other fish will also pick the skeleton clean.

"We did see skeletal remains in some tanks but I cannot recollect which ones. I doubt the footage will detect such remains as they will be indistinct against the gravel or furnishings of the tank.

"They do not decompose completely in the 30 minutes of the stated inspection frequency. This issue is important because Pets at Home (PaH) are trying to suggest that their staff will miss some decayed fish within that alleged 30 minute inspection window.

"I would also point out that fish death is rarely instantaneous. They become ill and show inability to swim properly, start to be bullied by the fish, hang oddly in the water. The fish should be removed from the tank BEFORE death and humanely euthanised or treated. I would suggest that there would be an average of 12hrs illness, death and then 36hrs before a skeleton. Even allowing for overnight there should be intervention before dead fish.

"PaH employ a team of well qualified vets, vet advisors and fish supervisors. Their problem is that control is by central monitoring of fish mortality. They know how many fish die per store and their number should be for euthanised fish only. If properly managed, the fish should not be dead unnoticed. It is worth pointing out that most PaH stores have veterinary practices in store, as an organisation they must employ over 300 vets. They cannot be short of advice."

The Committee noted that Pets at Home had queried the reliability of Watchdog's claim that it found 53 dead fish in total in the eight stores it visited and its contention that while Watchdog may have found dead fish it did not mean that the store had not improved the monitoring of its fish tanks since 2012.

The Committee noted:

- that in addition to the broadcast footage, which included images of fish which were clearly dead and which in two cases were being eaten by other fish, the Adviser noted additional examples of dead fish during her viewing of the unbroadcast rushes
- the view of the complainant's expert that fish begin to decompose almost immediately and therefore any intact dead fish would have been likely to have died within the previous 30 minutes
- that this was not the view of experts contacted by Watchdog and recorded in a document sent to the Adviser by Watchdog; the document showed that three days prior to transmission the programme sought additional advice from six vets with expertise in fish pathology about how quickly a dead fish might decompose
- none of those experts contacted by Watchdog prior to transmission expressed views which aligned with that of the Pets at Home expert that:
“A small fish of the size typically kept in aquariums at room temperature would be completely decomposed such that there would be no sign of it within 8 hours; at tropical temperatures (such as in our client’s tanks) this would take only about one hour.”

- that collectively the various experts told Watchdog that visible signs of decomposition would not be evident within an hour
- the consensus view of the six experts contacted separately by Watchdog was that visible signs of decomposition would not be evident within an hour, and that:
  - whilst fish do decompose very quickly and completely, the rate at which it happens varies depending on a range of factors
  - goldfish in warm water will show staining within 6 hours and will be pretty decomposed within 36
  - it might start falling apart overnight
  - fish in warmer water decompose faster than in cold water but either way it would be hours rather than minutes

The Committee noted that the opinion of Dr Robert Jones, the independent expert consulted by the Adviser for this appeal, aligned closely with that of the vets whom Watchdog spoke to. When he was asked by the Adviser how quickly an aquarium fish would decompose, Dr Jones said:

- it shouldn’t come to that, in 80-90% of cases it should be possible to pick up that a fish is sick; there would usually be around 12 hours from detectable illness to a fish dying and a good shop with reasonably trained staff should be able to detect a sick fish and euthanise or treat it
- in up to 20% of cases though you would not get any forewarning
- decomposition from a pathological point of view begins almost immediately after death because tissues will start breaking down
- but that is only at a microscopic level and would not be detectable with the naked eye
- fish will not disappear within half an hour; you would still be able to see remnants hours later, dependent on species and temperature
- other fish do not start attacking dead fish immediately.

The Committee noted information from the Adviser regarding comments made by Dr Jones whilst he was watching the rushes, and before he knew what was in the broadcast item and what Watchdog were alleging:

- the fish captured on video could have died in the last two hours (Bradley Stoke)
- they need to move dead and sick fish more often (Bradley Stoke)
- a half-eaten fish is not good (Eastbourne)

The Committee was satisfied, on the balance of expert opinion, that a number of the dead fish recorded in Pets at Home tanks must have died more than 30 minutes, and probably a matter of hours, before they were filmed. The Committee did not accept Pets at Home’s claim that dead fish start to decompose within 15 minutes in such a way as to explain the instances of decomposing fish discovered by the programme. The Committee was also persuaded by the expert evidence that it should be possible to detect sickness or disease in a high proportion of fish before they die, such that they can be removed; the 53 dead
fish discovered by the programme suggested that, however frequent the checks by Pets at Home staff, they were not fully effective. The Committee concluded therefore that the claims made in the programme were duly accurate.

Finding: Not upheld

Point (A) 2 – Whether the programme observed due accuracy in relying solely on Mr Jessop’s diagnosis of diseases in fish when it was alleged by the complainant that he had previously misdiagnosed such diseases in the 2012 broadcast

The Committee noted the allegations in the 2015 programme regarding diseased fish:

- that a fish in the Chatham store was seriously diseased:

  “It’s an ulcer disease, it’s a huge area affected, it’s eaten into it almost like a cancerous disease”

  “Our expert Mike found sick fish in all eight stores, affected with conditions such as fin rot, white spot and ulcer disease.”

The Committee noted the complainant’s contention regarding the comment in the programme that a fish was suffering from “ulcer disease”:

“Our client’s veterinary experts’ assessment, having seen the footage, is that this fish described had a myxobacterial infection, causing a white area on the skin which is easily treatable using our client’s myxazin fish treatment. The infection does not eat into the fish and was not ulcer disease. This demonstrates the very serious potential for misdiagnosis ... our client has not been able to review the raw footage or evidence. It is obvious that such kind of errors seriously undermine the broadcast’s claims.”

The Committee noted that in correspondence prior to transmission the complainant drew Watchdog’s attention to the concerns it had raised following the 2012 broadcast:

“Our client is extremely concerned about the likelihood that further misdiagnoses will be broadcast should you proceed.”

The Committee noted:

- that following the 2012 broadcast Pets at Home had alleged that Mr Jessop had misdiagnosed white spot in fish
- that it had attached to this 2015 complaint what it said had been an unsolicited email received by Pets at Home after the 2012 programme from a specialist aquatic vet, with a PhD on white spot in fish
- that the email stated that what was identified in the 2012 programme by Mr Jessop as “white spot” was categorically not “white spot” and was in fact “a harmless growth and not a contagious disease”.

The Committee noted that the Adviser had asked the BBC whether, in view of the comments received from Pets at Home prior to broadcast, Watchdog had sought a second opinion about any of the diagnoses prior to broadcast. The BBC was also asked if it could
point the Adviser to any further video evidence of what Mr Jessop identified as “white spot”, beyond the example in the broadcast item.

The Committee noted the BBC’s response:

“It wasn’t deemed necessary to obtain a second opinion on fish with ‘white spot’ given that the examples the expert saw were clear and obvious. A second opinion on a still image would not be as reliable as seeing the fish first-hand... examples of ‘white spot’ were found in Chatham and Crayford stores.”

The Committee noted the following comments from Watchdog’s expert vet Mr Jessop:

“I have seen many examples of all 3 of these conditions and stand by my diagnosis.

“The white spot disease was prevalent in many stores and is a disorder of stressed fish. It appeared on numerous fish in the same tank or blocks of tanks. It should immediately render the whole tank unsaleable until properly treated.

“Fibroma in a fish is a RARE benign tumour and appears as a raised blemish on the fish. It is usually benign, although there are more complex variants. I did not see any such lesions. However, they should render a fish unsaleable due to their presence. Or, at the very least be marked down in price as a damaged animal.

“Ulcer disease is a serious bacterial infection of the skin and caused deep caveating sores (hence eating into the fish like a cancer).

“I saw evidence of white spot and ulcer disease. I did not see fibroma and dispute the findings by their expert that it was fibroma.

“Fin rot is invariably a fungal infection.

“Fin rot, White spot and ulcer disease are all opportunists and tend to affect stressed fish.

“The white lesion is white spot.”

The Committee noted that Watchdog was not able to point the Adviser to any further examples on camera of what its expert considered to be “white spot”, except for that which was highlighted in the broadcast item. The Committee also noted that the Adviser (who was not an expert) did not see any when she viewed the rushes.

The Committee noted that Dr Robert Jones, the independent specialist aquatic vet, commented unprompted when he watched the broadcast item that the image identified as “white spot” was not “white spot”:

“The white spot on the fish is lymphocystitis, which is caused by a virus and is not highly contagious. It shows up under stress when fish are not well. They will recover. It’s a bit like when people are under stress and get a cold sore. Lots of fish get it. White spot is more serious. White spot in one tank in just one fish would spread across the whole tank within days.”

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5 The example used in the programme to illustrate the allegation that “white spot” was present was video footage, not a still image.
The Committee noted information from the Adviser that she had pressed Dr Jones on his diagnosis and that he had insisted he was in no doubt that it was not “white spot”; he said there would be multiple white spots on the fish and the white spot was not where you would find “white spot”. He would also expect there to be many fish infected in the tank, not just one.

The Committee noted that Dr Jones was unaware when he made his comment that *Pets at Home* had raised the issue.

The Committee noted information from the Adviser that whilst *Watchdog* was unable to point her to another video image of a fish which was suffering from “white spot”, the programme’s log records that it was detected in two stores.

The Committee noted also that the Adviser had listened to Mr Jessop’s contemporaneous commentary in the audio recordings and had reported that he was heard referring to “white spot” on several occasions.

The Committee noted that it was possible that whilst the example of white spot shown in the programme may not have been “white spot”, the other references to “white spot” noted in the programme’s log and heard in the audio recordings may have been correctly diagnosed. However, given the absence of any video material on which to assess that wider claim, and taken alongside the contrary evidence of the independent vet, and of concerns raised by *Pets at Home* following the 2012 broadcast, the Committee considered it could not safely reach the conclusion that white spot had been correctly diagnosed on this occasion.

The Committee noted that Dr Jones had also reacted to the comments in the broadcast item about the fish which it was alleged was suffering from ulcer disease; he had commented that all that could reasonably be said was that the fish had an ulcer which would have been caused by a bacterial infection; it would not be possible, in Dr Jones’ opinion, to tell just from looking at it what might be causing it. The Committee noted his view that the most that could be said was that it was not a well fish.

The Committee noted that Dr Jones agreed that the image identified as “fin rot” was almost certainly fin rot.

The Committee noted it was not its role to decide whether the diseases identified in the programme by Mr Jessop had been correctly diagnosed, but rather to assess whether the programme had done all it could to ensure due accuracy. The Committee concluded on balance that it had not, for the following reasons:

- the BBC’s statement that the evidence was “clear and obvious” was contradicted by the very strong contrary analysis by Dr Jones
- it was unfortunate that the programme appeared to have either not retained or not recorded adequate video or other evidence to reliably support its claims to have diagnosed specific diseases in fish in all eight stores, particularly given the claim that white spot in particular was “prevalent in many stores” and “appeared on numerous fish in the same tank or blocks of tanks”
- *Pets at Home* had previously disputed Mr Jessop’s diagnosis of white spot, and had alerted *Watchdog* to their concerns again prior to this broadcast, so Trustees considered that good practice would have been for the programme to seek a second expert opinion on the diagnosis of white spot - and of the other diseases it proposed to highlight in the broadcast - just as the programme makers had done in relation to the speed of decomposition of dead fish
Finding: Upheld as a breach of accuracy

Point (A) 3 – Whether the programme failed to observe due accuracy by exaggerating the scale of the problem in the fish department

The Committee considered how Watchdog framed the findings of its investigation in relation to the fish department, and whether the conclusions it reached were duly accurate.

The Committee noted Watchdog’s conclusion that “it seems that not much has changed at all in the fish department” since 2012 and that in their expert’s opinion “there were clearly still problems with how Pets at Home dealt with the fish in its store[s]”.

The Committee noted the complainant had alleged generally that:

• the programme had inferred there was a systemic problem in Pets at Home stores which had resulted in serious failures in animal welfare and had caused suffering to animals
• (but) the fact that Watchdog had visited fewer than 2% of its stores clearly showed that it did not have any proper grounds for suggesting systemic failures
• it was also unsafe to make such serious claims based upon an audio log or handwritten notes or on video footage re-reviewed by a non-veterinary or other suitably qualified expert, as the Editorial Complaints Unit (ECU) did.

The Committee noted the BBC’s response:

“There is a great deal of audio visual material. The recordings were used as supporting aids for what the expert and Watchdog undercover reporters saw first-hand. The undercover operatives filed detailed accounts of each store visit immediately following each visit.”

The Committee noted that Watchdog had provided the Adviser with a “store visits results table” in which it had summarised what the teams said they found in each store. The Committee noted too that the Adviser had viewed the rushes and listened to the audio (where available).

The Committee noted the Adviser’s summary of what she considered the key points from her investigation:

• that two of the eight stores (Chatham and Bradley Stoke) accounted for more than 50% of the total of dead fish found across the eight visits
• that in each of the remaining six stores the store visits results table logged between two and five dead fish
• that for none of the stores was there video evidence to support the totals logged: for example, the Adviser was able to clearly identify only four dead fish on video in the Chatham store, whereas the log recorded 17 dead; similarly, at Filton Abbey Wood the Adviser was unable to identify any dead fish captured on the rushes, whereas the log recorded five
• where the audio existed, the numbers of dead fish aligned closely with the numbers recorded in the log in most cases
• whilst the video material did not reflect the number of dead fish logged, that did not mean the programme’s claims were unreliable, only that there did not appear to be corroborating video evidence to support those claims.
The Committee noted that whilst the audio failed to record properly on a number of occasions, where it was available the audio demonstrated that Mr Jessop gave a detailed running commentary of what he was observing in each store as he walked around; beyond counting dead and diseased fish, the material reflected that Mr Jessop had multiple concerns about the welfare of the fish and the management of the tanks at the Chatham store.

The Committee noted that, inevitably, the material gathered during undercover filming in the fish departments of the eight stores was more comprehensive regarding fish-related issues than was reflected in the observations about diseased and dead fish which formed the allegations in the programme. The Committee noted that the Adviser therefore included additional contextual material when she compiled the clips and transcripts for Dr Jones to view and read.

The Committee noted Dr Jones' overall view when he was invited to give his opinion on what the material appeared to suggest about the extent of the problems in Pets at Home's fish department:

"Of the eight stores, six get my tick. In any fish store with thousands of fish sadly you can expect to see the odd fish unwell or dead. Those six stores had an average of 3-4 dead fish and in my view, that would not be a matter of particular concern.

"The time taken to move fish is crucial. Logically, if you’ve got a store where people are going around, the chances are they will find one or two dead fish.”

Dr Jones considered that the amount of dead fish in the other two stores could suggest a lack of training and/or inadequate procedures at those particular stores.

The Committee noted that the Adviser (who was not an expert) had independently corroborated Dr Jones’ observation that the presence of a few dead fish in display tanks was what might be expected in a store with a fish department the size of Pets at Home. She had visited two retail stores selling aquarium fish, neither of which was part of the Pets at Home chain: one store was picked at random and was part of a different chain, and the other was an independent shop. The Committee noted that in the first store the Adviser easily spotted three dead fish in the display tanks and in the second three dead fish and one fish which appeared, to the Adviser, to be sick. Both stores had large stocks of fish in display tanks, similar to the Pets at Home stores. The independent shop was selected by the Adviser because it had received high ratings online for quality and customer service and was recommended on a number of websites for serious aquarium fish hobbyists.

However, the Committee also noted that, to the best of the Adviser’s knowledge, in neither store was there any obvious sign of decomposition and the fish were intact in all cases, suggesting they had not been dead very long. The Committee noted there was some evidence that this was not always the case for the dead fish logged during the Watchdog visits.

The Committee noted that correspondence during the course of the complaint reflected that the eight stores selected for undercover filming were amongst 28 stores in the Pets at Home network about which Watchdog had received complaints since 2012.

The Committee noted too that it is a mandatory requirement under the Editorial Guidelines to gain approval for secret filming; as part of that process programme makers
have to demonstrate clear prima facie evidence to justify the intrusion. The Privacy guidelines prohibit what they refer to as “a fishing expedition” (see also Point E). *Watchdog* would therefore have been obliged to select stores about which complaints had been received.

The Committee noted that the Adviser had reviewed the relevant internal correspondence which provided examples of some of the complaints received by *Watchdog* concerning *Pets at Home* stores, but that it did not contain a comprehensive list of all complaints. It was therefore not possible to reach a reliable conclusion about how many of the eight stores had been the subject of complaints to *Watchdog* about their fish department. The Committee noted that the paperwork reflected that there had been complaints about the fish departments in the Eastbourne and Crawley stores but was inconclusive as to whether that might also have been the case for the other six stores in the sample and that they might have been included in the sample because of complaints regarding other departments, e.g. bearded dragons or rabbits.

The Committee noted that the paperwork reflected that the programme received clear guidance at several stages from Editorial Policy about what evidence it needed to gather, how it could be gathered and the number of stores which needed to be included for the investigation to be valid and that the programme appears to have complied with the guidance given (see also Point E).

The Committee was satisfied that *Watchdog* had visited a sufficient number of stores to be able to draw some conclusions about the effectiveness of the company’s welfare standards with regard to the monitoring of fish tanks and the identification and removal of dead and diseased fish. However, the wider impression which the audience would be likely to have taken, that the problems in the fish department were serious and widespread, could not be justified for the following reasons:

- the methodology did not allow for this conclusion: fewer than 2% of the stores were visited, and the stores in the sample had not been selected at random so could not reliably be said to be representative of the *Pets at Home* chain as a whole
- whilst the documented evidence was inconclusive regarding which of the eight stores had come to *Watchdog’s* attention because of complaints about fish, it was likely that a proportion of the eight were in the sample for that reason
- notwithstanding that a pre-condition for secret filming is the existence of prima facie evidence, had the audience been aware that the stores visited were ones that had attracted complaints, viewers might have been less likely to infer that there were serious failings more widely across the chain
- alongside this, the allegations in the programme regarding the number of dead fish failed to inform the audience that two of the stores accounted for more than half of those found, and that in the remaining six stores the number of dead fish found was in line with what might reasonably be expected in any store with a similar stock of fish on sale
- the reflection of the evidence gathered regarding the diagnoses of diseases in fish had been upheld as not duly accurate under point (A)2 above.

In the Committee’s opinion, viewers would have been led to believe that in all eight stores – and therefore, by extension, perhaps in other *Pets at Home* stores – there was a systemic problem in the fish department. This impression could not be justified on the evidence gathered and therefore the item was not duly accurate in how it presented the extent of any problem in the fish department of *Pets at Home*.
Finding: Upheld as a breach of accuracy

Point (A) 4 – Whether the programme observed due accuracy in how it reflected temperature advice about keeping bearded dragons

The Committee noted the programme’s claim that temperature advice given to customers in relation to bearded dragons in half of the stores visited was wrong, and that in two cases, if followed, it could ultimately have led to the lizard’s death.

The Committee noted the relevant extracts from the broadcast:

REPORTER
...the most important factor in ensuring a bearded dragon lizard remains healthy is the temperature of its tank. There are a number of guidelines relating to temperatures in tanks. All of them agree that it needs to be in an environment with a mixture of temperatures ranging from 15 degrees up to 41 degrees in the hottest spots.

(On-screen caption: Crayford, Crawley, Old Kent Road and Filton)

But in four of the eight stores, we were given the wrong advice and in two stores (on-screen caption: Crayford and Filton) the temperatures suggested were so hot according to our expert it could lead to the lizard’s death.

PETS AT HOME FILTON STAFF MEMBER
In a space like this you need to have a hotspot. That could be, umm, minimum of about 35 degrees and it can go hotter than that, I think, all the way up to 50 degrees, so that is, we are talking really hot.

REPORTER
Fifty degrees centigrade, Mike. What did you think when you heard that?

MIKE JESSOP
You’re almost slow cooking them at that sort of temperature. 50 degrees centigrade is far, far too hot for these little animals. To get the temperature wrong is a really fundamental error. This will put stress on their systems and that will open them up to all sorts of diseases, some of which can be fatal.

The Committee noted *Pets at Home’s* response to the allegation, read out by the studio presenter at the end of the item:

“[Pets at Home] disputes the brief exposure to 50 degrees Celsius would be harmful to a bearded dragon, saying lizards move away from hotspots if they want a cooler area...”

The Committee noted the following from the complainant’s letter of appeal:

“'There is no way that Watchdog could have any evidence that supports the claim that customers were being advised to keep lizards in a manner that amounted to 'killer conditions’. Even Watchdog’s claim that one of our client’s colleagues stated that a vivarium hotspot could go all the way up to 50 degrees, in no way amounts...”
to ‘killer conditions’ or the ‘slow cooking’ of the animal, something which is a highly emotive statement no doubt designed to convey to audiences that ‘shocking results’ had been uncovered. It also completely ignores the fact that if a bearded dragon found an area to be too warm it would move away from the heat source to a cooler spot.”

The Committee noted that during pre-broadcast correspondence the complainant said:

“There is a big difference between a hotspot and average temperature of the vivarium. We have verified with a reptile expert, Chris Newman of REPTA, that a hot spot of 50°C would not be detrimental to a bearded dragon, as long as they have the correct heat thermal gradient in the vivarium... Bearded dragons can sit under a hot spot to heat up to their desired body temperature and then simply move away to a cooler part of the vivarium and then move back when they need to warm up again”

The Committee noted that the BBC had reverted to Mr Jessop to provide a response on behalf of Watchdog:

“I stand by my view that 50C is dangerously hot for a bearded dragon. There is no reputable advice that states anything much above 40C. The animals’ preferred active temperature is between 30 & 35C.

“The whole point of a captive set up is to allow a range of temperatures. Typically advised for this species is 40 under the hot spot down to 25 in the coolest area.

“The PaH advice does not give enough space to achieve this range and in the case of the tightly confined lizard it had no chance of moving to different areas of the vivarium. If they had set the thermostat to 50C it would have died.

“I note that they are contesting that they only mean at the hottest part of the vivarium but due to the poor size, it would not allow for a temperature range.”

The Committee noted the full context of the clip from Pets at Home’s Filton store that was used in the broadcast item (broadcast section bolded):

WATCHDOG “CUSTOMER”
What sort of temperature does it need to be?

FILTON ASSISTANT
Well, so you need to think about, you need to think about in a space like this you need to have a hotspot, which is where he is right now, so that’s, that’s the warmest area. That can be a minimum of about thirty-five degrees and it can go hotter than that, I think all the way up to fifty degrees, so that is, we’re talking really hot.

And then you also need to think about the temperature of the rest of the viv as well. So that can be called the ambient temperature, also the cool temperature, so basically down the other end they can be anywhere in the mid-twenties in the, up to maybe about late thirties so you still want it to be nice and warm as well. So you need to always make sure you’ve got a gradient with a vivarium so that there’s a hot end and then it goes down to a cool end. So they can move about as they please and sort themselves out. If they’re too hot, they can go down the cool end, you know?
The Committee noted the following from the remainder of the conversation:

- the assistant went into further detail about the importance of temperature control and temperature gradients
- she recommended that the customer went to the store’s website to print off care sheets and that she did additional research elsewhere
- she said that *Pets at Home* would not sell the customer a bearded dragon until her vivarium had been set up for at least three days beforehand, and ideally six, “so that you can make sure all your temperatures are constant”.

The Committee noted that it appeared Mr Jessop had been able to make his comments based only on what it had been reported to him that the sales assistant had said; he had not been present during the conversation and nor had he been shown the rushes. The Committee noted the BBC’s response to a query from the Adviser about the basis for Mr Jessop’s comment:

“It was not deemed necessary for Mike Jessop to view all of the rushes. He was either present at the time or received an immediate update from the Watchdog undercover operatives who documented their findings immediately after each store visit.”

The Committee noted that Dr Shane Simpson, the expert reptile vet consulted by the Adviser for this appeal, was shown the rushes of the sequence and watched the material before seeing the broadcast item or knowing any detail of the nature of the complaint.

The Committee noted Dr Simpson’s comments whilst he watched the section where the advice was given at the Filton store:

“I have no problem whatsoever with anything the assistant said”

“she knows her stuff”

“it was a good recommendation to get a timer; people always forget to turn the lights on and off”

“her comment about a heat mat if it gets very cold at night was right”

The Committee noted that Dr Simpson did not initially pick up on the *Pets at Home* staff member’s 50°C comment. The Committee noted what he said when he was subsequently shown the broadcast item and told the nature of the complaint:

“I 100% agree with Pets at Home’s comment: a short period of time at 50 degrees would not be a problem. It’s not a temperature I would recommend people aim for, but in a 120cm tank it would probably be okay. The assistant who made the comment went on to say that the important thing was to have a gradient of temperatures and to install a thermostat, and she’s right.

“Ideally nowhere that a lizard can get to bask should be above 40, but the lizard would be able to regulate that by moving to where it was more comfortable if it got too hot; similarly, if a lizard was spending 100% of the time under the heat lamp it would signal that the overall temperature of the tank was too cold.

“Occasional exposure to 50 degrees would not cause major issues.

“The Exo Terra globes [bulbs] I could see they were selling in the stores are the
ones I recommend because the temperature ranges are clearly printed on the packaging.”

The Committee noted information from the Adviser’s research that there appeared to be a consensus that the basking spot temperature for bearded dragons is recommended to be no higher than around 40-43 degrees Celsius.

The Committee noted that, given the apparent conflict of views about the impact of a 50-degree hotspot, the Adviser had spoken by telephone to another vet with specific expertise in reptile husbandry and asked his opinion on the maximum hotspot temperature in a vivarium housing a bearded dragon. Dr Alex Rosenwax, who has a practice in Sydney which treats only birds, reptiles and fish, told the Adviser that the maximum acceptable temperature for a bearded dragon at a vivarium hotspot would be 50 degrees. The Committee noted Dr Rosenwax’s advice that shade temperatures in Central Australia, the natural habitat of some bearded dragon species, were commonly 41 degrees and that exposure to 50 occasionally would be normal.

The Committee noted that Dr Rosenwax disagreed that a bearded dragon that was exposed to 50 degrees would be “stressed” by it; he said it would move away if it felt too hot.

The Committee noted that Dr Rosenwax also disagreed with the assertion in the programme that exposure to 50 degrees “will open them up to all sorts of diseases, some of which can be fatal”. The Committee noted that Dr Rosenwax could not think of any disease which a bearded dragon might succumb to if exposed to a 50-degree hotspot.

The Committee noted the key points from the Adviser’s review of the rushes and the audio, where available, for the three other stores which Watchdog alleged had given incorrect advice about temperature:

- the relevant video footage was mute for Crayford, the second store which Watchdog alleged had given advice about temperature which could lead to a lizard’s death
- the BBC said that sound was lost on occasion during undercover filming and that...
  
  “…the incorrect vivarium advice [for Crayford] was one such occasion. However, the undercover operative kept a detailed log of the incorrect temperature advice they were given.”

- the programme log stated in relation to temperature advice at Crayford:
  
  “Reptile advice was very thorough … was told temp should generally be between 35 and 40 but can go up to 50. Mike says 50 is a bit hot. [The ‘Customer’] was told temp can go down to 15 at night”

- the audio channel was also mute for Old Kent Road, another store which was highlighted as having given the wrong advice; the log stated:
  
  “Reptile info - was told that bearded dragon tank should be 24°C- 26°C at all times. Mike says this is wrong – they need some variation”

- for Crawley, the last of the stores highlighted in the programme, it was unclear from the rushes on what basis the programme contended that incorrect advice
was given: the advice appeared to cover all the key points and the customer was handed a leaflet

- concerns raised by the complainant that the *Watchdog* team used leading questions to the sales assistant at the Crawley store were not substantiated by the undercover recording: the Adviser reviewed the rushes and found the questioning to have been appropriate and open-ended.

The Committee accepted there was a general consensus around the recommended temperature range for hotspots, but noted the conflict of veterinary opinion as to the risks, if any, of a hotspot of 50°C. The Committee noted that the two independent sources consulted for the Committee agreed with the complainant’s view that such a hotspot would not constitute a serious threat to the lizard, provided that it had sufficient space to move to a cooler area.

The Committee noted that in the only evidence available for scrutiny, from which the clip used in the programme was taken, the *Pets at Home* staff member was recorded as having gone to considerable lengths to emphasise that 50°C would only be acceptable if there were also cooler areas. The Committee noted that, in giving her advice, the assistant also advised the “customer” to read the detailed advice on the company’s website and said that she would not be able to sell the customer a lizard until the vivarium had been up and running for several days to achieve a consistent temperature range. The Committee noted that none of this good advice was reflected in the programme.

The Committee considered it had not been helpful that the BBC had said it had not felt it necessary to show the rushes to Mr Jessop, which would have given him the opportunity to take the wider context of the sales assistant’s comments into account when he made his comments.

Trustees were not persuaded, on the balance of the expert evidence, that a hotspot of 50°C would open the lizard up to a range of diseases or was unacceptably hot. The Committee decided that in view of the weight of veterinary expert opinion to the contrary, and in the absence of any reliable evidence of poor advice from visits to the other stores, the programme’s failure to reflect the full context of the advice given in the Filton store had led to a failure to achieve due accuracy.

**Finding: Upheld as a breach of due accuracy**

**Point (A) 5 – Whether the programme observed due accuracy in claiming that a lizard in store was being kept in conditions which were too cramped**

The Committee noted the relevant extract from the item:

REPORTEr

So some problems with fish and health checks, but what about the final promise to improve staff training, including the advice customers are offered when they buy pets. Had that improved? To find out we asked staff for advice on keeping a type of lizard.

ACTUALITY BRADLEY STOKe

Question: Can I ask someone about the bearded dragons?

Answer: Bearded dragons, yeah
REPORTER
Our first question; what size tank should the reptile be kept in? Bearded dragons can grow up to 60cm and according to the Model Conditions for Pet Vending Licensing Guidelines (MCPVL) should be kept in tanks that are at least 120. But we were handed a leaflet that said a tank 90cm in length was sufficient. That’s 30cm shorter than it should be and according to our expert Mike would almost certainly cause the lizard mental suffering.

MIKE JESSOP
They need the space, they need to burrow, they need to run, they need to forage and they need to play. It goes against the animal regulations, the animal welfare act, when they don’t have the space to display natural behaviour.

REPORTER
With the wrong advice being printed on leaflets by the company itself, perhaps it’s no surprise that in one of the Pets at Home stores

(on-screen caption: Old Kent Road)

we found a lizard being kept in conditions our expert thought were cramped and in a tank smaller than what the Model Conditions for Pet Vending Licensing recommends.

MIKE JESSOP (commenting on camera at the store)
No way should he be in that tank. He would be struggling to get himself fully stretched out on the ground.

MIKE JESSOP (AFTERWARDS TO REPORTER)
This is a leading pet store, a national chain and they can’t get it right for the lizards in store. It’s just appalling, it’s just unacceptable.

The Committee noted Pets at Home’s response which was read out at the end of the item:

“[Pets at Home say] ...bearded dragons are housed in vivariums that are big enough according to SAI Global Excellence Assured Pet Retail Scheme guidelines. It apologises for the error in the reptile care leaflet which has now been corrected.”

The Committee noted that in correspondence for this complaint Pets at Home contended that they were fully compliant with their animal welfare obligations and stated that:

- all stores are externally audited on an annual basis under the SAI Excellence Assured Pet Retail Audit and separately by each local authority at the time of licence renewal
- there are no licence issues with any of the eight stores Watchdog visited
- the programme had no evidence to support its contention that the tank in which the bearded dragon in the Old Kent Road store was housed was causing it “mental suffering”.

Regarding the assertions in the programme that lizards need to “burrow”, “run”, “forage” and “play”, the Committee noted Pets at Home’s comments:
“burrowing” is normally only observed in females preparing to lay eggs
“play” is not behaviour recognised in bearded dragons
“forage” is not a term used with reptiles
this calls into question Mr Jessop’s expertise and the accuracy of the statements he made.

Regarding the size of the vivarium in the Old Kent Road store the Committee noted Pets at Home’s comments:

- the claim that the size of the vivarium meant that the dragon could not stretch its full length when outstretched including its tail “is demonstrably false”
- “the correct way of measuring a bearded dragon is from nose to vent” (anus).

The complainant said:

“We have ascertained that the only bearded dragon at the time to which your ‘expert’ could have been referring measured 46cm in total from nose to tail tip (20cm from nose to vent). This bearded dragon was housed in a vivarium measuring 51cm. The claim that the bearded dragon was unable to stretch out its full length is therefore demonstrably wrong.”

“This is within our client’s guidance, which is based on the requirements of the SAI Global guidelines, especially for a juvenile reptile. These guidelines are very detailed and take into account the behaviour (active or sedentary) and habitat (arboreal or terrestrial) of the lizard as well as its length. This claim must be withdrawn.”

“You should also be aware that the Model Conditions for Pet Vending Licensing 2013 are subject to challenge in respect of this very point.”

The Committee noted that in correspondence prior to transmission the programme said:

“We do not have the dimension of the vivarium but our expert observed very clearly that the lizard was the full length of it from nose to tail.”

The BBC said that “Watchdog stands by Mike’s informed expert opinion”.

The Committee noted Mr Jessop’s comments regarding the information that Pets at Home are audited under a different set of criteria, by SAI Global, and that their lizards are housed correctly in store according to SAI criteria:

“The SAI advice that PaH use is a pet trade developed guidance from 2009. They [Pets at Home] would have been heavily involved in the 2013 Model Conditions for Pet Vending. You will note that 2 of the [Pets at Home] advisors were co-authors.

“... As a leading pet retailer it is a shame that Pets at Home cannot adopt the latest advisory standards. It suggests that the advice of their advisors is not being followed.”

The Committee noted the legislation relevant to this point is the Animal Welfare Act 2006 which requires that anyone responsible for the needs of an animal owes certain duties of
care including, among other things, a duty to provide appropriate housing for the animal.

The Committee noted information from the Adviser that:

- there is no statutory regulation which prescribes what size a tank should be
- the most widely recommended minimum tank size for a bearded dragon is 2 x body length, with some sources saying a bit larger would be better
- the MCPVL guidance states the enclosure should be a minimum of 3 x the total length of the lizard, although the Adviser did not come across any similar advice from any other “official” source
- some sources calculate the length measurement from snout to tail, others snout to vent (anus); the MCPVL guidelines refer to a lizard’s “full length”, therefore it would seem they calculate snout to tail
- the height of the tank is also a relevant factor; in the US for example the tanks are sized by volume rather than specific dimensions.

The Committee noted that the MCPVL guidelines are published by the Chartered Institute for Environmental Health (CIEH) and developed in conjunction with Defra, the Local Government Association, and several animal-related organisations. Whilst they are not statutory guidelines, they have been adopted by many local authorities and adherence to the MCPVL guidelines has become part of those councils’ licensing requirements.

The Committee noted that Southwark Council, which is the relevant licensing authority for the Old Kent Road Pets at Home store, has adopted the MCPVL guidelines and that it is a licensing requirement that pet stores abide by the conditions in the document. The Adviser contacted Southwark Council who advised the following:

- pet shops are inspected periodically; the Pets at Home Old Kent Road store was inspected in December 2014 and 2015
- it had not had any concerns, complaints or issues raised about the conditions for animals at the Pets at Home store and no breaches were found during the licensing inspections (around six months before and after the filming took place)
- the conditions for the bearded dragons appeared to be in line with the guidance in the licence.

The Committee noted the advice that there was a discrepancy between the published MCPVL guidelines and the citation from those guidelines in the item broadcast by Watchdog, but that it was not material to consideration of the point.

The Committee noted that the independent expert reptile vet, Dr Shane Simpson, was shown selected rushes from the unbroadcast material which depicted in-store conditions at several of the stores which Pets at Home visited. The Committee noted that he was given no information about what was in the broadcast item or the nature of the complaint against Watchdog.

The Committee noted that Dr Simpson commented unprompted on several occasions that “the cage set up looks fine” and “cage set up really good; the tank was a good height”.

The Committee noted that in a clip the Adviser played from the Filton store, Mr Jessop was heard querying the cage size. Dr Simpson commented:

“I’m relatively comfortable with the size of the tank for the dragon that is in there as it is a temporary situation; I would recommend bigger for its permanent home but not too critical in this situation.”
The Committee noted with regard to the store in which it was alleged a bearded dragon was housed in a tank that was too small, (and where conditions were described afterwards as “appalling” and “unacceptable”) that there were no images in the unbroadcast material which showed this bearded dragon full length or which depicted the lizard sideways rather than head on. Dr Simpson said it was impossible to see from the pictures whether the lizard could stretch out, although his instinct from looking at this image was that it probably could.

The Committee noted Mr Jessop’s comments which were recorded on the audio channel during the visit:

“Ooh, now that’s an interesting size. He’s getting close to full adult size and that is probably one times body length, so there is no way should he be in that tank.

“So an almost fully adult bearded dragon in too small an enclosure. He would be struggling to get himself fully stretched out on the ground. He’s got a bit of climbing height, but not much activity space.”

The Committee noted Dr Simpson’s opinion of the rushes:

“It’s not ideal but it’s not bad; I wouldn’t be overly concerned in a temporary situation. It still has some height, some vertical gradient. Vertical climbing space is as important; in the wild lizards are up in trees not on the ground.”

The Committee noted Dr Simpson’s comments, having watched the broadcast item and having noted comments in the programme that bearded dragons needed space to display natural behaviour to burrow, run, forage and play:

“Dragons don’t play. They are very simple animals: they need to bask, they need to feed and they need to be able to burrow.”

“I’ve never seen a bearded dragon run; what it’s doing right there is natural behaviour – basking under a lamp.” (Dr Simpson pointed to a freeze frame image on the screen from the broadcast item).

The Committee then noted Dr Simpson’s comments having been told the nature of the complaint and given details of the grounds on which Pets at Home disputed the findings. He said:

- in the industry we always measure snout to vent length not to the end of the tail as tails can often get bitten off or injured
- the vertical height is just as important as the length and in his view all the tanks he saw in the Pets at Home stores in the undercover footage had sufficient vertical height
- he did, however, disagree with Pets at Home’s comment, in correspondence for the complaint, that only females burrowed when they laid eggs. He said all dragons liked to burrow, particularly when they were going to hibernate in winter
- he also said that reptiles do forage, but that bearded dragons prefer the food to come to them, even in the wild
- he again emphasised that reptiles do not play; he said it was not a word that was used in reptile husbandry
- “environmental enrichment” was the relevant consideration: he had no concerns about what he saw in the rushes from the stores or about the advice given in that
regard, which he thought overall was excellent and reflected well-trained staff.

The Committee concluded:

- it was not possible from the footage to determine accurately the length of either
  the lizard or the tank
- the BBC, in its evidence, said that it did not have the actual dimensions but that
  their expert judged that “the lizard was the full length of it from nose to tail”;
  the Committee noted that Mr Jessop had had the advantage of being present.

The Committee decided it was unable to reach a view on this aspect of the programme’s
claim.

However, by Pets at Home’s own submission, the lizard measured 46cm nose to tail tip, or
20cm nose to vent; in either case the vivarium, at 51cm, was less than the recommended
MCPVL guideline of three times the lizard’s length.

Although Pets at Home asserts that it complies with, and is externally audited under,
different SAI guidelines which go into greater detail in relation to lizards and which take
account of the requirements of a young lizard, the Committee noted that the local
licensing authority requires stores to apply the MCPVL guidelines. Although the Council
had found no breach of those guidelines during its inspections around six months before
and six months after the programme material was recorded, the essence of the broadcast
allegation was that the tank failed to measure up to the MCPVL guidelines, and in that
respect the Committee found the programme was duly accurate.

The Committee noted there was disagreement between the various experts as to a
lizard’s requirements for space in which to run, or forage, or play, or burrow. Trustees
decided therefore that it would be unsafe for the Committee to reach a judgement as to
whether the lizard would suffer mental stress in a cage of this size.

Finding: Not Upheld

Point (A) 6 – Whether it was duly accurate to claim that Pets at Home had
failed to meet its promise to conduct a point-of-sale check on every animal

The Committee noted the relevant extracts from the broadcast:

REPORTER
What about its next promise to look into the health checks on animals when
they’re sold? According to the company’s own website, staff should carry out a six-
point health check. This includes looking at their nose, mouth, eyes and ears. After
we purchased sick animals in 2012, Pets at Home promised to review health check
training. So how thorough are those checks now? Hmm, not very in some stores.

WATCHDOG UNDERCOVER REPORTER
(On-screen caption: Old Kent Road)
Hiya, can I speak to you about the rabbits please?

REPORTER
(On-screen caption: Crayford, Old Kent Road, Crawley, Bradley Stoke)
In four of the eight stores we visited staff were willing to put the animal in the box
and ask us to hand money over with no sign of a health check.
ACTUALITY CRAYFORD
So that'll be £38 for those then please

ACTUALITY OLD KENT ROAD
£22

ACTUALITY BRADLEY STOKE
That's £35 then

MIKE JESSOP, WATCHDOG EXPERT VET
That's just not acceptable. The health check is so important, that we know then that the animals are fit and well to travel to their new home. Any problems with it, it could be weakened and that could then lead to more suffering, disease or even death when it gets to its new house.

The Committee noted the company’s right of reply response which was read out at the end of the item:

“Pets at Home acknowledge that things occasionally go wrong but say it invests heavily in pet facilities and staff training and achieves industry leading standards in pet welfare. It says it has met all the commitments it made in 2012. Pets at Home says Watchdog is mistaken to claim health checks are missed – it checks the health of every pet it sells several times.”

The Committee noted the complainant’s comments:

“The six-point health check takes place during our client’s sales procedure. The process begins on selection of a pet when our client’s colleague will make a visual assessment of the pet’s eyes and nose before they pick the animal up. Lifting the pet and making it secure in their hands allows our client’s colleagues to check the overall body condition and the animal’s bottom. This means that the health check can then be completed quickly, yet thoroughly, as the sales procedure progresses. The fact that this process has been completed may not be appreciated by someone unfamiliar with our client’s procedure.

“This isn’t a step which requires one of our client’s colleagues to identify that the health check is starting, or one which takes part at a pre-determined location and time in the chain of sale. Rather, it is a continuous process ... the six-point health check is the final check that is carried out; each pet will have been health checked a number of times prior to that before it is eventually sold to a customer.

“....given that our client has not been afforded the opportunity to review the raw footage and material which the BBC is relying on, it is not able to provide its detailed analysis to fully demonstrate that the Broadcast was wrong ... the process starts from the minute a colleague looks at a pet and the Broadcast only showed a small part of this process.”

“We are very concerned that the assessment of whether or not the six-point health check has taken place appears to have been conducted by undercover researchers who do not have any veterinary qualifications, or familiarity with our client’s processes, such that they would not be qualified to know how our in-store colleagues carry out their six-point health check.”
The Committee noted also the complainant’s comments pre-broadcast having been advised that *Watchdog* intended to highlight failings regarding the conduct of health checks:

“We have also clarified that the layout of all four of the stores referred to in your email of 9 June (Crawley, Old Kent Road, Crayford and Bradley Stoke) means that there would be a period of time following the selection by the customer of their particular pet during which the store colleague would be holding the animal outside of the customer’s view. It would therefore be simply impossible for the customer (or researcher) to know whether or not the health check had been carried out.

“In three of the stores identified there are full Bunny Village set ups where our client’s colleagues have to enter a small central room which is out of sight of the customer and then return through that same room before they reach the sales floor. This means they are completely out of sight for a period of time and the customer (or researcher) therefore could not know if the health check had taken place while the colleague was out of sight. The layout of the fourth store requires the customer to select their pet from the front of the enclosure, the store colleague would then have their back to the customer when picking up the pet and then taking care to settle, calm and cradle the pet securely before turning round to face the customer. The customer would therefore be unaware if the health check was being carried out during this time.”

The Committee noted Pets at Home’s contention, which was also in the pre-broadcast correspondence, that since 2012 it had “upweighted” its training on health checking and that it had produced a DVD specifically showing health checking and sexing of small animals.

The Committee noted that in correspondence with Pets at Home prior to broadcast, the BBC said:

“The BBC is very clear on what even the most momentary six-point check would look like and what level of handling of the animal would be required.

“The BBC does not accept that the staff in any incident where a lack of six point check was observed was out of their view for more than the split second it took them to walk through Bunny Village... The staff members did not stay inside Bunny Village for any duration at all, they walked straight through it.”

The Adviser asked Pets at Home to make available a copy of the training video which was referred to in correspondence, to better understand what Pets at Home meant by a six-point health check, and so assist Trustees in their assessment of whether the stores named in the *Watchdog* programme had failed to conduct one.

Clearance was obtained from Pets at Home for the four-minute video of a rabbit undergoing a health check to be shared with Trustees for the purpose of considering this appeal, although the clip was not to be shared with the BBC or programme makers.

The Committee watched the training video and then viewed a selection of clips from the untransmitted material for the four stores at which it was alleged no health check had taken place. Trustees also viewed sample clips for comparison from two stores at which *Watchdog* was satisfied there had been a health check.
Trustees noted that it was evident from their viewing of the training video that an experienced assistant would be able to complete the required health check to Pets at Home’s standard in around a minute. The Committee noted too that the complainant had said in correspondence that, by its nature, the video is necessarily exaggerated and drawn out as it is a training tool, produced to demonstrate very clearly and slowly how health checks on animals are carried out, and that this may be different to how a health check can quickly be carried out by Pets at Home’s experienced staff who are used to carrying out health checks on a daily basis.

Trustees noted information in the video about what the health check was intended to cover, that the animal was required to be sexed during the process, and that the health check was to take place in front of the customer.

The Committee noted that Pets at Home’s training procedures did not require that the customer be explicitly advised by the sales assistant that he or she was doing a health check.

Having watched the Pets at Home training video the Committee found it was relatively straightforward to work out the point in the sales process at which it was likely that the Pets at Home assistant had carried out a version of a health check. Trustees considered that it was possible that the Watchdog researchers might have failed to detect that the health checks shown in the video were, for the most part, being carried out.

The Committee noted that in the stores where Watchdog considered a health check had been conducted, it took no more than a minute, and in one case just 30 seconds.

The Committee noted that although there was considerable variation between the four stores as to the extent to which it could be argued that a health check had occurred (and it could be debated as to whether or not the health check was carried out completely in each of the four instances), it was nevertheless satisfied that a recognisable form of health check was conducted in all four stores, and that on each occasion this was in full view of the customer.

Trustees accepted that it was a legitimate editorial decision for Watchdog to decide it would assess the effectiveness of Pets at Home’s health check training by sending their undercover team in to eight stores to make test purchases.

The Committee noted Pets at Home’s contention that the point-of-sale health check was the final stage in a series of in-house procedures intended to ensure the animals in its care were healthy and fit to go to their new homes. Trustees noted also that their viewing of the compilation clips demonstrated that the health check was only one part of the point-of-sale procedure. Trustees considered it noteworthy that the footage they saw reflected diligent staff who offered thorough advice and appeared on the whole to show care for and familiarity with the animals in their care.

Trustees considered that the statement in the programme, that there were no visible signs of a health check in four of the eight stores visited, would have led audiences to doubt whether there had been such checks. Based on the footage they had seen from six stores (including the four where Watchdog had said that there were no visible signs of a health check), Trustees were satisfied that checks had probably had taken place, albeit in ways which might not have been evident to the Watchdog team. In this respect the programme therefore failed to be duly accurate.

**Finding: Upheld as a breach of accuracy**
Point (A) 7 – Whether the item failed to observe due accuracy by misleading the audience about the level of consumer dissatisfaction with Pets at Home

The Committee noted that the right of reply invitation which Watchdog sent to Pets at Home prior to transmission stated that Watchdog had continued to receive a high volume of complaints about Pets at Home, 60 since 2014 alone.

The Committee noted the studio introduction to the broadcast item which said that Watchdog had received “more than a thousand” complaints since 2012 (relevant sentence bolded):

“Four hundred stores across the country, a paradise for pets and their owners according to its website. Now Watchdog first investigated Pets at Home in 2012 after viewers complained of buying sick guinea pigs and rabbits that later died. Our undercover team went into eight stores and indeed found animals that were unwell and distressingly underweight, as well as dead and diseased fish in display tanks. Pets at Home promised to improve but since then we’ve had more than a thousand further complaints.”

The Committee noted that shortly before transmission the complainant said:

“Your ‘investigation’ into our client is based on the volume of complaints allegedly received by Watchdog about our client; however, this ignores the position in reality. Our client’s statistics show a customer satisfaction rating of over 99.99%. To suggest on the basis of the 60 complaints that Watchdog has received in the last year that there are serious issues with our client’s stores which need investigating is misconceived.”

The Committee noted that in correspondence for this appeal the BBC said:

“A key part of the justification for carrying out the second investigation was the significant volume of complaints to the Watchdog database that they continued to receive after the first broadcast. Watchdog still continues to receive complaints about Pets at Home and has done for some years.”

The Committee noted that some of the supporting evidence for the Watchdog investigation was contained in a document compiled by the production team in March 2015 when it was seeking internal permission for undercover filming; it included considerable detail about the level and nature of complaints which had been received since the results of Watchdog’s first investigation was broadcast in September 2012.

The Committee noted information from the Adviser that the document listed a number of specimen complaints and that the detail included the names of customers, the dates of their purchases, the names of stores, and the outcome of their complaint in each case. Trustees noted that the programme had evidently gone to some trouble to verify the detail of some complaints, even to the extent of getting written evidence of refunds received.

The Committee noted that the programme was following the requirement in the Editorial Guidelines which states that secret recording is normally permitted only where there is a prima facie indication that the behaviour to be researched exists (Editorial Guideline 7.4.16, and see Point B for more detail on this point.
The Committee noted that in correspondence for this appeal the Adviser was told that the timeframe for the “more than a thousand” complaints which was mentioned in the introduction covered the period between the programme broadcast on 19 September 2012 and the further programme, broadcast on 18 June 2015.

The Committee noted information from the Adviser that the programme did not rely only on customer complaints when commissioning the investigation: since the 2012 broadcast Watchdog had been contacted by four whistle-blowers, i.e. Pets at Home employees. Their stories, along with the complaints from customers, were what had prompted the second investigation.

Trustees were satisfied that the programme had received a significant number of complaints from customers and that it had retained evidence which supported this, in the form of detailed complaints, including names and addresses and verification of purchases, and refunds received in some cases.

Trustees noted that the figure of more than a thousand complaints received since the original broadcast in 2012, compared with the relatively lower level of complaints since 2014 and up to the date of transmission, might suggest that a high volume were received following the original broadcast, and perhaps before Pets at Home had implemented some of the steps it promised to take following that broadcast.

The Committee noted that Pets at Home claimed it had a 99.99% customer satisfaction rating. Trustees did not regard that as evidence that Watchdog had exaggerated the number of complaints it had received.

Trustees considered that it was a matter for programme makers to determine how many complaints, and of what seriousness, were necessary to justify an investigation. Trustees considered it was entirely within the BBC’s editorial discretion to revisit a topic covered in an earlier programme to see what had changed, irrespective of the existence of further complaints. Trustees had seen no evidence to suggest that the database of complaints compiled by Watchdog should not have been relied upon, nor did it consider that the programme makers were obliged to consider Pets at Home’s data.

**Finding: Not upheld**

**Point (A) 8 – Whether the programme achieved due accuracy in checking and verifying the material/content which was broadcast**

The Committee noted the issues raised by the complainant in relation to this point:

- *Watchdog* placed an over-reliance on researchers who had no veterinary training and would not have had the requisite veterinary knowledge or expertise in animal care; it was entirely possible that observations had been improperly made
- *Watchdog* placed an over-reliance on audio recordings and notes to record observations and not audio visual material which was capable of independent verification
- Pets at Home considered that leading questions were used when gathering evidence in relation to the temperature at which bearded dragons should be kept
- Watchdog’s expert was only present during 50% of the store visits
- there was no independent verification of the conclusions of the programme’s expert vet, despite pre-broadcast concerns raised by Pets at Home’s questioning his expertise (see also Point C below)
• the ECU appeared to have accepted the journalists’ assessments of important veterinarian matters on their face value and this was not acceptable; it had wrongly determined that the evidence gathered by the programme makers would be unsafe only if it had been falsified by them. This was not correct
• had Pets at Home been afforded the opportunity to review the specific material on which Watchdog based its allegations it was possible that serious breaches of the BBC Editorial Guidelines would have been avoided.

The Committee noted the BBC’s response in correspondence for this appeal:

“There is a great deal of audio visual material. The recordings were used as supporting aids for what the expert and Watchdog undercover reporters saw first-hand.

“The undercover operatives filed detailed accounts of each store visit immediately following each visit.”

The Committee noted the BBC’s rejection of the assertion that Watchdog should have sought a second opinion on Mr Jessop’s conclusions:

“Mr Jessop was presented in the broadcast as a ‘forensic vet’. It is on this basis, and his experience as a former President of the British Small Animal Veterinary Association, which led to his appointment on this edition of Watchdog as an expert...”

“While Mr Jessop is experienced and should therefore know what to look for in such situations, given that the allegations are based on evidence found and filmed in your client’s stores, it does not seem unreasonable to conclude that anyone with similar expertise carrying out the same investigation would have found the same result. I would further add that Watchdog did not rely entirely on Mr Jessop’s view and additional expert advice was sought where appropriate.”

The Committee noted comments by the Head of Editorial Complaints, ECU at Stage 2 that unless there was evidence that Watchdog had falsified their records in some respect “the programme-makers’ evidence seems to me a safe basis for my findings”.

The Committee noted also that, in respect of the diagnosis of diseases in fish by Mr Jessop, the Head of Editorial Complaints said that Mr Jessop had a “good stereoscopic image and the ability to move around and observe from different angles”, which would be helpful in diagnosis, and that “while I obviously cannot entirely rule out the possibility that his diagnosis was mistaken in this instance, I do not believe you have provided grounds for believing that it was”.

The Committee noted that prior to broadcast the BBC said: “We simply do not agree that Mr Jessop is an expert upon which we are not entitled to rely.”

The Committee noted that, as reflected in discussion of Point (A)1, following the pre-broadcast concerns raised by the complainants, Watchdog sought additional expert advice in relation to the rate at which fish decompose. The Committee noted that the programme team had not done so with respect to any of the other allegations, despite pre-broadcast concerns having been raised by Pets at Home on all the points which Watchdog said it intended to make.

The Committee noted that Mr Jessop was not present during the undercover filming of
the health check sequences nor for the temperature advice for bearded dragons; he relied primarily on second-hand accounts for those occasions. Trustees noted also that, as discussed in Point (A)4, the BBC had said that Mr Jessop did not view all the rushes:

“It was not deemed necessary for Mike Jessop to view all of the rushes. He was either present at the time or received an immediate update from the Watchdog undercover operatives who documented their findings immediately after each store visit.”

Trustees noted that there were occasions during undercover filming when no audio was recorded.

Trustees noted also information from the Adviser that her review of the rushes indicated that Watchdog's undercover reporters had taken mobile phone snapshots of dead and diseased fish in some of the stores, but that the BBC had advised her that these images were no longer available.

The Committee noted, as discussed in Point (A) 4, that the audio in the unbroadcast rushes and/or audio recordings, where available, does not support the complainant’s assertion that the undercover reporters used leading questions when gathering evidence in relation to the temperature at which bearded dragons should be kept.

Trustees considered that, given Mr Jessop’s professional standing as a practising vet and his former role as President of the British Small Animal Veterinary Association, it was reasonable to rely upon him as the programme’s principal source of veterinary advice.

Trustees noted that the BBC had not felt it necessary to show all of the video rushes to Mr Jessop and recognised that the sheer volume involved might have made that time-consuming. The decision not to do so was essentially an editorial one.

Nevertheless, the BBC was required to ensure it did all it could to achieve due accuracy. The Committee considered the following as relevant in reaching its decision on this point:

- Trustees were concerned that there was no audio recorded during undercover filming on certain occasions, albeit they also acknowledged the technical difficulties that surreptitious recording can sometimes involve.
- given the contentious nature of the allegations and knowing prior to broadcast that Pets at Home had challenged every point, Trustees were concerned that the BBC did not take steps to retain the still images captured by their researchers using their mobile phones upon which the BBC, in correspondence for this appeal, sought to place some reliance.
- when some of Mr Jessop’s findings were challenged by Pets at Home’s veterinary adviser, the BBC sought a second opinion only in relation to the rate at which dead fish decompose and not in relation to the diagnosis of white spot and tumours in fish, the appropriate size for a vivarium housing a bearded dragon, or the risks which might be associated with a hotspot of 50°C.
- the advice given by the independent experts consulted by the Adviser for this appeal which suggested that, had the BBC done so, other experts may have offered a different opinion.

The Committee concluded that, in the light of the Committee’s findings on various points of accuracy, it was evident that the programme should have done more to corroborate more of the claims it made, and to ensure that the expert it did seek to rely on had
access to all necessary material to form his views with the benefit of all appropriate context. In addition _Watchdog_ should have taken steps to ensure that, in gathering the evidence to supports its claims, adequate records were made, and that those records, particularly where they related directly to allegations in the broadcast item, were retained. In these respects the programme failed in its obligations to achieve due accuracy.

**Finding: Upheld as a breach of accuracy**

**Point (A) – Whether the programme observed due accuracy in how it presented allegations relating to the health and welfare of animals in Pets at Home stores**

The Committee noted the complainant’s overall point on appeal:

“Our client is the biggest chain of UK pet stores which has the welfare of pets at the centre of its business. This is enshrined in our client’s ‘Pets before Profit’ policy. The claim that pets sold by our client are suffering and at serious risk of disease and/or death as a result of our client’s failure to honour promises made to the public strikes at the core of our client’s values. The allegations made in this broadcast are of the most damaging kind that could be levelled at a pet retailer such as our client.

“The clear allegation was that our client had completely failed to deliver on those promises (made in 2012) and was an unfit pet retailer.”

The Committee noted the complainant’s contention that to comply with the Editorial Guidelines “both the overall meaning conveyed by a broadcast and the constituent parts of it must be accurate and should not be misleading”:

“It is clear that sensationalist language accompanied with selected visuals taken out of context would have caused audiences to be left with a misleading and inaccurate impression.”

The Committee noted the complainant’s view of what it considered to have been the “overarching meaning” of the broadcast:

- there was a systemic failure in _Pets at Home_ stores
  - whereas _Watchdog_ visited fewer than 2% of the company’s stores and therefore did not have proper grounds for suggesting systemic failures
- that this failure has jeopardised the welfare of animals in its stores which are suffering and at serious risk of disease and/or death because of _Pets at Home’s_ failure to honour the promises it made to the public following the 2012 broadcast
  - whereas “all of those promises have been delivered and have been shown to be operating effectively in stores”

The Committee noted the complainant’s contention that the impression of systemic failure was conveyed by what it thought were several exaggerated statements in the broadcast, which went far beyond what could be supported by any undercover footage:

“You’re almost slow cooking them...”

“Eaten into like a cancerous disease”

“Tank of death and destruction”
“They shouldn't have fish in this store, they don’t know how to look after them”

“Could then lead to more suffering, disease or even death”

“Almost certainly cause the lizard mental suffering”

“It’s just appalling, just unacceptable”

“We saw disease problems, suffering problems and we saw welfare problems and they just need to do better”

The Committee noted that at Stage 1 of the complaints process the BBC said:

“The allegations are based on evidence which is documented in the films recorded in your client’s stores. We therefore don’t agree that audiences would have been misled in any way and we stand by the broadcast as fair and accurate.”

The Committee noted that at Stage 2, the Head of Editorial Complaints, ECU said in relation to the steps which *Pets at Home* claimed to have taken since 2012:

“Even granting that these steps were taken, the test of whether your client has ‘delivered’ is not what it has done in respect of the promises, but whether what it has done has been properly effective. You go on to say that, as the programme makers ‘visited less than 2% of our client’s stores’, there were no proper grounds for suggesting systemic failures. However, the relevant statistic is not the percentage of stores visited but the percentage of those visited in which shortcomings were observed.”

The Committee noted the ECU’s view that the statements made in the programme could only be described as “sensationalist” if the programme had no reasonable grounds for making them, which the ECU considered was evidently not the case.

The Committee noted that in response to this appeal the BBC said:

“We would highlight the programme introduction which clearly establishes the conditions only pertained to ‘some of those stores’, and the percentage of those stores (from the sample) where Watchdog found problems.”

The Committee noted the introduction to the item and the opening section of the segment, which the BBC contended sufficiently signposted to the audience the limit of the investigation which the programme had carried out:

**HEADLINE**

*Pets at Home. Nationwide outlets and the conditions we've discovered in some of those stores*  

**PRESENTER INTRODUCTION**

First though, *Pets at Home*. Four hundred stores across the country, a paradise for pets and their owners according to its website.

**REPORTER:** We sent our undercover team into eight *Pets at Home* stores across the country, joined by forensic vet, Mike Jessop, who visited branches with us back in 2012.
The Committee decided that despite *Watchdog* having clearly set out that they had visited “some of those stores” the audience might reasonably have inferred (in the absence of any qualifying script line) that these stores constituted a representative sample, that the conditions described in the programme were likely to exist more widely and that the chain generally was in certain respects not delivering on welfare standards promises it made in 2012.

The Committee considered that this impression was not adequately supported by the evidence, as illustrated by the number of failures of due accuracy identified in Points (A)1- (A)8. Trustees therefore concluded that the item overall could not be regarded as duly accurate.

**Finding: Upheld overall as a breach of due accuracy**

**Point (B) – Whether the programme was fair to Pets at Home in how it presented allegations relating to the health and welfare of animals in Pets at Home stores**

The Committee considered whether the item as broadcast was fair to *Pets at Home*. Trustees noted that the point engaged the Impartiality; Privacy; and Fairness, Contributors and Consent sections of the Editorial Guidelines.

The Committee noted that whilst the complainant had framed elements of its complaint in terms of the Impartiality Guidelines, the BBC's Royal Charter and the accompanying Agreement make clear that due impartiality applies in respect of output which deals with matters of public policy or political or industrial controversy. The *Watchdog* broadcast did not concern such matters. Whilst due impartiality is applied by the BBC to opinions in all output through the BBC Editorial Guidelines, the Adviser and the Committee have taken the view that this point of complaint (as set out in more detail below) should properly be dealt with and tested against the Editorial Guidelines on fairness. Though one of the Impartiality guidelines is engaged, Impartiality was not more broadly engaged in this instance.

The Committee noted that the extracts from the Fairness Guidelines most relevant to consideration of this point are:

“We will be open, honest, straightforward and fair in our dealings with contributors and audiences unless there is a clear public interest in doing otherwise, or we need to consider important issues such as legal matters, safety or confidentiality.

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

The extract from the Impartiality Guidelines most relevant to consideration of this point is:

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

The extract from the Privacy Guidelines relevant to this point is from 7.4.16 which relates
to secret recording for factual output (relevant phrase bolded):

“Secret recording may be used as a method of consumer, scientific or social research in the public interest, where no other methods could naturally capture the attitudes or behaviour in question. In such cases, although there may be no evidence against known individuals, there should normally be a prima facie indication that the behaviour to be researched exists in general. The results of the research should be edited to provide a fair and accurate representation of the research.”

The Committee noted the points raised by the complainant:

- *Watchdog* approached the matter with a wholly inappropriate pre-conceived agenda, which had already been trailed by the BBC in its promotion of the broadcast
- there was a clear failure to take steps to assess impartiality or robustly test the claims made prior to broadcast and to present matters with due impartiality in the broadcast
- evidence brought to the programme’s attention prior to broadcast was dismissed out of hand
- no alternative areas of argument were offered, nor were other experts with opposing standpoints included.

The Committee noted how *Pets at Home’s* perspective was reflected in the live studio spot at the end of the item:

**STUDIO PRESENTER**

Well Pets at Home acknowledge that things occasionally go wrong but say it invests heavily in pet facilities and staff training and achieve industry leading standards in pet welfare. It says it has met all the commitments it made in 2012. Pets at Home says *Watchdog* is mistaken to claim health checks are missed – it checks the health of every pet it sells several times. It says that since 2012 it’s doubled the frequency of fish tank checks and has robust procedures to ensure fish are dealt with properly if they’re ill or die. It also says that a dead fish can decompose within an hour and disputes the brief exposure to 50 degrees Celsius would be harmful to a bearded dragon, saying lizards move away from hotspots if they want a cooler area and that bearded dragons are housed in vivariums that are big enough according to SAI Global Excellence Assured Pet Retail Scheme guidelines. It apologises for the error in the reptile care leaflet which has now been corrected.

The Committee noted the BBC’s response at Stage 1 of the complaint:

“You allege that Watchdog had a pre-conceived agenda... (the broadcast) was based on their investigation which took place over the previous months and there is no evidence to suggest that Watchdog had arrived at any conclusions before they began those investigations. As stated in the programme, Watchdog had received over 1000 complaints from customers of your client since the 2012 broadcast and it was this that prompted their second investigation.”

The Committee noted comments from the complainant in correspondence at Stage 2:

“Watchdog’s approach (evidenced by its approach to the right of reply) ... was
indicative of the fact that they were fundamentally closed to any material which ran contrary to the claims they wanted to make, and were thereby operating with a pre-determined position. Watchdog clearly viewed the material it gathered through a particular prism.

"Not only is our client concerned that this unfairly influenced the agenda of the broadcast, it is also concerned that it infected the journalistic techniques involved ... there are grounds to suggest that the BBC’s researchers sought to unduly influence conversations with our client’s colleagues in order to elicit responses which could later be used to substantiate Watchdog’s pre-conceived position when carefully edited...

"Watchdog undoubtedly undertook their ‘investigation’ with a particular outcome in mind rather than in a truly objective manner."

The Committee noted that in relation to the complainant’s contention that no alternative areas of argument were offered:

- the BBC had stated its view that it was entitled to rely on the opinion of Mr Jessop as a qualified vet and former president of the British Small Animal Veterinary Association and that it had sought external advice where appropriate.

The Committee noted in relation to the assertion regarding journalistic techniques:

- the Adviser saw no evidence in the rushes that Watchdog employed leading questions when gathering evidence in relation to the temperature at which bearded dragons should be kept.

Trustees recalled their consideration of Point (A) and their viewing of various video compilations and transcripts which the Adviser had assembled from the unbroadcast material. They noted too comments made by the independent expert vets, Dr Jones and Dr Simpson, in which they independently remarked unprompted how impressed they were with the quantity and quality of the advice and the breadth of knowledge displayed by some of the Pets at Home staff.

The Committee noted comments about the manager of the Crawley store which were made by Dr Jones, the aquatic vet, having watched a five-minute clip of rushes:

“That impressed me; everything he said about water quality was accurate; he knows about water quality”

The Committee noted comments by Dr Simpson, the reptile vet, after he was shown a clip from the Crawley store where an assistant was giving advice about owning a bearded dragon:

“not a single thing I disagree with. I’m very pleased to hear what he said. When he got the dragon out he said beardies like areas to hide and burrow; that was good, beardies like to burrow. Everything he said showed he knows about bearded dragons.”

The Committee noted that after watching material from the Eastbourne store, Dr Simpson said:
“From the wording and language she used it’s clear that they have all been trained the same. That’s good, the training is obviously standardised.”

The Committee noted Dr Simpson’s overall conclusion that:

“If every pet shop had what I saw in their shops I’d be pretty happy.”

The Committee noted where the untransmitted material and the broadcast footage reflected more negatively on Pets at Home: the footage and the notes reflected comments by Mr Jessop about numerous dead crickets in containers which were intended to be bought for reptile feed and, as discussed in Point A, there were dead and diseased fish in all eight stores.

The Committee noted that with the exception of the right of reply statement from Pets at Home which was read out in the studio following the item, the broadcast item was wholly negative in respect of Watchdog’s findings; in particular there were no images shown or references in the commentary to the material gathered during the investigation which might be said to reflect positively on Pets at Home.

Trustees found no evidence to support the complainant’s assertion that the programme had approached its investigation without an open mind. It was perfectly natural, following the first broadcast, for the programme to want to assess at some time whether the improvements promised in 2012 had been made, and the decision to mount a further investigation followed the receipt of a substantial number of further complaints. The documentation provided by Watchdog in order to secure approval for undercover recording demonstrated that its focus was on issues and its evidence gathering was confined to stores featured in those complaints.

Trustees also saw no evidence to support the complainant’s claim that Watchdog researchers had asked leading questions of Pets at Home’s staff with the aim of encouraging an incorrect response regarding the recommended temperature range for captive bearded dragons. The audio recordings suggested that the questioning had been appropriate and open ended.

The right of reply process (see point D below) also appears to have indicated that Watchdog had initially intended to make further allegations against Pets at Home but that the programme’s focus narrowed in the light of the evidence they discovered. This too suggested that the programme approached the investigation with a relatively open mind.

Trustees recognised that, when undercover journalists seek evidence of wrongdoing or of poor practice, they will not feel obliged to highlight all other instances where they discover good practice too. Nonetheless, the BBC expects undercover research to be presented in a way that paints a fair and accurate picture overall. Trustees were struck by the fact that two independent experts, chosen by the Trust and not objected to by either party to this complaint, expressed unprompted approval of the high standards of advice given by various members of Pets at Home staff in the untransmitted undercover recordings. It is not clear whether the Watchdog team showed any of the positive untransmitted material to its own expert, Mr Jessop, although it is clear that, at times, Mr Jessop was required to give his opinion based solely upon second-hand information received from Watchdog reporters rather than being afforded an opportunity to see the apparent supporting evidence in its full context which might have impacted his views.

Trustees themselves noted instances where Pets at Home staff had taken care to offer the Watchdog customers further advice, had provided them with leaflets, or had urged
them to go online for more information. Trustees were also struck by one particular
sequence in the untransmitted footage which featured Watchdog’s attempt to buy a
rabbit; on inspection, the Pets at Home staff member had identified illness in the animal
and had refused to sell it, instead removing it for treatment. Since one of the targets of
Watchdog’s investigation was to test the effectiveness of point-of-sale health checks,
Trustees found the absence of any reference to this occasion concerning.

Overall, Trustees considered that - irrespective of the relative strength or weakness of the
individual cases where the programme claimed to have found poor standards or poor
service - the relentlessly critical nature of the programme and the failure to reflect the
incidence it discovered of good standards, best practice and good service led to
unfairness to Pets at Home which was not redressed simply by a presenter reading a
summary of the company’s formal reply to the allegations it had been made aware of.

Finding: Upheld as a breach of the guidelines on Fairness, Privacy and
Impartiality

The Committee noted that the BBC will be reviewing its Editorial Guidelines to ensure that
the BBC continues to set the highest editorial and ethical standards and asks that, when it
does so, it should take explicit account of the need for BBC content to give a fair
summary of its findings when using undercover techniques.

Point (C) – Whether the programme observed due impartiality with regard to
the expert who appeared in the item

The Committee noted the relevant section from the Impartiality Guideline:

“We should not automatically assume that contributors from other organisations
(such as academics, journalists, researchers and representatives of charities) are
unbiased and we may need to make it clear to the audience when contributors are
associated with a particular viewpoint, if it is not apparent from their contribution
or from the context in which their contribution is made.”

Mr Jessop, the vet who accompanied Watchdog’s undercover reporters on visits to eight
stores in the Pets at Home chain, has a private veterinary practice in Wales. Mr Jessop
was present for the filming of the fish section and the section where it was alleged a
bearded dragon was housed in a tank that was too small. He was not present, but
commented separately, with regards to what Watchdog told him it had found when it
filmed the health check and bearded dragon advice sequences.

The Committee noted that Mr Jessop was referred to as Watchdog’s expert. Trustees
noted how Mr Jessop was introduced:

“We sent our undercover team into eight Pets at Home stores across the country,
joined by forensic vet, Mike Jessop, who visited branches with us back in 2012.”

The Committee noted the complainant’s contention that:

- Watchdog relied on Mr Jessop in respect of nearly all the allegations
- he has strongly held personal views against the selling of animals in pet stores
generally and on the specific issues that the broadcast was likely to include; he
appears to have a fundamental opposition to pet stores as a matter of principle
- Mr Jessop had been quoted in the Daily Mail as saying that “selling animals from a pet store is an appalling idea”
- he has been linked to the Animal Protection Agency (APA), which is known to object to animals being sold and kept as pets
- papers and articles which Mr Jessop has produced in conjunction with others linked to the Animal Protection Agency suggest that Mr Jessop is against the keeping of reptiles as pets in particular.

The Committee noted the complainant’s contention that:

“Watchdog did not take properly into account that there was a very real potential that Mr Jessop could not impartially assess matters relating to our client given that he had shown hostility to the nature of our client’s business and he would have a vested interest in undermining the integrity and reliability of one of the largest pet stores in the country.”

“All of these matters were put to Watchdog prior to the broadcast by us but were dismissed out of hand... Watchdog should have taken steps to interrogate and address this possible conflict of interest.”

“The ECU has fundamentally erred on this matter, stating that Mr Jessop’s position would only have been of concern if there were grounds for believing that it had led him to provide a misleading account of what he had observed. This is not appropriate or proper. Where concerns of impartiality have been raised they need to be investigated and dealt with before any broadcast.”

“Had Watchdog been acting with due process it would have considered the matters we raised properly and further scrutinised the position. At the very least it should have, in accordance with the BBC Editorial Guidelines, made it clear that Mr Jessop was associated with a particular viewpoint.”

The Committee noted the BBC’s position, that any views held by Mr Jessop are irrelevant because:

“...he was presented in the broadcast as a ‘forensic vet’ it was on that basis, and his experience as a former president of the British Small Animal Veterinary Association, which led Watchdog to appoint him as an expert, [and that] while he is experienced and should therefore know what to look for in such situations, given that the allegations were based on evidence found and filmed in Pets at Home stores, it did not seem unreasonable to conclude that anyone with similar expertise carrying out the same investigation would have found the same results.”

The Committee noted that in pre-broadcast correspondence Watchdog said:

“The BBC does not accept that the professional veterinary judgement of our expert is flawed or unsafe. Or that any association he has as part of his professional veterinary life make him impartial [sic] or unreliable for the purposes of his observations in this investigation.”

The Committee noted that at Stage 2, the Head of Editorial Complaints, ECU said of Mr Jessop:

“Mr Jessop is a qualified veterinary surgeon and a former president of the British Small Animal Veterinary Association. As such, he has the necessary qualifications,
expertise and experience to offer an informed opinion on the conditions he observed in the various Pets at Home stores. You have suggested he was not an impartial contributor because of his views on the sale of pets in stores, but he was not asked to give an opinion on that matter. His position on it would be of concern only if there were grounds for believing that it had led him to provide a misleading account of what he had observed, and I know of no such grounds in this instance.”

The Committee noted the programme’s response to the point for this appeal:

“Watchdog is aware of Mike Jessop’s published views and stands by his integrity as a vet and animal welfare expert.”

The Committee noted that Mr Jessop also chose to respond:

“I am asked for advice by many organisations and to say I have ‘links’ with the APA appears to be a criticism. I have acted in an advisory role for the APA but have no official links. I have advised and consulted many welfare organisations including the RSPCA where I do have some official links. I have acted on many occasions as an expert witness and sit on the board of trustees of the Glamorgan N&E Branch of the RSPCA in an advisory role (I believe it is approximately 15 years).

“I have advised the Royal College of Veterinary Surgeons, British Small Animal Veterinary Association, British Veterinary Association, Federation of Veterinarians of Europe, Society of Veterinary Practitioners, British Veterinary Zoological Association, Veterinary Public Health Association and have strong links and membership of most of these organisations.

“I could go on but the list will become a bit unwieldy.

“I have published 4 papers with people who also have links with APA, two ... were co-authored with E Toland who runs the APA charity... These all were published in peer reviewed scientific journals.

“I have never and will never publish anything that suggests I believe in banning pet ownership of any species, because I don’t. I am passionate about the health and welfare of any captive animal and would extend that passion to all animals captive and wild.”

Trustees noted that programme makers are entitled to choose who they wish to contribute to an item and that the holding of a specific viewpoint did not disqualify an contributor from appearing in BBC output. The Committee was clear that the editorial responsibility to achieve due accuracy and due impartiality lies with the programme makers.

The Committee noted the material highlighted by the complaint as relevant to this point:

The Daily Mail article

The Committee noted that the assertion that Mr Jessop is on the record as having opposed the sale of animals in pet stores related to an article which appeared in the Daily Mail on 16 March 2014, the headline of which states:
“Anger as charities sell off rescue cats at giant pet superstores after years of campaigning against the sale of animals in shops”

Trustees noted that the article reported a new RSPCA rehoming initiative for cats and dogs and that Mr Jessop was amongst those quoted in the article as opposing the policy. This is the relevant extract in context:

“Vet Mike Jessop, a past president of the British Small Animal Veterinary Association, said:

‘Selling animals from a pet store is an appalling idea. Animal welfare organisations have fought for years to keep dogs and cats out of pet shops and you no longer see puppies and kittens in shop windows.

‘So this is a huge step backwards. I am also very concerned that shoppers will be encouraged to buy a pet on the spur of the moment. And I feel uncomfortable about cats being kept in pens in what will surely be stressful conditions. Confined to a pen for too long, they can be depressed.’”

The Committee noted that the complainant wrote to the BBC before the Watchdog item was broadcast, citing the Daily Mail article:

“This clearly shows Mr Jessop’s fundamental opposition to pet stores as a matter of principle and undoubtedly calls into question his ability to impartially assess the animal welfare practices of the largest pet store chain in the country.”

The Committee noted that Mr Jessop had chosen to respond to this appeal:

“The Daily Mail quote refers to the decision made by the RSPCA in allowing their reputation to be questioned in a link up to supply rescue rabbits and other animals to the commercial pet trade.”

The Animal Protection Agency (APA)

The Committee noted the APA’s focus is on wild/exotic animals and noted the APA’s mission statement on its Facebook page:

“To achieve real and lasting results for animals, by campaigning - alone or alongside other organisations - to end the keeping of wild animals as pets in Europe, through lobbying to improve legislation to protect such animals and raising awareness of all issues concerning the keeping of wild animals as pets.”

The Committee noted the complainant’s contention that Mr Jessop’s co-authorship of papers with the head of the APA indicated that he shares the organisation’s views. It noted too that while Mr Jessop had acknowledged he had advised the APA on occasion, he had rejected the implication that he was biased by association, pointing out that he had advised a range of animal-related bodies.

Peer-reviewed papers

The Committee noted that prior to broadcast Pets at Home wrote to Watchdog setting out the grounds on which it contended that Mr Jessop was not impartial, making the following assertion in relation to Mr Jessop’s position on the ownership of reptiles as pets:

“It is clear his view is that reptiles should not be sold in pet shops or kept as pets.
We refer by way of example to the joint paper produced by Mr Jessop in conjunction with Clifford Warwick. It clearly advised against the keeping of ‘exotic’ animals, including fishes, amphibians, reptiles and birds, as pets. Mr Jessop’s strong personal stance in relation to the selling and keeping of reptiles cannot be ignored, and inevitably colours his views. It would be wholly wrong to seek to rely on Mr Jessop as impartial, or to present him as such.”

The Committee noted the Adviser’s review of two articles which Mr Jessop had co-written with Mr Warwick, and her analysis of the key message from each in relation to the issues discussed here:

**EMODE paper, 2014**

- this paper categorised animals in relation to their ease/difficulty as pets to help prospective owners make informed choices
- regarding reptiles, it said they were far harder to keep than the public might imagine
- a UK study found that 75% of reptiles died within their first year in the home
- the paper did not explicitly state that exotic animals should not be kept as pets, but the clear message was that where a pet buyer had no specific expertise, reptiles were probably not a good choice.

**JEHR paper, 2013**

Mr Jessop was one of four authors of a paper which discussed the risk and prevalence of animal to human transmission of disease; it was in that context that it explicitly advised against keeping exotic animals as pets (a bearded dragon is considered an exotic animal).

In relation to the complainant’s assertion that Mr Jessop was on the record as being opposed to keeping reptiles as pets, the paper says:

“It is not advisable to keep exotic animals as pets” (p19)

“Future guidance may include advising against keeping exotic animals as pets unless excellent monitoring for diseases and essential husbandry practices are pursued” (Introduction)

“In the domestic environment exotic pet keeping represents a continuous [health] risk with no absolute resolving recommendation other than discouraging the practice”

The Committee considered whether information in any of the above publications or Mr Jessop’s on-the-record comments regarding the sale of animals from pet shops constituted material facts which the audience ought to have been made aware of.

The Committee reiterated that it was for BBC content producers to choose who takes part in their programmes and to assess their suitability for the role the individual is expected to play. The Committee considered that Mr Jessop’s experience as a vet and his prominence in the British Small Animal Veterinary Association would suggest a high level of expertise in the care and health of small animals. The Committee noted that, as part of this appeal, the BBC said it was aware of Mr Jessop’s published views and stood by his suitability to be the programme’s expert. The Committee did not disagree.

Whilst Trustees considered it would also have been helpful, once it was made aware of
the complainant's concerns pre-transmission, had *Watchdog* sought additional independent advice on the evidence it had gathered, they did not find that the failure to do so in itself constituted a breach of the relevant section of the Impartiality guidelines.

However, Trustees also considered the ECU’s view, that Mr Jessop’s views were relevant only if there were grounds for believing that he had given a misleading account of what he saw during the *Watchdog* investigation. The Committee disagreed with that judgement.

Trustees saw no evidence to suggest that Mr Jessop’s contribution to the programme, and in particular his professional assessment of the material gathered, were affected by any opinions he may have held or expressed about the sale of animals in pet shops or the suitability of creatures such as lizards as household pets. However, Trustees did consider that in the specific circumstances of this particular broadcast, the nature and content of Mr Jessop’s published views were relevant, given that the item dealt specifically with animals which were being sold in pet shops and the keeping of lizards as household pets. Trustees therefore decided, without making any judgement as to views actually held by Mr Jessop, that the programme was required to present his contribution in a context which allowed the audience to take proper account of his relevant previous comments and published views in informing their judgement. The programme’s failure to do this was, in Trustees’ opinion, a breach by Watchdog of guideline 4.4.14.

**Finding: Upheld as a breach of impartiality**

**Point (D) – Whether the programme gave a fair opportunity to Pets at Home to respond to the allegations**

The Committee noted that the relevant guideline is Fairness, Contributors and Consent, in particular those sections which relate to the right of reply provisions.

The Committee noted a summary of the issues raised by the complainant under the umbrella of Point (D):

**Point (D) 1**
that a trail was broadcast on 11 June 2015, prior to the main item, without giving Pets at Home an opportunity to respond

**Point (D) 2**
that Pets at Home was not given a fair opportunity to respond to the allegations in the substantive broadcast item

The Committee noted the relevant extracts from the Fairness guidelines:

6.1
The BBC strives to be fair to all - fair to those our output is about, fair to contributors, and fair to our audiences. BBC content should be based on respect, openness and straight dealing. We also have an obligation under the Ofcom Broadcasting Code to “avoid unjust or unfair treatment of individuals or organisations in programmes”. (Rule 7.1, Ofcom Broadcasting Code)

6.4.25
When our output makes allegations of wrongdoing, iniquity or incompetence or
lays out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a “right of reply”, that is, given a fair opportunity to respond to the allegations.

...We should normally describe the allegations in sufficient detail to enable an informed response, and set a fair and appropriate deadline by which to respond.

6.4.26
Any parts of the response relevant to the allegations broadcast should be reflected fairly and accurately and should normally be broadcast in the same programme, or published at the same time, as the allegation.

Point (D) 1 – Whether the trail broadcast on 11 June 2015 breached the requirement that those criticised in BBC output should be given a fair opportunity to respond to the allegations

The Committee noted that the forthcoming item about Pets at Home was trailed in the edition of *Watchdog* broadcast on 11 June 2015, a week before the substantive item was broadcast:

“Next week. Pets at Home, we go undercover with shocking results”

The Committee noted the complainant’s contention that the transmission of the trail was in breach of the Fairness guidelines because, among other things:

- the reference to “shocking results” with no reference to Pets at Home’s countervailing position amounted to an allegation that Pets at Home had done some wrong and/or fallen short of the standards expected
- this constituted clear criticism and Pets at Home should have been afforded a proper right of reply.

The Committee noted that there were several contacts between the programme and lawyers for Pets at Home on the day the trail was due to be broadcast and that in the final communication, *Watchdog* wrote:

“Neither the proposed trail or any broadcast planned for the 18th June will be unsafe, unlawful or done with malice. Any allegations will be firmly based on fact and in line with the BBC’s high editorial and legal standards...

“...the reference to Pets at Home in the trail is brief. The allegations will not be set out and no undercover footage of your client will be shown. We therefore intend to go ahead with the trail as planned.”

The Committee noted the grounds on which the complainant was appealing:

- *Pets at Home* had first been notified on 9 June that *Watchdog* intended to broadcast allegations about the company in a broadcast on 18 June
- *Pets at Home* was advised that they it until 16 June to respond
- there was no indication on 9 June that the item would be trailed two days later, and before *Pets at Home* had been given the opportunity to respond
- after it had become aware that a trail was intended, Pets at Home had relied on the assurances it had been given by *Watchdog* that “the reference to Pets at
Home in the trail is brief” and that “the allegations will not be set out”. As a result, Pets at Home had been denied the opportunity to seek an injunction

- the fact that the full details of all the claims which Watchdog intended to make in the broadcast were not included in the trail did not absolve Watchdog of its Guideline responsibilities
- Watchdog was already on notice that Pets at Home intended to dispute the allegations
- it was inevitable that there were viewers who would have seen the trail but not the broadcast and would have formed a negative view about Pets at Home without ever knowing about the other side of the argument
- the broadcasting of the trail committed Watchdog to giving its audiences as “shocking results” as possible to fit the promotion, regardless of what Pets at Home said in reply.

The Committee noted the BBC's response at Stage 1:

“[when the trail was broadcast] the Watchdog team had carried out their undercover investigation and assessed the results. It seems fair for the Watchdog team to describe those results as ‘shocking’...

“The guidelines are quite clear that a right of reply should normally be offered when making allegations. However the ‘next week’ teaser contained no claims or allegations. As such a right of reply was not required.”

The Committee noted the view of the Head of Editorial Complaints, ECU at Stage 2:

“The trail did not contain any specific or substantive allegations of wrongdoing and the language used did not, in my view, amount to what might reasonably be described as a strong or damaging critique of your client. There was therefore, no requirement to offer a right of reply.

“On the arguments advanced in your letter, it is difficult to envisage any circumstances in which a programme such as Watchdog could legitimately inform viewers that particular persons or organisations were to be featured in a forthcoming programme, however strong the evidence in the programme makers’ possession. I believe it is reasonable for programmes to take a view of what the evidence will support in advance of a detailed reply, though not always without an element of risk in the event that the trailer’s claims cannot be made good in the subsequent broadcast. We differ on the extent to which they were or were not made good in this instance, but the principle remains. The trail did not commit Watchdog to including your client in the upcoming broadcast irrespective of its substantive reply, and in the event that that reply had removed the ground for concern (and again we differ on the extent to which that may be said) I would have expected Watchdog not only to drop the item but to make clear to viewers that its previous concerns had been satisfactorily answered.”

Trustees reached the following conclusions:

- audiences hearing the trail which was broadcast on 11 June would have been in no doubt that Watchdog had shocking evidence of a critical nature about Pets at Home; this amounted to a “strong and damaging critique” of the company
• there would inevitably have been viewers who would not have seen the following week’s broadcast and would have remained unaware of the company’s response to the programme’s allegations
• contrary to the ECU’s view that Pets at Home’s position would make it difficult to envisage circumstances in which Watchdog could legitimately inform viewers that particular persons or organisations were to be featured in a forthcoming programme, it would have been entirely straightforward to have composed a trail that did not jeopardise fairness. For example, the trail could have retained an element of open-mindedness by being formulated as a question
• this would seem appropriate given that the programme team had yet to receive the company’s right of reply response but were aware that Pets at Home planned to challenge all of the allegations
• the content of the trail which was broadcast was at odds with the assurances which had been given to Pets at Home just a few hours earlier.

Trustees judged that it was important, in the best interests of editorial freedom of expression, not to set hard and fast rules regarding the content of trails, and that this would always have to be judged on a case by case basis. Nevertheless, Trustees considered that, when writing a trail about an item where there is a right of reply process underway or anticipated, programme makers should judge whether the trail needs to be written in such a way that the trail itself does not call for a right of reply process.

On this occasion Trustees considered that, in the circumstances of the programme, and taking into account the exchanges which had already taken place between the programme and the complainant, the trail should have been expressed differently or should have indicated that Pets at Home intended to rebut the “shocking results”.

Finding: Upheld as a breach of fairness

Point (D) 2 – Whether Pets at Home was given a fair opportunity to respond to the allegations in the substantive broadcast item

The Committee noted the complainant’s contention that Watchdog did not do enough to comply with its right of reply obligations:

• “In the circumstances and given the seriousness of the allegations, notice of only five working days in which to provide a response to a whole myriad of allegations and questions was insufficient.”
• Pets at Home had not been provided with any substantiating evidence
• Pets at Home’s response to the allegations was not adequately reflected when the item was broadcast.

The Committee noted that there is no designated timeframe for response when offering a “right of reply”, but there is editorial guidance for production teams which refers to:

“providing a fair opportunity to reply to allegations requires providing enough time to make a response.”

The guidance notes state that the amount of time that is fair will change according to circumstances, including:
• the nature and complexity of the allegation. More detailed and complex allegations may require longer time for a response
• whether or not the allegations were already familiar to the subject of them. Detailed case studies that are completely new to the subject of an allegation may require more time to be thoroughly researched and responded to than cases or complaints that they are already familiar with
• the nature of the subject and their resources. With all other factors being equal, a large corporation with a sizeable PR operation may be expected to respond quicker than a small business with just a few employees or an individual
• whether there is a pressing need to broadcast in the public interest, for example because the reporting of allegations is likely to be frustrated by any delay, or because of the requirements of contemporaneous reporting.

The Committee noted the guidance regarding the amount of information which should be given to the respondent:

“...it is important that the respondent has enough information and detail about the arguments and allegations to understand them and give an informed response.”

The Committee noted that, in general, subjects of allegations should be given:

• a summary of the nature, format and content of the output
• information about where and when the output is to be broadcast
• the date by which the subject would need to provide a response
• contact details for further information should the subject wish to request it.

“Approaches for a response do not normally have to explain all the evidence or detail the form it takes. However, the subject of the allegations should understand on what basis they are being made and normally have sufficient detail to make an informed response to evidence that will support those allegations (including, for example, specific incidents to be included in the output).

“So long as that is achieved, there is no requirement to make copies of the evidence available or to show the subject any secret filming.”

The Committee noted the conclusion at Stage 1 that Watchdog had followed the guidance correctly, that seven days seemed a reasonable time frame, and that no substantive reasons were given by Pets at Home at the time as to why seven days would not suffice.

The Committee noted the Stage 1 response to the complainant’s contention that it should have been provided with the underlying evidence:

“Watchdog was under no obligation to provide such evidence. The obligation was to ensure that your client was provided with enough information and detail about the allegations to understand them and to be able to provide an informed response. From reading the pre-transmission correspondence between your client and Watchdog, it appears that the allegations were understood by your client.”

The Committee noted the relevant extracts from the Editorial Guidelines on Fairness regarding the form the right of reply should take on air:
“Any parts of the response relevant to the allegations broadcast should be reflected fairly and accurately”

The Committee noted that the editorial guidance note states:

“We are not obliged to include responses to allegations in their entirety, regardless of whether the response is an interview, written statement or other format. Similarly, responses need not be quoted verbatim, but merely have to be reflected. Exactly what is included in the output and how it is reflected, is a matter for the production team, so long as it achieves fairness.

“To be fair, we should include material that is relevant to the allegations. It is not necessary to include material that may be considered irrelevant to the allegations. If we choose to paraphrase material rather than use direct quotes, the meaning must be fairly represented.”

The Committee noted the timeline of Pets at Home’s right of reply process, which began on 9 June ahead of the broadcast of the item on Watchdog on 18 June with a letter informing it of the allegations and inviting its response.

The Committee noted that the pre-broadcast correspondence between Pets at Home and Watchdog comprised 27 emails between 9 June and 18 June. The Committee considered the content of those emails and formed the conclusion that contacts between the parties demonstrated that Watchdog had complied with the relevant guideline which states:

“We should normally describe the allegations in sufficient detail to enable an informed response, and set a fair and appropriate deadline by which to respond.”

The Committee noted that:

- the correspondence reflected that, although the complainant rejected all the allegations as “demonstrably untrue, misleading and defamatory”, it nevertheless engaged with the process
- the complainant asserted from the outset that to provide a proper response it needed to see the substantiating evidence: “the bare detail provided in your email is wholly insufficient”
- Watchdog in turn explained that it considered sufficient information had been supplied, and that it was not BBC policy to provide untransmitted journalistic material; Pets at Home was invited to forward any queries it had in relation to the allegations
- on 15 June, the complainant submitted a detailed not-for-broadcast response which addressed the substantive allegations and the questions which had been raised by Watchdog
- the accompanying letter stated:

  “Should you include our client in this broadcast we require you to include our client’s enclosed ‘On the Record’ statement unedited in full.”

- whilst Watchdog did not share any of the underlying material, the correspondence reflected that the programme reviewed the rushes and talked to its undercover reporters and Mr Jessop when necessary to answer specific questions posed by Pets at Home during the pre-broadcast period
• at the time of broadcast, apart from the complainant’s objection to not being given access to the underlying evidence, there did not appear to be any substantive outstanding questions awaiting Watchdog’s response.

The Committee concluded that the length of time that Watchdog gave the complainant to respond took account of the size of Pets at Home and the resources likely to be at its disposal. Trustees considered that the time given to Pets at Home to respond was sufficient for it to consider, prepare and provide a proper response.

Trustees considered that adequate detail was provided to Pets at Home to understand the likely allegations and to enable the company to respond in detail if it wished.

Trustees recognised that there are very good editorial and legal reasons why it would not be usual for a programme to provide recorded or documentary evidence to the subject of an allegation prior to broadcast; they could see no exceptional reason why such material should have been shown to Pets at Home in this case, given that the nature of the various allegations had been made clear.

Trustees noted that the company had not taken up an offer to be interviewed live on the programme but had supplied a lengthy statement. Trustees considered that Watchdog had included a reasonable summary of the main points of that statement which were directly relevant to the allegations it broadcast.

**Finding: Not upheld**

**Point (E) – Whether the programme obtained the appropriate permissions for the gathering and transmission of secretly recorded material**

The Committee noted that in its letter of appeal the complainant requested that the Trust review all the material that had passed between itself and the BBC at all stages of the complaints process, and all relevant material held by the BBC in relation to the broadcast.

The Committee noted that the complainant had asked the Trust to consider the guidelines on Privacy, the relevant section of which states:

**Approval of Secret Recording**

7.4.11

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.

The gathering and broadcast of secretly recorded material is always a two-stage process, requiring a justification for any intrusion at each stage. So, the decision to gather is always taken separately from the decision to transmit.

A record must be kept of the approval process... Each division is responsible for maintaining its own secret recording records to enable the BBC to monitor and review its use across all output.

The Committee noted that the pre-broadcast correspondence reflected that Watchdog was asked for an assurance that the necessary approvals in relation to secret filming had been obtained:
“It is not clear from your email whether you have undertaken any covert filming in our client’s stores and, if so, whether you intend to use any material obtained in this manner in the broadcast. Our client did not approve or consent to any such filming, and nor did its colleagues or customers. You will of course be aware of the specific obligations with which you are required to comply under the BBC Editorial Code prior to undertaking any covert filming. If such filming has taken place please confirm that you have fully complied with your obligations under the BBC Editorial Guidelines, namely that you obtained senior editorial approval in advance of carrying out any secret filming and that you have obtained similar approval to broadcast any footage obtained in this way. As you will of course be aware, these obligations are Mandatory Referral within the BBC Guidelines and must be observed.”

The Committee noted Watchdog’s response:

“We can confirm that we did undertake covert filming in the eight stores and our intention is to broadcast some of this material in support of the allegations we make. This filming was carried out with the appropriate senior editorial advance approval.”

The Committee noted that the Adviser had had sight of the relevant paperwork and had also been provided with a detailed explanation of how the programme went about meeting its guideline obligations.

The Committee noted that the paperwork reflected that:

- advice was sought from Editorial Policy at the outset of the investigation in March 2015; the process began with a detailed conversation between Watchdog and the Head of Editorial Policy for Factual programmes
- the Head of Editorial Policy for Factual programmes remained involved throughout the process, updating and supplementing her advice as the investigation progressed
- the relevant senior editorial figure approved the investigation and cleared the item for broadcast
- there were several iterations of the secret recording form, which is the document used by programme management and Editorial Policy to track the request and approval process for secret filming, and that the copies seen by the Adviser reflected where Watchdog sought additional approval as necessary whilst undercover filming took place during April and May 2015.

The Committee concluded that the programme had fulfilled the guideline requirement for secret filming; it had prima facie evidence, and it secured senior editorial approval before undertaking the recording and again before broadcasting parts of it.

The Committee noted that the complainant had not made an allegation with regard to this point, but rather a request for assurance that the process had been conducted correctly. As such, no finding was made.

Point (F) – Whether the Editorial Complaints Unit’s summary of its finding which appears on the BBC website is appropriate
The Committee noted that following the *Watchdog* broadcast on 18 June, a version of the *Pets at Home* item was posted on the BBC website. It did not include any of *Pets at Home’s* responses to the allegations.

The Committee noted that at the beginning of August, after several requests from the complainant, the BBC amended the website version of the story to include *Pets at Home’s* responses to the allegations.

The Committee noted that the BBC apologised to the complainant for not including *Pets at Home’s* right of reply when the item was first uploaded, and for the length of time it had taken to make the amendment.

The Committee noted that, at that point, the overall complaint was at Stage 2 of the complaints process and that the complainant asked the Editorial Complaints Unit to review the matter because it considered the Stage 1 response was not sufficient acknowledgement of the clear failure by the BBC to adhere to the right of reply guidelines.

The Committee noted the subsequent acknowledgement from the Editorial Complaints Unit that there had been a serious breach of editorial standards in not including *Pets at Home’s* response when the website version was first uploaded; it was not recorded as an “upheld” complaint because the ECU decided that the action taken had been appropriate and sufficient and that the matter had therefore been resolved.

The Committee noted that the complainant was given advice that because a “resolved” finding is an acknowledgement of a serious breach of editorial standards, a summary would be published on the complaints pages of the BBC website, alongside summaries of complaints which had been upheld.

The Committee noted that the point raised on appeal related to the wording of the published finding: the complainant contended that it was misleading because it did not reflect that the bulk of the complaint, concerning the content of the trail and the broadcast item was yet to be determined by the Trust.

The Committee noted the summary of the finding which appears on the complaints pages of the BBC website:

**Watchdog, BBC1, 11 & 18 June and website: Finding by the Editorial Complaints Unit**

**Complaint**

The 18 June edition included a report on conditions in a number of branches of *Pets at Home*, and concluded that shortcomings identified in a programme broadcast in 2012 had not been effectively addressed. Solicitors representing *Pets at Home* complained that the trailer for the item in the 11 June edition, the website content linked to the item and the item itself were in various ways inaccurate and unfair to their client.

**Outcome:** The terms of the trailer and the item were justified on the basis of what the programme-makers had observed and filmed at the branches of *Pets at Home*. The website included a version of the 18 June item made before *Pets at Home’s* points in reply to criticisms were incorporated, but in response to the complaint the programme-makers acknowledged that this represented a serious
breach of the BBC’s editorial standards and replaced the item with a version which reflected Pets at Home’s points. In the view of the ECU, this sufficed to resolve the issue.

Not upheld/Resolved

The Committee noted that the complainant had advised the ECU that it was unhappy with the wording and had requested that it either delay publication of the finding until the BBC Trust had adjudicated the complaint, or that it made clear that the remainder of the complaint was still under consideration.

The Committee noted the ECU’s advice to the complainant, that to accede to either request would require a departure from established practice. The Head of Editorial Complaints said:

- there was no instance in which a published summary had included the information that the complaint had been taken to appeal
- it was established practice for the ECU to publish summaries of its findings irrespective of whether they were the subject of appeal to the Trust
- this was to ensure that where the ECU had found breaches of editorial standards these were publicly acknowledged in a reasonably timely fashion
- there did not appear to be any grounds for treating this case as an exception.

The Committee noted the basis on which the complainant contended that the ECU summary was misleading:

- given the omission of any reference to the ongoing appeal to the BBC Trust, it was inappropriate for the ECU to have included in the summary of its finding the statement:

  “The terms of the trailer and the item were justified on the basis of what the programme-makers had observed and filmed at the branches of Pets at Home.”

- to report a decision as “not upheld/resolved” without stating it is subject to appeal is clearly misleading.

The Committee noted that just as in a court process, the ECU publishes its findings regardless of whether they may be subject to appeal elsewhere. The publication of the finding on this occasion was not a failure of process but an example of due process.

**Finding: Not upheld**

**Action:** The Committee noted its decisions on the various points of appeal, particularly the finding that there had been a failure of due accuracy relating to the item as a whole, as well as failures of the guidelines on Impartiality, Privacy and Fairness relating to various points.

Together these constitute a serious breach of the Editorial Guidelines and warrant an appropriate broadcast summary of the Trust’s findings. The item must also be removed from the website.
The Film Review, BBC News Channel, 5 June 2016, 17.45

Background

The programme reviews new film and DVD releases in a weekly 15-minute segment. In this edition Anna Smith reviewed the film The Nice Guys starring Ryan Gosling and Russell Crowe.

The Nice Guys clip featured a character played by Russell Crowe deliberately breaking the arm of the character played by Ryan Gosling, having first warned him that he was going to give him a spiral fracture of the left radius. There was no visual close-up of the breaking of the arm but the soundtrack featured audio of the break accompanied by pained squealing and screaming from Ryan Gosling in response to his injury.

Appeal to the Trust

The complainant said the BBC News Channel did not provide a content warning before it broadcast The Nice Guys clip, which contained the violent scene. He said the character played by Russell Crowe broke the arm of Ryan Gosling’s character “very graphically”.

The complainant said he watched the programme with his six-year-old child and, as he did not expect The Nice Guys clip to contain violent content and because it happened very quickly, he had no time to switch over. His child was extremely upset.

Applicable Editorial Guidelines

The editorial guidelines on Harm and Offence are applicable to this complaint. The full guidelines are at www.bbc.co.uk/editorialguidelines.

The Committee’s decision

The Committee considered the appeal against the relevant editorial standards, as set out in the BBC’s Editorial Guidelines. The Guidelines are a statement of the BBC’s values and standards.

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

The Committee noted that in his appeal the complainant said that the BBC should have warned that there was a scene of violence.

The Committee noted how the film critic Anna Smith introduced The Nice Guys clip:

    Gavin Esler: Hello and welcome to the Film Review on BBC News. To take us through this week’s cinema releases is Anna Smith. What have we got?
Anna Smith: We’ve got The Nice Guys. This is a crime, comedy caper set in 1977 LA starring Ryan Gosling and Russell Crowe, interesting pairing there.

Gavin Esler: Nice Guys I’m really looking forward to, I also want to see if Ryan Gosling can do comedy.

Anna Smith: He really can as you’re about to see in the clip, but we’ll cut to that in a second. Yeah, I really thought he was very funny in this. It’s from Shane Black who gave us Kiss Kiss Bang Bang, which I really liked; hence I was also looking forward to this. It’s a story of two mismatched. One is a private eye played by Ryan Gosling and the other chap, played by Russell Crowe, is a heavy. He’s paid to beat people up. They end up teaming up together for a rather intriguing plot to do with porn stars and missing young women and corrupt politicians. When they first meet, Russell Crowe’s character is actually hired to beat up Ryan Gosling. Let’s have a look.

The Committee noted the film was classified as a 15 by the British Board of Film Classification (BBFC) which means that no one younger than 15 may see it at a cinema or rent or buy it as a DVD.

The Committee also noted that the BBFC’s website described the film as containing strong violence, sex references and strong language. It also described its genre as drama, comedy and thriller and its summary of the movie said:

“The Nice Guys is an action comedy drama, set in Los Angeles in 1977, in which a private investigator and an unlicensed enforcer uncover a conspiracy when they team up to trace a missing young woman.”

The Committee noted that the introduction to The Nice Guys clip signalled that the film was a crime comedy caper and that the Russell Crowe character was a heavy who was paid to beat people up and that in the clip the audience was about to see he had actually been hired to beat up Ryan Gosling. However, the Committee also noted there was no explicit reference to the portrayal of fictional violence in the clip that was then broadcast.

The Committee noted that the BBC Executive had made the following comments:

- The scene featured in the film clip was played for humour rather than to shock, and the violence was implied rather than explicit.

- It was not a scene of real-life violence, and therefore did not go beyond what might be regarded as appropriate within a segment reviewing films, on a dedicated news channel, which covers many serious issues and has a predominantly adult audience.

- BBC News Channel uses verbal warnings when showing real-life distressing or violent scenes and carefully assesses them on each occasion because unnecessary use can dilute their overall effectiveness.

- A specific content warning about violence was unnecessary in the context of the comedic and fictional nature of the film clip.
The Committee noted that the Stage 1b response included an apology for the upset the clip had caused the complainant and his child. It also noted that the complaint had been discussed with the production team and the team accepted it could have handled the clip differently, for example by ending it a little earlier, before Ryan Gosling’s arm was actually broken.

The Committee noted that the Editorial Complaints Unit at Stage 2 of the BBC’s complaints procedure did not uphold the complaint and said:

“You have pointed out no warning about the content was given to the audience and I agree the introduction could have been more specific. However, I do not believe the nature of the clip meant a specific warning was necessary. As I have said, the scene was primarily played for humour rather than with any sinister or malicious intent; the arm break was not actually shown; and the implied violence was ‘appropriate to the likely audience’ bearing in mind it was shown on a channel aimed at an adult audience.”

The Committee noted that this edition of The Film Review was originated live at 17.45 on Friday 3 June and was then repeated five times over that weekend, including three repeats on Sunday 5 June at 17.45, 19.45 and 23.45. The two pre-watershed repeats were unbilled and it was one of these repeats that the complainant and his child had seen.

The Committee noted the content of the Harm and Offence Guideline 5.4.7 that states:

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.

Only in exceptional circumstances can there be any departure from this practice, and then clear content information should be given. Exceptions may include, but are not limited to, images that some children might find distressing in ... items in pre-watershed news bulletins.

The Committee agreed that it was clear that, as the evening progresses, somewhat stronger material may be progressively played up to the watershed in accordance with the Guideline. However, in the early evening it is understood that younger children may be watching and may not be with an adult and material should be broadcast in accordance with that expectation.

The Committee also noted the Violence guideline 5.4.27 that states:

Our audiences, particularly children, can be frightened or distressed by the portrayal of both real and fictional violence. We should make very careful judgements when we plan to include violence in our output....

Consideration should be given to the editorial justification for any depiction of violence, and violent content should normally be clearly signposted...

In reaching its decision the Committee recognised that the BBC Executive had taken the complaint seriously and that its Stage 1b response had been reasoned and detailed and had included an apology for the upset caused to the complainant and his young child. The
Committee also agreed that the use of the clip in The Film Review had involved nuanced judgments about the portrayal of fictional rather than real-life violence in the context of the BBC News Channel.

The Committee considered the film critic’s introduction to The Nice Guys film clip and considered that it provided The Film Review’s pre-watershed audience with a mixed message. Firstly, the Trustees agreed that parents watching with their children could have been lulled into a false sense of security when the film was described as a “comedy caper”. Secondly, they agreed that the audience was not given sufficient warning that they might hear something violent or see implied violence even though the introduction had said: “When they first meet, Russell Crowe’s character is actually hired to beat up Ryan Gosling. Let’s have a look.”

Trustees acknowledged that the clip did not show the arm being broken. However, Trustees agreed that the noise of the “break” and the screaming (which adults might well have found to be comic) could be distressing to a young child who would not have understood that the scene was meant to be humorous.

Whilst they accepted that the News Channel is aimed at an adult audience, Trustees also noted that children could be in the room whilst adults watched the news or could be left alone with the News Channel on. Indeed, Trustees considered that parents might regard a pre-watershed film review segment as a relatively safe time to allow children to watch alone a channel which, by its nature, would otherwise often deal with real-life violence.

The Guidelines rightly indicate that, in the case of pre-watershed news items, an exception may be made to the requirement that content be suitable for children, so long as there was an appropriate warning. But there was no exceptional reason in this case. The clip was shown at 17.45, which was a time when a young child might see it and, in any event, the introduction was insufficiently clear to constitute a warning that the clip would contain implied violence.

The Committee concluded that there had been a breach of the harm and offence guidelines in this case because the clip was not suitable for broadcast at this time. It therefore upheld the appeal.

Finding: Upheld
Today, BBC Radio 4, 7 June 2016

Background

On 7 June 2016, during the EU Referendum campaign, Today featured an interview with Lord Heseltine, which coincided with the publication of his report “Tees Valley: Opportunity Unlimited”. This report, published by the Department for Communities and Local Government, identified opportunities to unlock, promote and support economic growth in the Tees Valley. The area had experienced significant job losses when the SSI (Sahaviriya Steel Industries) steelworks at Redcar were closed in 2015. At the time of broadcast, there was also uncertainty about the future of Port Talbot’s steelworks.

The sequence began with the presenter, John Humphrys, interviewing a former SSI worker who was now driving a bus, and who expressed his view that the Chinese and the UK government were to blame for the closure of SSI – the Chinese for dumping cheap steel, and the UK government for saying they were unable to help. He said that he thought Britain should leave the EU because “charity begins at home”.

Lord Heseltine (a Remain campaigner) was asked to respond to the former SSI worker’s observations. Lord Heseltine expressed his view that there would be serious consequences for the UK if it left the EU, and he cited the view of Hitachi (which has a manufacturing base in the North East) that they may consider leaving the UK in the event of a Brexit vote. Lord Heseltine then said he was surprised at the optimism he had found in his visits to the Tees Valley. He said that unemployment was now lower than before SSI closed: though jobs had been lost, he said, those jobs had been made up for by other activities.

John Humphrys said to Lord Heseltine:

“But isn’t there quite an important point here that we mightn’t have had to lose Teesside, we may lose Port Talbot, we mightn’t have had to lose Port Talbot, if it happens, if we had been able to impose the sort of tariffs against Chinese steel that the Americans had imposed for instance. But the European Union doesn’t allow that.”

Lord Heseltine replied:

“Well the great claim against the European Union is that the French and the Germans and the Italians all cheat, so just put yourself in the capital cities of those countries. Do you think they would have said, ooh we must be good boys, the bureaucrats in Brussels have told us we’re not allowed to help our local industry so we must touch our forelocks and say well ok Brussels. Of course they wouldn’t. They would have laughed in your face if you’d suggested it. So of course there is a dialogue involving Europe because if you didn’t involve Europe any one of the 28 countries could say well we will not comply to the rules or whatever it may be and there would be no single market. The reason Margaret Thatcher went for a single market, with all the constraints, was to make sure there were rules which most

people most of the time stick to. And that gives us a great strength in that single market which we’d be in my view very unwise to abandon.”

The complaint

The complainant said that the question was inaccurate and misleading because it gave the impression that the UK’s membership of the EU was to blame for the fact that the UK had not raised higher tariffs, and it failed to mention that the EU had wanted to raise tariffs further but had been prevented from doing so by the UK government.

Applicable Editorial Guidelines

The Committee considered the output against the BBC’s guidelines on Accuracy – in particular:

- 3.1 Introduction
- Principles 3.2.1, 3.2.2, 3.2.3

The Committee’s decision

In reaching its decision the Committee took full account of all of the available evidence, including (but not limited to) the Editorial Adviser’s report, comments by the complainant and by BBC News.

Trustees noted that:

- the EU has trade defence measures (or “instruments”) which aim to protect industries in member states from unfair trade practices such as “dumping”
- “dumping” occurs when manufacturers from a non-EU country sell goods in the EU below the sales price in their domestic market, or below the cost of production
- if the European Commission can establish – through an investigation – that this is happening, it may correct any damage to EU companies by imposing duties on imports of the product from the country in question
- as domestic demand for Chinese steel has dropped, the Chinese have been accused of dumping cheap steel on European markets. Chinese officials have denied the practice
- on 1 March 2016 the US Department of Commerce announced it was imposing preliminary duties of 266% on Chinese cold-rolled steel
- on 12 February 2016 the European Commission announced it was imposing provisional anti-dumping duties on cold-rolled steel from China; the duties ranged from 13.8% to 16%
- unlike the US, the EU abides by a “lesser duty rule” by which tariffs are imposed “at a level lower than the margin of dumping”
the European Commission proposed modernising trade defence instruments in 2013 but member states with different trade traditions disagreed over the need to modify the lesser duty rule.

it was reported that Britain and the Nordic countries had opposed modifying the rule on the grounds that it already provided adequate protection for industries. Charles de Lusignan, a spokesman for the European Steel Association (Eurofer) told Today in April 2016 that “the fact is that the UK has been blocking this. They are not the only member state, but they are certainly the ringleader in blocking the lifting of the lesser duty rule.”

on 29 February 2016 Sajid Javid, the Secretary of State for Business, Innovation and Skills made the following points in a House of Commons debate:

- the lesser duty rule did not prevent the imposition of tariffs, nor was it a bar to effective action against unfair trading: it simply ensured that duties were set at a level that removed the harm caused by dumping, and no higher
- under its existing rules the EU could act more quickly and could go further in imposing higher tariffs
- he did not support the lifting of the lesser duty rule because it was “there to create a level trading field”
- he said that artificially over-inflating the price of imported steel would have a damaging effect on British companies further up the manufacturing chain and would impose a disproportionate cost on the wider economy.

The Committee noted the complainant’s view that the question put to Lord Heseltine was misleading because “a major ingredient (the UK government’s policy and position on tariffs on Chinese dumped steel) was not introduced where it ought to have been a major consideration”:

“...the reason for the absence of higher tariffs was the opposite to the one implied; it was because of the UK government’s influential request to the EU, not because the EU would not allow individual countries to impose them! It was his responsibility to inform the listening public of this by question or assertion.”

Trustees noted that there was a considerable degree of ambiguity about Mr Humphrys’ statement. They considered that it could be understood to be:

- a “devil’s advocate” challenge to Lord Heseltine (a prominent Remain campaigner) on the limitations and restrictions of operating in a single market

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7 https://hansard.parliament.uk/Commons/2016-02-29/debates/16022928000001/UKSteelIndustry
- a factually accurate statement, because the EU does not allow individual countries to raise tariffs unilaterally, irrespective of the position taken by the UK on negotiations to change the EU’s Trade Defence instruments

- a suggestion that the UK could have higher tariffs only by leaving the EU

- an accurate statement that, given the trade instruments in place at the time of the SSI closure, the EU was unable to impose the “sort of tariffs against Chinese steel that the Americans had imposed”.

Trustees noted, however, that the item was broadcast against the backdrop of the EU Referendum and that Brexit campaigners had claimed that the UK’s steel industry was paying a heavy price for membership of the EU because:

- the EU had not taken sufficient action to prevent alleged “dumping” of below-cost steel by Chinese producers

- the EU has strict rules on state aid which prevents member nations from subsidising or temporarily nationalising their steel industries.

The Committee noted that the former SSI worker had already expressed his view that Britain should leave the EU, and that he blamed the crisis on the Chinese (for the dumping of cheap steel) and the Conservative government (for saying it was unable to help Teesside). Trustees therefore understood the question to be an attempt to take these points and pose them to Lord Heseltine in the form of a challenging statement. In reply, Lord Heseltine chose to stress the potentially negative effects of countries acting independently in applying punitive tariffs, rather than stating that the EU was able to impose higher tariffs under its existing rules or that the UK had itself opposed plans to amend the lesser duty rule.

Trustees acknowledged that some listeners may have inferred, from Mr Humphrys’ statement, that the UK had wanted to impose punitive tariffs on Chinese steel but had been prevented by virtue of its UK membership. However, they also recognised that the statement itself had been factually accurate, reflecting both that no one member country could impose tariffs unilaterally and that, under its current rules, the EU could not impose punitive tariffs. On balance therefore, although they regretted any ambiguity, they concluded that the item had been duly accurate and not materially misleading.

**Finding: Not upheld**
Requests to review the Trust Unit’s decisions on appeals

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

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

The Kaye Adams Programme, Radio Scotland, 27 April 2016

The complaint concerned a phone-in on Radio Scotland the day after an inquest jury had returned a verdict of unlawful killing in respect of the 96 people who died at Hillsborough stadium in 1989.

The complainant noted what he recalled of the presenter’s conversation with a contributor who was a retired police officer; the complainant said the presenter had commented to her guest that, in respect of the police’s conduct, “the first instinct of everybody is to cover their own back”. The complainant suggested the tone of their exchange had been inappropriately humorous.

The Head of Public Policy & Corporate Affairs, BBC Scotland, said that: “We do not share your perceptions of the Hillsborough discussion on that programme” and added that:

“Great care is taken to ensure sensitivity and a balance during discussions. Sympathy for the victims, and their families, was central to the programme.”

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 31 October 2016 on the substance of his complaint. He noted the response from BBC Scotland and asked:

- is it the contention that the presenter did not say that the natural instinct for any police accused is to “cover their own backs”?

- is BBC Scotland suggesting that the retired Chief Inspector, did not say that anyone who criticises the police “must have a sad life”?

- assuming confirmation of the above, how ambiguous could “perceptions of the discussion” be?
Decision of the Trust Adviser

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

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

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

The Adviser noted also that the creative and editorial direction of the BBC was a matter for the BBC Executive and the manner in which a programme chose to reflect a topic would generally be considered a matter for editorial judgement and not something which engaged the Editorial Guidelines.

Nevertheless, she was conscious that there was considerable public interest in the Hillsborough inquest and that there would be a reasonable expectation amongst the audience that the subject matter would be handled with sensitivity and that there would be appropriate attention to tone and content. The Adviser noted that the complainant had contended that the presenter and one of the contributors were inappropriately jocular in how they framed an exchange about police responsibility. She therefore also considered the content against the Guidelines for Harm and Offence, in particular section 5.4.53, Tragic Events, where programme makers are cautioned to guard against causing unjustifiable offence as judged against generally accepted standards.

The Adviser noted that The Kaye Adams Programme is a well-established fixture on Radio Scotland and is billed as getting “to the heart of the stories making the news”. The audience expectation would therefore likely be for robust discussion and a challenging exchange of views. In the Adviser’s view the content and tone of this edition reflected that brief.

The Adviser noted that in his letter of appeal the complainant, quite reasonably, based his complaint on his recollection of what was said during the programme by both the presenter and one of her guests, a former police officer. The Adviser considered it would therefore be helpful to transcribe the relevant extracts in context.

The legacy of Hillsborough and the issue of trust was the main focus of the hour-long discussion. This was set out by the presenter in the introduction and repeated at frequent intervals throughout:

“Hillsborough dominating headlines. 96 victims unlawfully killed. We want to know what impact it has had on you? Has it shaken your faith in authority?”

The overwhelming majority of callers and text messages suggested that trust in all authority had been lost. A former Chief Inspector with Strathclyde Police was in the minority of voices and opinions heard in the programme who took a more nuanced position. It was in the context of answering the question about trust in authority that he made the “sad life” comment remembered by the complainant (the relevant sentence has been bolded):
Former Chief Inspector
...people should remember that we’re a long way past the 80s. A lot of bad things happened in the 80s and as one of your callers pointed out, it wasn’t just things involving the police. It was a whole host of things that have happened in the 1980s that we’re only starting to hear about. Absolutely shocking scandalous stuff that was covered up. Not just by police but by Government, by ministers, by various establishments. Absolutely. And Hillsborough is just the tip of the iceberg in relation to that. **But let’s not throw the baby out with the bathwater here and say that all police are liars and we can’t trust the police... Of course we can. And if your outlook is completely negative to that then you’ve got a very sad life ahead of you.** You know, you have to place your trust in somebody. It’s important to question authority, it’s important to question things. But let’s not throw the baby out with the bathwater because of the things that happened at Hillsborough.

The complainant said he recalled hearing the presenter state in conversation with the former Chief Inspector that the natural instinct for any accused is to “cover their own backs”. The first reference by the presenter of that nature was not as a statement, but to pose a question in response to a comment by her first caller who had referred to a cover up by the authorities. This is the end of the relevant exchange:

**JAMES (CALLER)**
Quite simply they can cover the matter up. And quite simply people aren’t believed because of their position in society.

**PRESENTER**
James listen, thank you very much for your call this morning. Do you feel the same as James? That basically those who can, in positions of authority, cover their own backs, do...? Maybe that’s human nature. I don’t know. 0500 92 95 00...

Later in the programme, during an exchange with a journalist and writer who had followed Hillsborough from the beginning, the presenter asked:

**PRESENTER**
Not to diminish in any way the magnitude of Hillsborough - and that is an ongoing story - I guess our bigger discussion this morning is around whether or not those attitudes, cover ups, abuse of authority etc, distrust of authority etc leak out into other aspects of society.

Cameron used the expression, and other people have used the expression, of people covering their back or protecting their backs. Not to make it any way justifiable [NAME], but is that not human nature?

The complainant’s final point related to the tone of an exchange between the presenter and the former Chief Inspector. The complainant said the presenter was having a laugh and a joke with the former Chief Inspector agreeing that “the first instinct of everybody is to cover their own back” and that the former Chief Inspector chuckled when he said that anyone who criticised the police “must have a very sad life”.

The Adviser listened to and transcribed the relevant sections of the programme. She noted that:
• there were no occasions on which the audience would be likely to be left with the impression that either Kaye Adams or her guest were being anything less than respectful towards the victims of Hillsborough or those who had fought for justice

• specifically they did not appear to laugh or share a joke, nor was there any reference in the exchanges between the former Chief Inspector, Strathclyde Police and the presenter to the “first instinct of everybody is to cover their own back”

• as demonstrated in the extracts from the programme, references to police covering their backs were more nuanced and were in other sections of the programme with other guests

• when read in context, neither of the comments cited by the complainant would likely suggest bias or insensitivity

• taken as a whole the programme would likely be considered duly impartial and to have avoided unjustifiable offence in its reflection of the Hillsborough tragedy and police conduct.

The Adviser considered this was a difficult subject and a particularly sensitive moment and that this was reflected in the framing, content and conduct of the discussion.

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

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that whilst he was at a disadvantage in that he did not have a transcript of the broadcast, he did not believe that the tenor of the programme had been accurately reflected in the response he had received from the Adviser. The discussion was light hearted at best and dismissive at worst. The broadcast, he said, did not merely lack “sensitivity” or “sympathy”, it continued the 27-year rejection of police culpability for the deaths at Hillsborough. He continued to assert that his complaint amounted to a matter of substance.

The Panel’s decision

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

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

• it had been demonstrated with reference to a transcript made by the Trust, independently of the BBC, that the broadcast did not include the comments the complainant recollected having heard in the context in which he recalled them
• the relevant extracts of the transcript, which had been made available to the complainant by the Trust Unit, demonstrated that the broadcast was conducted with sensitivity

• all the contributors to the programme acknowledged police culpability in the Hillsborough disaster, albeit that the retired police officer urged listeners not to lose all trust in the police because of what had happened.

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

**The Panel therefore decided that this appeal did not qualify to proceed for consideration.**
Thought for the Day, BBC Radio 4, 7 March and 17 May 2016

The complaint concerned two editions of Thought for the Day on the Today programme by Mona Siddiqui, Professor of Islamic Studies at the University of Edinburgh.

The complainant made the following points:

- Thought for the Day (TFTD) on 7 March 2016 showed political bias in using Mona Siddiqui as she was chairwoman of the Scotland Stronger in Europe campaign

- her contribution on 17 May 2016 was within the official EU Referendum campaign period and the subject was “essentially immigration” which clearly had a high profile in the campaign

- TFTD was broadcast within Today and it was not acceptable that a presenter on a current affairs programme could simultaneously hold a senior political post during a campaign.

BBC Audience Services made the following points at Stage 1:

- Mona Siddiqui delivered her TFTDs in her capacity as Professor of Islamic Studies at the University of Edinburgh. Her contribution on 7 March was not about Europe, the European Union or the referendum and she would therefore be considered an appropriate contributor

- the programme team gave Mona Siddiqui’s continued contribution during the referendum period considerable thought and discussed it at length with the BBC’s Chief Political Adviser in Editorial Policy

- it was decided that Professor Siddiqui’s contribution could continue for a variety of reasons; namely that fellow contributor Reverend Giles Fraser was a prominent campaigner for the opposing Leave side, that neither would write a “thought” with a connection to anything that could be construed as relevant to the referendum and that their scripts would be heavily scrutinised by a senior editorial figure in the production team prior to broadcast

- in addition, their positions would be continually reviewed throughout the referendum period

- TFTD on 17 May was connected to the BBC World on the Move Day on 16 May and focused on the personal stories behind immigration and not politics

- there were many different contributors during the BBC’s special programming including the former Head of MI6 Sir Richard Dearlove
• TFTD was a unique slot on the BBC in which speakers from a wide range of religious faiths reflected on an issue of the day from their faith perspective

• in the midst of the three-hour Today programme devoted to overwhelmingly secular concerns - national and international news and features, searching interviews and sometimes heated debate on issues of public policy - the BBC judged it appropriate to offer a brief, uninterrupted interlude of spiritual reflection, at a point in the morning when most of the audience were embarking on their day

• at its best the short talk planted a seed of thought, a spark of spiritual insight that stayed with listeners during the day. In addition, the mix of regular contributors to the slot represented a wide range of theological, social and political views to ensure further balance across a period of time.

The Editorial Complaints Unit (ECU) made the following points at Stage 2:

• the BBC’s guidelines made it clear there were occasions when the audience should be made aware if a contributor was associated with a particular viewpoint if it was not apparent from their contribution or the context

• care had to be taken when inviting politicians to contribute to non-political output to ensure they did not gain undue advantage over their opponents

• the content of these two contributions could not be construed as directly relevant to the referendum campaign or likely to encourage people to vote Remain

• Professor Siddiqui’s comments on 7 March were limited to the benefits of investment in the arts and humanities, particularly in developing countries, which was not an issue in the referendum campaign

• her contribution on 17 May concerned attitudes to movement and migration, and while immigration was undoubtedly a factor in the referendum, the views she expressed on TFTD were largely personal and moral in nature, and focused on the range of emotions felt by those who moved or were displaced

• for example, she said:

  “Today we focus on the migration issue in terms of a crisis of borders and resources but in all the political complexity the real story is that of each individual’s hopes and fears. Leaving your country can have long term emotional and psychological consequences, even if you are lucky enough to build a new life elsewhere. Despite the gratitude felt by so many to have reached safe shores, others will continue to feel displaced until they have a chance to return one day, to rebuild and breathe new hope into what we see as war-ravaged lands and yet for them has always remained home.”

• she was reflecting the hopes and fears of individual migrants or refugees, including the desire of some to return to the place they might regard as “home”,

Editorial Standards Committee bulletin, issued February 2017
rather than the potential benefits or drawbacks of the free movement of people within the EU.

- Professor Siddiqui’s contribution would have had to be significantly more focused on UK immigration and the issues under debate in the referendum campaign for it to amount to political bias or give undue weight to one side of the referendum debate.

- Professor Siddiqui was introduced as a Professor of Islamic Studies at the University of Edinburgh and it was reasonable to assume some listeners would have been aware of her campaigning role. It was therefore conceivable they might have regarded her appearance as promoting the Remain view, regardless of what she actually said.

- TFTD also included contributions from a high-profile campaigner for Leave, Reverend Giles Fraser. Both Reverend Fraser and Professor Siddiqui were invited to contribute three times from the time the referendum was announced in February up to the polling date in June.

- that ensured the appropriate balance in the event listeners assumed the contributors were using their appearance on TFTD to make a campaigning point.

- none of these contributions could be regarded as directly relevant to the referendum or to have influenced public opinion on any referendum issue.

**Appeal to the BBC Trust**

The complainant appealed to the BBC Trust on 10 November 2016 on the substance of his complaint.

**Decision of the Trust Adviser**

The Trust Adviser (the Adviser) decided that the complainant’s appeal did not have a reasonable prospect of success. She noted that the BBC’s Editorial Guidelines allowed a wide range of individuals, groups or organisations to offer a personal view or opinion in BBC output. However, she noted that the guidelines stated that:

“We should not automatically assume that contributors from other organisations (such as academics, journalists, researchers and representatives of charities) are unbiased and we may need to make it clear to the audience when contributors are associated with a particular viewpoint, if it is not apparent from their contribution or from the context in which their contribution is made.”

She also noted that the guidelines relating to Politics, Public Policy and Polls stated that:

“We must take care when inviting politicians to contribute to non-political output, whether on the basis of their expertise outside politics or of their celebrity. We must not give them such prominence as to gain undue advantage over their opponents. Where their political allegiance is relevant to their contribution, it should be clear to the audience.”
The Adviser noted the complainant’s view that Professor Mona Siddiqui, who was a regular contributor to TFTD, should not have been allowed to continue to contribute because of her position as chairwoman of the Scotland Stronger in Europe campaign. The complainant considered that this amounted to political bias and was particularly the case during the formal EU Referendum campaign.

The Adviser noted the content of the two editions of TFTD which the complainant had cited in his complaint. The first concerned the benefits of investment in the arts and humanities particularly in developing countries and the Middle East. The Adviser considered it likely Trustees would be of the view that, as this was not an issue during the EU Referendum campaign, to feature the views of Professor Siddiqui on this issue did not amount to political bias in the way the complainant described. The second edition concerned migration, but focused on what Professor Siddiqui referred to as the “long term emotional and psychological consequences” of movement and the “hopes and fears” of individuals who leave their own country to begin a new life elsewhere. This TFTD, which was part of BBC World on the Move Day, looked at our sense of “home” and drew also on Professor Siddiqui’s own personal experiences of coming to the UK. The Adviser did not consider it likely Trustees would conclude that this edition related to the political debate on immigration as it featured in the EU Referendum campaign. She thought it more likely that Trustees would agree with the ECU Complaints Director’s response at Stage 2 when he stated:

“Professor Siddiqui’s contribution would have had to be significantly more focused on UK immigration and the issues under debate in the referendum campaign for me to conclude it amounted to political bias or gave undue weight to one side of the referendum debate.”

She decided therefore that Trustees would not agree that featuring Professor Siddiqui on this edition of TFTD would have amounted to political bias.

In addition the Adviser noted that Professor Siddiqui was introduced on both occasions as Professor of Islamic Studies at New College, University of Edinburgh. She also noted that the BBC in its responses had pointed out to the complainant that measures had been put in place to ensure that the appearance of Professor Siddiqui could not be construed as partial and would not offer any advantage to the Remain campaign. These included using an equal number of contributions from Leave supporter Reverend Giles Fraser and ensuring that their scripts were heavily scrutinised by a senior editorial figure in the production team prior to broadcast.

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

**Request for review by Trustees**

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

- Mona Siddiqui was better known than Giles Fraser particularly in Scotland where she had a relatively high profile. He submitted the results of an Internet search to support his argument
• readers of most Scottish newspapers or the BBC website would be well aware of her views and position as a result of the widespread publicity given to her

• on the other hand Giles Fraser’s views would presumably only be known by Guardian readers who read his column

• as TFTD drew from a small pool of liberal people of faith any attempt at balancing the views of speakers fell at the first hurdle as it was not a representative sample of the population in the first place.

The Panel’s decision

A panel of the Committee considered the points made by the complainant, the BBC and the Adviser. Trustees agreed that if they took this matter on appeal they would not be likely to uphold a breach of the Editorial Guidelines given that:

• the first TFTD on 7 March concerned investment in the arts and the second on 17 May examined migration from a personal perspective

• the content of these TFTDs did not include issues directly related to the EU Referendum campaign

• to ensure due impartiality an equal number of contributions were included from Reverend Giles Fraser, a Leave supporter

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

The Panel therefore decided that this appeal did not qualify to proceed for consideration.
Appeals against the decisions of BBC Audience Services not to correspond further with the complainant

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

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

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

The Editorial Complaints and Appeals Procedure8 explains that:

At all stages of this Procedure, your complaint may not be investigated if it:
• fails to raise an issue of breach of the Editorial Guidelines; or
• is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In all of the following cases the complainants had appealed on the substance of their complaints but as BBC Audience Services had ceased handling the complaints at Stage 1 the point put to the Trustees was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success. In each of the instances below, the complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that the complainant’s appeal did not qualify to proceed for consideration by the Committee. The Committee was provided with the complainant’s correspondence with the BBC, the complaint’s appeal/s to the Trust, the response/s from the Trust Unit and the complainant’s request/s to review that decision. The Committee was also provided, where appropriate, with the relevant broadcast or published content.

Decision of BBC Audience Services not to respond further to a complaint about a segment on the Jeremy Vine Show, BBC Radio 2, 21 June 2016

The complainant considered that a segment on the Jeremy Vine show which was broadcast two days before the EU Referendum assumed that a vote to leave the EU would precipitate a financial crash.

The complainant made the following points:

- the item discussed the impact a crash would have across the UK economy and whether it might be “a good thing”
- apart from “an unnoticeable mention” at the start of the item saying that the Leave side questioned whether there would be a crash, “the whole rest of the piece was done under the scenario of a crash in the pound”
- there was no attempt by the presenter during the discussions to point out that a Leave vote might not lead to any of this crash scenario
- the two guests who argued whether or not a crash was good for Britain did not provide balance.

The complainant said:

“No attempt was made to balance the pro-remain message in the Bring on the Crash broadcast. The message was clearly: Vote Leave and get an 18% crash in house prices; a crash in the value of your pension and a crash in the value of shares… Done two days before the vote this was extreme bias at its worst and regarding the most important question recently faced by the British public…

“The charge is the programme knew exactly what it was doing, it knew it was trespassing in an area it is absolutely not allowed to go... at a time it is absolutely forbidden to go there.”

BBC Audience Services said it had forwarded the complainant’s concerns to the programme’s production team who had responded as follows:

“We were not predicting a post-Brexit crash, which indeed has not happened. We looked at whether there might be some positive effects if one did, such as plunging house prices enabling young people to get on the property ladder. Both guests were strong contributors and well matched for each other on opposing sides of the debate. Over the course of the whole referendum campaign we discussed a wide range of subjects – including the economy, of course – but at all times we made sure our show was fair and balanced.”

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

Appeal to the BBC Trust
The complainant appealed to the BBC Trust on the substance of his complaint, stating that the BBC had breached the Editorial Guidelines on Impartiality as they related to broadcasting during elections and referendums.

**Decision of the Trust Adviser**

The Trust Adviser ("the Adviser") understood that BBC Audience Services had decided to cease handling this complaint at Stage 1. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

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

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

The Adviser noted also the document, Appendix 8: EU Referendum Guidelines, which is available online at http://www.bbc.co.uk/editorialguidelines/guidelines/appendix8. She noted in particular the following sections:

**Principles of the Guidelines**

These guidelines are intended to offer a framework within which journalists and content producers:

- can operate in as free and creative an environment as possible

These Referendum Guidelines supplement the Editorial Guidelines (Chapter 4 "Impartiality" and Chapter 10 "Politics, Public Policy and Polls"). They should, in particular, be read in conjunction with the sections in Chapter 10 on "Reporting UK Election and Referendum Campaigns" as well as "Broadcasting During Elections" which say we must ensure that:

- news judgements continue to drive editorial decision making in news based programmes.

The Adviser noted that the direction of the BBC’s editorial and creative output was a matter for the BBC Executive under the BBC’s Charter, and deciding which aspects of an issue to include in an item of content on a particular occasion, was a matter for the Executive. She noted in relation to this complaint that

- the Jeremy Vine programme had taken a creative decision to explore whether there might be positive aspects to any financial turmoil which might ensue in the event of a vote to leave the EU

- the programme’s decision to focus on this aspect of the issue as its starting point, rather than to debate in the first instance the likelihood of a crash,
would, in her view, be likely to be considered a legitimate editorial decision by Trustees

- the Trust only has a role if, for example, output does not meet the BBC’s editorial standards (as set out in the Editorial Guidelines).

The Adviser noted that the item appeared to have been prompted by an article which had been published in the previous day’s Guardian newspaper, as reflected in Jeremy Vine’s introduction:

“...The international investor George Soros has warned of serious consequences for the UK economy if we vote to leave the EU on Thursday. In an article for the Guardian he adds his voice to many other experts. He writes the value of the pound would decline precipitously if we leave; it would also have an immediate and dramatic impact on financial markets, investment, prices and jobs. Mr Soros believes the devaluation of our currency would be bigger and more disruptive than the one in 1992 when we were forced out of the Exchange Rate Mechanism...”

The Adviser noted the content of the segment, which consisted of: the introduction; a packaged report; and a discussion hosted by Jeremy Vine. She noted that financial turmoil was posited as only one possible outcome of a vote to leave the EU, and that the position was clearly ascribed to those who believed the UK should vote to remain. She noted the following from the introduction to the item:

“...Only a couple of days left until we vote... and the Remain campaign warning of economic turmoil if we leave the EU...”

She noted this from Jeremy Vine’s introduction to a report from Tim Johns:

“...If there is financial turmoil because of a no vote wouldn’t quite a lot of people do well out of it?”

She noted that the report reflected that the pound had already been rising and falling on the foreign exchange markets in relation to whether a vote to leave or remain was predicted by the polls. The reporter said that the pound had been “all over the place” and went on to say:

“...if Brexit occurs could this financial turmoil worsen. Even if it does, and by the way, Leave campaigners say this is all over-hyped, perhaps for some people it wouldn’t actually be such a bad thing?”

She noted the reporter then gave a rundown of what Chancellor George Osborne predicted would happen to the economy in the event of a vote to leave the EU, following it with a further reflection of the opposing view that talk of a financial crash was exaggerated:

REPORTER
Iain Duncan Smith meanwhile accused the Chancellor of hamming it all up
IAIN DUNCAN SMITH
He appears to be talking the economy down deliberately in the hope that somehow that will panic everybody; panic the markets in the next seven days and then force people to vote for remain because they'll be so scared.

REPORTER
Whoever’s right it’s all about this:

CONTRIBUTIONS FROM A RANGE OF VOICES
Uncertainty in the financial markets.
Panic in the markets.
It’s very volatile.

REPORTER
[...] Vote Leave say the UK will ultimately be more prosperous outside the UK. But let’s entertain the thought that Mr Soros is partly right...

The Adviser noted that, in the discussion which followed the report, Jeremy Vine referred to the prediction of economic turmoil as the “so-called crash”.

The Adviser considered Trustees would be likely to conclude that:

- the extracts from the programme which reflected that financial turmoil was only one possible outcome;

- the fact that the view was attributed to the Remain camp; and

- the likely editorial justification for discussing the possible impact of such a crash would have been sufficient for the item to have achieved due impartiality, whilst legitimately focussing on a single aspect of the issue.

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

Request for review by Trustees

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

- he had categorised statements in this segment as either “Remain Campaign friendly” or “Leave Campaign friendly” and the ratio was 11 to 1 in favour of statements which supported remaining in the EU

- a number of the statements heard during the segment mirrored phrases used by the official Remain Campaign

- the segment was unbalanced
the EU Referendum guidelines published by the BBC defined “due impartiality” more specifically than normally in elections:

“... the referendum guidelines state that the programme should show a fair broad balance of pro-leave and pro-remain comments to achieve due impartiality”

the complainant highlighted phrases from sections 3.1 and 3.2 of the EU Referendum Guideline:

3.1 Broad balance
Due impartiality is not necessarily achieved by the application of a simple mathematical formula or a stopwatch, but the objective – in a referendum with two alternatives - must be to achieve a proper balance between the two sides. ... Achieving due impartiality during the campaign means finding “broad balance” between the arguments and not necessarily between the designated Campaign Groups. There may be circumstances in which other voices, beyond the formal representatives, are relevant to the arguments: these too should be weighed in terms of the broad balance.

3.2 Responsibility for achieving broad balance and due impartiality
Each editorial area of output – programme, strand, channel etc – will be responsible for ensuring how it achieves an appropriate balance across the campaign as a whole. How that coverage is distributed from the beginning to the end must also be achieved in a fair and appropriate way, but in daily programmes, that will normally mean finding broad balance across each week of the campaign.

... Individual editions of daily programmes or strands should avoid getting out of kilter, unless there is a strong editorial justification:

Weekly programmes, or running series within daily sequence programmes, which focus separate items on one side or the other, should trail both forward and backwards so that it is clear to the audience that due impartiality is built in over time.

The complainant concluded that:

“This programme did not trail forward or backwards so accordingly, needed to have proper standalone balance.”

The Panel’s decision
A panel of the Committee considered the points made by the complainant, the BBC and the Adviser.

The Panel noted the complainant’s interpretation of the EU Referendum Guidelines. Trustees agreed that:

- the Jeremy Vine show is a daily programme, where "broad balance" (as defined in 3.1) was required to be achieved across each week of the campaign
• the segment in question did not constitute a “running series within daily sequence programmes” as suggested by the complainant

• it did not therefore meet the criteria in the Referendum guidelines requiring such content “which focus separate items on one side or the other” to trail forwards or backwards to achieve balance

• neither was this a segment which focused on “one side or the other”, rather a scenario where the UK had voted to leave was posited and was the starting point of the discussion.

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

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

• the programme’s approach was a creative decision which was a matter for the BBC Executive; the Trust would only be able to consider the complaint if the legitimate exercise of editorial judgement had likely led to a breach of the Editorial Guidelines and/or the supplementary EU Referendum Guidelines; the Panel did not consider there was evidence to suggest that that was the case

• the narrative direction of the segment appeared to follow the weight of evidence: the warnings in the Guardian by George Soros as reflected in Jeremy Vine’s introduction, and information included in the segment, to the effect that the pound had already been rising and falling on the foreign exchange markets in relation to whether a vote to leave or remain was predicted by the polls, demonstrated editorial justification for the programme’s approach

• there was no evidence that including the item in the programme was an attempt to influence people not to vote leave, as claimed by the complainant

• the programme’s treatment of the issue appeared to be consistent with the principles of the EU Referendum Guidelines, in particular where it was stated that the intent of the guidelines was to allow journalists to “operate in as free and creative an environment as possible” and that “news judgements should continue to drive editorial decision making in news based programmes” (a category which the Panel considered covered the Jeremy Vine show)

• the Panel considered there was adequate and appropriate reflection within the segment of the possibility that: the vote could go either way; the economy might not be as vulnerable as some were suggesting; and that the expressed concerns could be a tactic of the Remain campaign

• Audience Services had given a reasoned and reasonable response to the complaint.
The Panel decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

The Panel therefore decided that this appeal did not qualify to proceed for consideration.
Decision of BBC Audience Services not to respond further to a complaint about Manchester-centric bias vis-à-vis Liverpool

This long-standing complaint concerned allegations of Manchester-centric bias with respect to the omission of Liverpool from BBC news and current affairs output in general and the BBC’s UK weather map in particular.

The complainant (and another person) made the following points:

- Liverpool had been omitted from the BBC’s UK weather map, outside broadcasts and other current affairs output.

- When covering stories concerning the north-west, the BBC always contrived to “finish up” in Manchester or Greater Manchester. Manchester and the north-west were not synonymous.

- With regard to Audience Services’ assertion that the BBC Weather Centre had to ensure its UK map did not become cluttered, the complainant asked why the BBC thought that the inclusion of Liverpool would clutter up the map, but the inclusion of Manchester would not.

- The complainant was infuriated by Audience Services’ comment that names could more easily be changed on local weather maps as these covered “smaller areas”. Liverpool was larger than Manchester, not only in size but also in many other respects (a number of which the complainant detailed⁹) and was as famous as (or more famous than) Manchester. The complainant submitted an email from the Office for National Statistics, which stated that the populations of Liverpool and Manchester were 552,267 and 510,463 respectively.

- It was unfortunate that two great cities were situated so close to one another, but that did not give the BBC the right to be the final arbiter as to which should be accorded prominence.

- The names of major regional cities were included on the UK weather map and in weather reports, namely: Birmingham for the Midlands; London for the south; Portsmouth and Plymouth for the south coast; Cardiff for Wales; Newcastle for the north-east; Glasgow and Edinburgh for Scotland, and so on. This “system” collapsed with regard to the north-west, where Manchester (only the fourth largest city in the north and the second largest in the north-west) was chosen for weather reports and outside broadcasts.

- The complainant had sent the BBC a great deal of data showing that Liverpool was the larger city, a major port and a capital of culture, but to no avail.

- Manchester was sometimes thought to be larger than Liverpool, when the population of Salford was erroneously included in that of Manchester. The

⁹ These included but were not limited to: population size, history, culture, Guinness world records, pop-chart successes, architecture, commerce, port facilities, waterway capacity, public art, beaches, modes of transport, footballing prowess, rainfall and crime rates.
complainant reminded Audience Services that the BBC was based in Salford, not Manchester.

- Manchester was the first city to appear – before even London – “slap bang” in the middle of the BBC’s UK weather-map graphic. This was evidence of bias.

- ITV, Channel 4, Channel 5 and Sky TV never omitted Liverpool from their corresponding output.

- With regard to the BBC’s coverage of a proposed east coast–west coast rail link, the BBC had interviewed the Lord Mayor of Manchester, but none of the Lord Mayors of the other cities on the proposed route (namely, Liverpool, Leeds and Sheffield), all of which were larger than Manchester.

- Contrary to Audience Services’ assertion, locations on the weather map were not “chosen very carefully”.

- With regard to Audience Services’ assertion that the BBC chiefly labelled coastal areas, the complainant stated that Liverpool – which he described as the largest city and port on three coasts – was not mentioned, despite there being hundreds of miles of space on the map in which to display it.

- The complainant submitted:
  - a petition with over 130 signatures regarding Manchester-centric bias in outside broadcasts and weather reports
  - a log of selected BBC weather maps between 7 and 29 September 2016, showing the number of appearances of Liverpool and Manchester as 46 and 127 respectively.

- With regard to procedural matters:
  - He complained that the time limits in the BBC’s Editorial Complaints and Appeals Procedures were “Orwellian”, and said that he had not been informed of them in his previous three-and-a-half years of complaining.
  - Audience Services’ two-day study was worthless compared to over three years’ worth of factual evidence provided by the complainant.
  - The fact that Audience Services could only consider output during the past 30 days meant that over three years’ worth of complaints had effectively been wiped out.
  - The complainant had repeatedly requested that his complaint be escalated, but had received no response.
  - Audience Services had advised the complainant:
    - to build his case by conducting a survey of weather forecasts over 30 days; and

10 According to the complainant, he had sent Audience Services three petitions (two of them “mini-petitions”) over the course of three years. However, only the third petition, dated 18 August 2016, was in Audience Services’ records.
to respond within 20 days,

which was "silly". The complainant did not want this procedural issue to detract from his substantive case.

Audience Services made the following points:

- The BBC Weather Centre chose carefully which place names to use on the UK weather map.

- Place names could and would be changed from time to time. However, this could be done more easily on local weather forecasts, as they focused on weather stories affecting smaller areas. Therefore, forecasters could tailor maps to highlight conditions affecting those specific areas.

- As a case study, a complaint handler had viewed the main weather report (within the News at Six) on 31 August and 1 September 2016.
  - On both occasions, the report first showed a UK-wide map with cities like Birmingham, Norwich and Newcastle listed. Neither Manchester nor Liverpool was shown as places representing the north-west at that stage.
  - Then, as the report zoomed in on the map and offered more detail across different areas, both Liverpool and Manchester were represented, as well as Hull, Wrexham, York and Carlisle amongst others.
  - The report then returned to the UK-wide map.

From this brief sample, there appeared to be no strict formula that prioritised one city over another, especially in the north-west.

- On the main, static map of the UK, only a very few places were named. This was to keep the map as clear as possible whilst allowing viewers to see where they were, relative to those places.

- The BBC chiefly labelled coastal areas, so that the names did not obscure the land masses.

- The places that were and were not shown on the main, static map were only one part of the story. The BBC animated the maps to fly around the whole of the UK in detail, where a range of cities were then shown. Liverpool was included within this range, at which juncture there was more space to do this.

- In addition to national forecasts, the BBC also provided local weather forecasts in its regional news programmes. In those forecasts, more towns and cities could be named on the maps.

- The BBC sometimes received similar communications from people in other cities. In each case, Audience Services looked at the specific setting in which correspondents felt their town or county was under-served, and considered it on its own merits.
• The BBC would not show favouritism towards any city when offering detail to a UK audience. It wanted to serve all parts of its audience fairly and equally, ensuring that every region, community and section of viewers felt included, represented and valued.

• The BBC tried to ensure that most cities/towns were represented over a period of time.

• With regard to procedural matters:
  o If the complainant wished to continue to dispute this case, he should offer specific examples of occasions of bias. Audience Services would need:
     programme name;
     date and time of transmission; and
     context in which any omission occurred (weather map, news stories, etc.)

    If Audience Services did not receive concrete examples, they could not proceed further.

• The BBC’s complaints procedure allowed complainants to request an escalation of their complaint within a specified time period. If the complainant chose not to do so within 20 working days, then his case would not be taken any higher and Audience Services would only be able to reiterate its previous responses.

• Under the BBC’s Editorial Complaints and Appeals Procedures, Audience Services could only consider issues that had arisen during the previous 30 days of transmission.

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

Appeal

The complainant appealed against Audience Services’ decision not to respond further. He made the following points:

• Throughout their complaint of over three years, the complainant and the signatories of the petitions he had organised (‘the petitioners’) had been asked to keep a log of times and dates when they believed the BBC had breached its remit.

• Time and again, the petitioners had proved that the BBC had breached the Editorial Guidelines on impartiality.

• Since this complaint began, the number of petitioners had risen from over 135 to over 230.

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11 See para 3.1 of the BBC’s Editorial Complaints and Appeals Procedures:

12 See para 2.1 of the Editorial Complaints and Appeals Procedures.
• The complainant and the petitioners had sent over 100 emails to BBC Breakfast, and over 40 individual letters and phone calls.

• The petitioners asked that a representative be given the chance to present their case: if the BBC Executive were to do so, the petitioners’ arguments would appear garbled, as many different people had presented the case in many different ways over a long period.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood that BBC Audience Services had decided to cease handling this complaint at Stage 1. She decided that the point she should consider was whether the complainant’s appeal against Audience Services’ decision not to correspond further had a reasonable prospect of success.

For the following reasons, the Adviser decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted all the points made by the complainant and Audience Services.

The Adviser noted that the Royal Charter\textsuperscript{13} and accompanying Agreement between the Secretary of State and the BBC\textsuperscript{14} draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. Under article 38(1) of the BBC's Royal Charter, both “the direction of the BBC’s editorial and creative output” and “the operational management of the BBC” are the responsibility of the Executive Board, not the Trust. This entitles the Executive to make editorial, creative and operational decisions without the Trust interfering. The Trust will therefore only become involved if, for example, the BBC is potentially in breach of the standards set out in its Editorial Guidelines.\textsuperscript{15}

In the Adviser’s view, decisions concerning:

• the selection of the content of the BBC’s news and current affairs coverage;

• the selection of outside broadcast locations; and

• the labelling of the BBC’s weather maps

were editorial or operational decisions and, as such, were beyond the Trust’s remit.

The Adviser then considered whether any potential breach of the Editorial Guidelines had arisen.

The Adviser noted that all BBC output is required to meet the standard of “due impartiality”, which the Editorial Guidelines define as follows:

\textsuperscript{13} http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

\textsuperscript{14} http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement.pdf

\textsuperscript{15} http://www.bbc.co.uk/editorialguidelines-guidelines
"The term ‘due’ means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation."²

The Adviser noted the heightened emotional tone of some of the complaint correspondence and the evident strength of the complainant’s feelings about his home city of Liverpool. The Adviser also noted that the BBC sometimes received representations from people elsewhere in the UK, who felt similarly aggrieved about the frequency of inclusion on the UK weather map of their own home towns or cities. However, when evaluating the likely audience expectation of the UK weather map, the perspective the Adviser had to adopt was that of the disinterested viewer.

In the Adviser’s view, Trustees would be likely to conclude that the disinterested viewer would be unlikely to regard a place’s inclusion on, or exclusion from, the UK weather map as an indication of the BBC’s evaluation of that place’s merit or status vis-à-vis any rival place. The Adviser considered that, while the disinterested viewer might feel a slight and fleeting frisson of pleasure or disappointment at the inclusion or exclusion of their home town or city, they would be likely to regard this as a trivial matter rather than a manifestation of institutional bias.

The Adviser considered that Trustees would be likely to agree that the primary purpose of including place names on a weather map was to allow viewers to ascertain their own location – and, hence, their own weather forecast – by reference to the locations of named places. The Adviser believed that Trustees would be likely to conclude that place names were included on the UK weather map as an orientation aid to viewers, not an accolade to the towns or cities in question; and, conversely, that many significant places were excluded from the UK weather map for reasons of legibility, not as a slight against those places.

It therefore appeared to the Adviser that the considerations the complainant (and another person) had submitted as evidence of Liverpool’s alleged superiority to Manchester were irrelevant to the primary purpose of a weather map.

The Adviser noted the contents of the log submitted by the complainant. The Adviser noted that the log did not purport to be a comprehensive survey. Furthermore, given that scant details had been provided of the methodology used by the log’s author(s), the Adviser considered that this data should be treated with caution. In any event, even if the log were to be accorded the highest possible evidential weight, the Adviser believed that Trustees would nevertheless be likely to conclude that any disparity between the figures for Liverpool and Manchester did not amount to evidence of bias, as (for the reasons discussed above) bias was neither the only nor the most likely reason for selecting one city more frequently than the other. The Adviser therefore concluded that Trustees would be likely to decide that the labelling of weather maps had not breached the Editorial Guidelines on impartiality.

With regard to the selection of which news and current affairs stories to cover, which contributors to interview and which locations to use for outside broadcasts, the Adviser could see no evidential basis on which Trustees would be likely to conclude that these

² Editorial Guidelines Section 4, Introduction. See http://www.bbc.co.uk/editorialguidelines/guidelines/impartiality

³ These included but were not limited to: population size, history, culture, Guinness world records, pop-chart successes, architecture, commerce, port facilities, waterway capacity, public art, beaches, modes of transport, footballing prowess, rainfall and crime rates.
editorial or operational decisions had potentially breached the Editorial Guidelines on impartiality.

With regard to the complainant’s request for a hearing, the Adviser noted that, according to paragraph 5.17 of the Editorial Complaints and Appeals Procedures:

"The Trust does not normally hold hearings (i.e. inviting parties to put their case to the Trust in person) although in exceptional circumstances and at the Trust’s discretion it may decide to allow it."\(^{18}\)

In the Adviser’s view, Trustees would be likely to conclude that there were no exceptional circumstances that made it appropriate for them to exercise their discretion to hold a hearing.

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

**Request for review by Trustees**

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

- The BBC had an unacknowledged, but nevertheless de facto, system of using the largest cities to denote their respective regions on weather maps.

- Liverpool was the largest city on the west coast and a major port, but did not appear on the map – even though the map’s west coast was empty and there was no risk of cluttering the map. In support of this assertion, the complainant provided images of the static and animated BBC weather maps.

- The BBC should remove the smaller city in the north-west region (by implication, Manchester) and insert the larger (by implication, Liverpool).

- The complainant provided an image of the ITV weather map, on which Liverpool appeared. He claimed that Liverpool also appeared on other TV broadcasters’ maps.

- He re-submitted an email from the Office for National Statistics, setting out the populations of listed cities.

- He noted that a friend of his had complained to the BBC that recent storms affecting Liverpool had not been reported, and about “Manchester guests” commenting on news stories that did not specifically concern Manchester.

- The complainant and others would continue their campaign until a senior BBC figure took notice.

• For over three years, the complainant and others had provided the BBC with many facts, on the basis of which Liverpool should have been accorded the same status as other cities.

The Panel’s decision

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

As a preliminary matter, Trustees considered the complainant’s request for an oral hearing. While Trustees appreciated the strength of the complainant’s feelings, they concluded that there were no exceptional circumstances that made it appropriate for them to exercise their discretion under paragraph 5.17 of the Editorial Complaints and Appeals Procedures to hold a hearing.

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

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

• Decisions concerning:
  o the selection of the content of the BBC’s news and current affairs coverage;
  o the selection of outside broadcast locations; and
  o the labelling of the BBC’s weather maps

were editorial or operational decisions that were a matter for the Executive Board and not the Trust (Royal Charter (2006) article 38 (1) (b) and (c))

• Place names were included on the BBC’s UK weather map for the primary purpose of helping viewers to orientate their own locations and, hence, their local weather forecast.

• There was no reason to believe that the inclusion or exclusion of any given place from a weather map was indicative of the BBC’s estimation of that place’s status in relation to any other place.

• The labelling of the BBC’s weather maps was appropriate to that primary purpose, and had not raised a potential breach of the Editorial Guidelines on Impartiality.

• With regard to the selection of news and current affairs stories, contributors and outside-broadcast locations, there was no evidence of any potential breach of the Editorial Guidelines on Impartiality.

Trustees also agreed that the complainant had received a reasonable and reasoned reply from Audience Services.
Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

The Panel therefore decided that this appeal did not qualify to proceed for consideration.
Decision of BBC Audience Services not to respond further to a complaint about an article on the BBC Sport website

The complaint concerned an online report of a football match between Kosovo and Croatia which was played in neighbouring Albania, with Kosovo losing 6-0. The complainant made the following points:

- There were chants of "Kill Serbs" amongst the crowd of spectators which had not been referred to in the match report.
- It was racist to ignore these chants which were effectively death threats against one particular nation.

BBC Audience Services in its reply:

- acknowledged the complainant’s concerns and explained that the BBC was aware that not everyone would agree with its choices on which stories to cover and the prominence given to them in BBC output.
- noted that decisions about how to report on sports news stories were made by editors who took into consideration the editorial merit of each story. These decisions were matters of judgement, but the BBC appreciated audience feedback when people felt a story had been overlooked or marginalised.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of his complaint. He drew the Trust’s attention to two online articles in support of his complaint, one of which was a BBC Sport online article: Kosovo & Croatia face Fifa hearings over anti-Serbian chanting (http://www.bbc.co.uk/sport/football/37695179)

He also referred to the BBC Trust’s decision to uphold a complaint about Michael Palin’s New Europe, War and Peace, BBC Two. He felt there was a lack of consistency because he believed that the Trust had criticised the programme for not presenting Serbia in a sufficiently bad light.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust read the correspondence between the complainant and the BBC. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided it did not.

She noted that all BBC output was required to meet standards of “due impartiality” and “due accuracy” which, in terms of the Editorial Guidelines, meant that the impartiality and accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. She also noted the BBC’s commitment to reflecting a wide
range of opinion across the output as a whole, and over an appropriate timeframe, so that no significant strand of thought was knowingly unreflected or under-represented.

She noted that the online output at the centre of the complaint was a brief report of the match. Sports Editors were responsible for making editorial decisions based on the nature of the action they were reporting on – in this case a football match in which the focus was on the outcome of the contest between two teams. The behaviour of the spectators at this particular match had been reported on elsewhere, including the other BBC Sport article cited by the complainant (http://www.bbc.co.uk/sport/football/37695179):

**Kosovo & Croatia face Fifa hearings over anti-Serbian chanting**

The tie was Kosovo's first home fixture but, because of a lack of facilities in the country, was played in neighbouring Albania, where Croatia won 6-0. Kosovo's membership of Fifa was opposed by Serbia, from which it declared independence in 2008.

World governing body Fifa has not said when the hearings will take place. Earlier this year, Fifa ordered Croatia to play two World Cup qualifying games behind closed doors because of “discriminatory chants” during friendly matches against Israel and Hungary.

The first game of that punishment was against Turkey in September and the second will be when they host Iceland in November.

The Head of Editorial Standards, BBC Trust noted the difference between the two online articles referred to by the complainant in his appeal. The article at the centre of the original complaint was a match report, while the article introduced by the complainant in his appeal was a news story arising from the behaviour of spectators at the same match who had been heard chanting anti-Serbian comments. She noted that the Editorial Guidelines acknowledged that it was not possible to include every aspect of an issue or an event in every piece of BBC output; however, she considered that the content of the two articles taken together demonstrated the BBC's editorial commitment to covering wider elements of an issue over an appropriate timeframe, with the aim of ensuring that no significant strand of thought was knowingly unreflected or under-represented.

The Head of Editorial Standards, BBC Trust noted that the complainant referred to a separate complaint about a programme which had been partially upheld by the Trust with regard to accuracy and impartiality. The full Trust ruling could be read at: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2008/may.pdf

She noted that the appeal concerned a travel programme and Trustees had concluded that, while there was a limit to the amount of historical and political context which could be included, they had taken into account the fact that the programme makers had decided to deal with one of the most controversial events in the recent history of Europe – the break-up of Yugoslavia. They stated:

The choice of the title 'War and Peace' underlined the fact that the programme makers wanted to report and comment on the recent history as well as the present situation. Given that ambition and the highly contentious nature of the debate about the wars in former Yugoslavia, the programme makers should have taken greater care to ensure accuracy and impartiality. The Committee would remind BBC management of the need to ensure that in programmes providing
viewers with factual information concerning important events, every effort is made
to ensure that the facts are thoroughly checked, so as not to mislead the audience
and to meet the BBC's obligations on impartiality.

Finding: The complaint was partially upheld with regard to accuracy and
impartiality

The Head of Editorial Standards, BBC Trust noted that the elements of output referred to
by the complainant were very different in their nature and scope. She believed Trustees
would be likely to agree that BBC Sport had reported appropriately on the Kosovo v
Croatia football match as a sports event and the content of the report met requirements
for due accuracy and due impartiality. She had not seen evidence that the BBC had
endorsed racism in its reporting of the match.

She noted that the Royal Charter drew a distinction between the role of the BBC Trust
and that of the BBC Executive Board, led by the Director-General. "The editorial and
creative direction of the BBC" was defined as a duty that was the responsibility of the
Executive Board under Article 38, (1)(b). Decisions about what to include in individual
reports were the responsibility of editors, and the Trust did not have a role in those
decisions unless a potential breach of the Editorial Guidelines had been identified, and she
did not believe Trustees would consider that to be the case in this instance.

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

Request for review by Trustees

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

- He noted that there had been no analysis by the Head of Editorial Standards, BBC
  Trust of the Associated Press article published on the USA Today website
  concerning Fifa’s action in response to anti-Serbian chants at a World Cup
  qualifying match.

- He believed there had been a breach of procedure and that the BBC had hidden
  the fact that Albanians and Croats together chanted: “Kill Serbs”, whereas the
  Associated Press, USA Today and ESPN, all leading news outlets, had reported
  racist chants.

The Panel's decision

A panel of the Committee considered the points made by the complainant, the BBC and
the Head of Editorial Standards, BBC Trust.

The Trustees noted that the issue in front of them was whether the decision by BBC
Audience Services to decline to enter into further correspondence was correct on the
basis that the Editorial Guidelines had not been breached.
Trustees agreed that if they took this matter on appeal they would be likely not to uphold this complaint given that:

- the BBC Sport online article at the centre of the complaint was a brief football match report, whereas the other online articles referred to by the complainant concerned a news story arising from the behaviour of spectators at the same match who had been heard chanting anti-Serbian comments.

- BBC Editorial Guidelines acknowledged that it was not possible to include every aspect of an issue or an event in every piece of BBC output.

- the BBC had covered the wider elements of this news story in its online article: http://www.bbc.co.uk/sport/football/37695179.

- Trustees considered that the two BBC online articles taken together demonstrated the BBC’s commitment to covering wider elements of an issue over an appropriate timeframe, with the aim of ensuring that no significant strand of thought was knowingly unreflected or under-represented.

- they were likely to conclude that BBC Sport had reported appropriately on the Kosovo v Croatia football match as a sports event and that the content of the online match report met requirements for due accuracy and due impartiality.

- the Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. “The direction of the BBC’s editorial and creative output” was defined as a duty that was the responsibility of the Executive Board under Article 38, (1)(b). The responsibility for editorial decisions about the content of BBC Sport match reports rested with BBC Sport editors.

- Audience Services had given a reasoned and reasonable response to the complaint.

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

**The Panel therefore decided that this appeal did not qualify to proceed for consideration.**
**Decision of BBC Audience Services not to respond further to a complaint about Hillsborough, BBC Two, 8 May 2016**

The complaint concerned a two-hour documentary about the Hillsborough tragedy and the aftermath up to and including the inquest, which concluded on 26 April 2016. The programme had no presenter or commentary apart from some on-screen text and featured the testimony of relatives of the dead; surviving Liverpool fans who had been at Hillsborough; police who had been on duty that day; and Professor Scraton, the author of “Hillsborough: the Truth” (an account of the tragedy) and the lead writer of the 2012 report of the Hillsborough Independent Panel.

The complainant made the following points:

- The programme reported a one-sided view of the disaster.
- It was implied that Prof Scraton had discovered the editing of the police testimonies when Lord Justice Taylor (who oversaw the initial inquiry in 1989) had also known about them.
- The programme should have stated unequivocally that Lord Justice Taylor and others always knew about the edited police statements; however, the programme presented this information as if it had been “covered up”.
- It was not mentioned that the inquest verdict on unlawful killing was reached by a majority verdict, not unanimously.
- There was no interviewee defending the police or the original coroner’s decision to impose a 3.15pm cut-off for deaths in his investigation.
- The programme was designed to present “an emotional sob-story” to the viewer.
- After receiving an initial response, the complainant sought a further response at Stage 1b. He received a more detailed reply from the programme-makers, and sent a further complaint.
- He considered the programme was in breach of the Guidelines relating to Impartiality. He noted that he had been sent a “list of Scraton’s qualifications” and suggested the BBC should provide a list of the qualifications of people who held opposing views and who were featured in the programme.
- He noted that Prof Scraton had not been asked to give evidence to the inquest.
- He queried why the programme had not stated, which other people had been aware of, the changes to police statements – and considered it was because it undermined the narrative that there had been a “cover-up”.

Editorial Standards Committee bulletin, issued February 2017
• He noted that every court case and inquest included information that was not in the public domain but that this did not mean there was a cover up.

• He disputed the programme-makers’ position that they did not need to include information that the unlawful killing verdict had been reached by a majority rather than unanimously.

• He considered that it was a requirement of the Guidelines on Impartiality that the programme should have discussed what argument and counter argument had informed the views of the two jurors who had not agreed with the verdict and considered the BBC’s decision not to do this was because it would not have “fitted in with the one-sided ‘truth’ of the program”.

• He noted that the 3.15pm ruling was now widely held to be erroneous but considered it had been made in good faith. He considered the programme should have investigated what reasons lay behind this original decision – and, by not doing so, had implied that it was “part of an ongoing establishment campaign against the Hillsborough victims”.

• He considered it was “extraordinary, bordering on prejudicial” for the BBC to claim that the criminal investigation was expected to result in prosecutions when the BBC could not know this.

BBC Audience Services made the following points:

• They considered that this programme, combined with other news coverage, would have given viewers an understanding that this was a difficult and complex story.

• They felt it was an important story to tell, but appreciated that the complainant considered the BBC Two programme should have taken a different approach.

• In a second response, Audience Services apologised for the delay in responding and noted that the complaint should have been passed to programme-makers for a response. The programme-makers provided the following information:

  Prof Scraton

  Prof Scraton’s analysis reflected 25 years of in-depth research into all aspects of the disaster and its aftermath. He was widely accepted as the leading authority on Hillsborough. They noted his credentials in this area in terms of the reports and publications he had authored and the roles he had undertaken for the Home Office and for the Hillsborough families’ legal teams. They noted that the Panel and jury verdicts were in line with Prof Scraton’s analysis.

  Edited police statements

  The film accurately portrayed the discovery of the edited police testimonies. They noted that Lord Justice Taylor did know about the
editing of the original police statements, as did the West Midlands Police investigators, the Coroner and the Home Office. They stated that it was only as a result of Prof Scraton’s first book – which was subsequently serialised in the national press – that the editing of the police testimonies was put into the public domain. They wrote: “There is no question that in its breadth and depth this process was hidden from public view until Scraton made public what he had discovered.”

Majority verdict

They did not consider it was material to include the point that the verdict was not unanimous. They noted the verdict had been accepted by the coroner and supported by a comprehensive and detailed narrative verdict that included significant, detailed criticisms of a number of parties.

The 3.15pm cut-off time

They noted that the Lord Chief Justice had been clear that, whatever reason lay behind the original decision not to hear evidence that related to events after 3.15pm, it had been an erroneous decision that prevented a full examination of the facts surrounding the deaths of each of the 96 people.

Lord Justice Stuart-Smith’s comments

The programme-makers stated that it was expected that the findings of both investigations would be consistent with the Panel’s Report and the inquest verdicts and the criminal investigation would result in prosecutions. They stated that, in the light of everything that had been revealed – and the inquest verdicts – it was clear that Lord Justice Stuart-Smith’s scrutiny was severely flawed.

The programme-makers considered that the final commentary should be viewed in the context of three matters:

1. The extent of revised institutional processes and procedures that had been set in train by the Government as a result of the Panel’s report.

2. The outcome of the inquests – both in terms of the jury’s decision and the “unprecedented breadth and depth of the narrative verdict”.

3. The ongoing investigations by the Independent Police Complaints Commission and the criminal investigation by a former chief constable.

They concluded by stating that they considered the programme had taken full account of the inquest transcripts, the evidence that had been submitted and the report of the Hillsborough Independent Panel. They noted the documents they had consulted and believed the film “presented the facts accurately and fairly and in keeping with the detail now known about the context, circumstances and aftermath of the disaster”.
After a further follow-up complaint, Audience Services said they had nothing further to add and that they did not believe the complaint had raised an issue that justified further investigation.

**Appeal to the BBC Trust**

The complainant appealed to the BBC Trust. He considered the programme was biased in that he believed it set out to “paint a dramatic picture of cover-up and present the police as unfavourably as possible”. He considered there were a number of factors behind the tragedy. He considered police failings were the main cause of the tragedy and believed that some of these were matters of negligence while some were accidental. In particular, he raised two specific points:

- The programme should have mentioned the 7-2 majority on the unlawful killing verdict at the inquest in April 2016
- He queried:

  “On what basis can the BBC claim that the ongoing criminal investigations are expected to result in prosecutions? Do you regard that as prejudicial and indicative of lack of impartiality?”

The complainant also raised a matter of complaints handling; he queried why it had taken five months to answer his complaint and noted that it felt as if it was “a deliberate attempt to procrastinate” either in order that a complainant would give up or to render any future apology useless.

**Decision of the Trust Adviser**

The Trust Adviser (“the Adviser”) decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided it did not.

The Adviser noted that all BBC output was required to meet the standards set out in the BBC’s Editorial Guidelines. As long as output met the BBC’s editorial standards, decisions about what to include in programmes – including which interviewees to feature, what angles to focus on and what the overall approach should be – were all editorial decisions that rested with programme-makers. She noted that this was set out in the BBC’s Royal Charter which stated that the: “…direction of the BBC’s editorial and creative output” was a responsibility that lay with the BBC Executive, not the Trust.

She noted that the Guidelines stated that all BBC output had to meet the standards of “due” accuracy and impartiality which was defined as follows:

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

For completeness, an independent editorial adviser to the Trust watched the programme and conducted additional research on the issues in question. The independent editorial adviser noted that the programme had not included any indication that future prosecutions were expected to result from the ongoing criminal investigations and
considered that this point of appeal related to information written in the programme-makers’ response to the complainant at Stage 1b.

The Trust Adviser ("the Adviser") noted that, in law, majority verdicts and unanimous verdicts carry equal weight. She noted that the programme-makers had responded to the complainant on this point, stating that the jury’s decision had been accompanied by a strong and detailed narrative verdict from the coroner and that they did not consider it was a material point to include. She considered that Trustees would be likely to agree that this was a matter of the programme-makers’ editorial judgement and that there was no requirement under the Guidelines for Impartiality that it should be included.

The Adviser turned to the second point made by the complainant, who considered that, by stating that it was likely there would be further prosecutions of senior police officers, the BBC was showing a lack of impartiality.

The Adviser noted that the Independent Police Complaints Commission was expected to pass its files to the Crown Prosecution Service early in 2017 and a decision about further prosecutions would be made some time after that.

However, she noted this point had not been made in the broadcast output but had been contained in the complainant’s correspondence from the programme-makers. She noted that the Editorial Guidelines applied to all BBC output, but not to correspondence. She considered that Trustees would be likely to conclude it would not be appropriate for them to consider this point, as it did not relate to BBC content.

The Adviser also noted the complaints handling point that had been raised. She agreed that there had been a delay in responding substantively to his complaint and appreciated that complainants valued a timely response to the points they had raised. However, she noted that the BBC had acknowledged the delay at Stage 1 and had apologised for it. The Adviser was sorry the complainant had experienced the delay but thought it was likely that Trustees would conclude that the matter had been resolved by the BBC’s earlier apology.

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

**Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that he himself was just a football fan, interested in the event, with every sympathy for the victims and their families. But,

- he considered that the documentary could not have been more biased had that been the intention.

- he considered that the aim of the programme had been to get at the “truth” by being critical of the police and previous suppression.
• the inquest had lasted two years, the issues were complex and there must have been some in favour of the police, which ought to have been reported.

• viewers only of this documentary, with no other information, would have got an incomplete picture of the tragedy and the inquest’s decisions.

• the majority verdict was material. Otherwise why would it have to be announced?

• he agreed that the statement about the likelihood of prosecution, made in correspondence from the BBC, was not covered by the Editorial Guidelines but he thought it was indicative of a lack of impartiality.

• the time the BBC took to respond to his complaint was excessive, and requiring the complainant to respond to a deadline was therefore unfair.

The Panel’s decision

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

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

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

• in law, majority verdicts and unanimous verdicts carry equal weight. The decision as to whether or not to refer to the 7-2 majority on the unlawful killing verdict was a matter of editorial judgement and there was no requirement in terms of due impartiality that it should have been included.

• the complainant had received a reasonable and reasoned reply from Audience Services. Trustees regretted the delay in the BBC’s handling of the complaint but considered that the matter had been resolved already by the BBC’s apology.

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

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

Decision of BBC Audience Services not to respond further to a complaint about Rillington Place, BBC One, November and December 2016

Rillington Place was a BBC One drama about the murders committed by John Christie. This three part series specifically focused on some of his victims as well as the wrongful conviction and subsequent hanging of Timothy Evans.

In the third and final episode of the series (broadcast on 13 December 2016), John Christie was seen questioned by a police officer. The police officer lists the names of bodies found at the property. Christie was also seen confessing his murders to a priest. Christie refers to each of the victims by their forename.

The BBC received a complaint from the daughter of one of Christie’s victims. The victim was not shown in the programme but was referenced in the final episode as one of his victims (as described above).

In summary, the complainant stated that:

- It was insensitive to produce this drama and although her mother was not directly depicted in the series, the circumstances of her murder were similar to those portrayed in the programme. The programme was extremely upsetting for her.

- She was not contacted before the series was transmitted (in subsequent correspondence she gave details of how she believed she could have been approached).

Audience Services initially handled the complaint. It stated that:

- It understood that this was a very sensitive story for complainant’s family.

- The production team did make efforts to trace the victim’s family but unfortunately were unable to do so.

Her complaint was also responded to by ‘Drama England’. The response stated that:
- The BBC did, in advance of making the drama, try to trace the victim’s children, but unfortunately its searches were unsuccessful.

- The production team did “everything we thought was practicable to find surviving members of the [victim’s] family”.

- It was extremely difficult to locate family members since the BBC did not have the names that they are currently known by.

- Great care was taken with scenes which depicted Christie carrying out murders – with the aim of making sure that they while they were inexplicit they conveyed the “monstrous nature of the man”.

- The names of Christie’s victims are a matter of public record and the BBC felt it was important that those that suffered should be named and not forgotten.

- The BBC apologised that the programme caused the complainant understandable distress.

The complainant was informed that if she remained dissatisfied with the BBC’s response then she could appeal to the BBC Trust.

**Appeal**

The complainant appealed to the BBC Trust on the substance of her complaint. She stated that she did “not feel [she had] received a good enough reason” from the BBC.

**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 all BBC output was required to meet the standards set out in the Editorial Guidelines. In particular, in this case the relevant Guideline states:

**Revisiting Past Events**

7.4.44 We must consider how to minimise any possible distress to surviving victims and relatives when we intend to examine past events which involved suffering and trauma. This applies even if the events or material to be used were once in the public domain. The way we achieve this will depend on, for example, the scale and location of the original incident and the time that has elapsed since it occurred. But so far as is reasonably practicable, surviving victims or the immediate families of the dead people who are to feature in the programme should normally be notified of our plans. We should proceed against any reasonable objections of those concerned only if they are outweighed by the public interest.

The Head of Editorial Standards understood how this programme would be particularly upsetting for the complainant and that the onus was on the BBC to try and contact her and her family before its broadcast. The BBC’s commissioning department was therefore
asked by an independent Adviser to the Trust for full details about what steps were taken to inform the complainant’s family about the programme.

The BBC explained that the complainant’s family name had changed and was now different to her mother’s surname. In these circumstances, it is extremely challenging to find someone, whose name, the name of their father and their date of birth are all unknown. However, a researcher was required to pursue this “utilising all practicable means”. The Trust Adviser was informed that primary sources and contemporary accounts from the early 1950s did not reveal the names of any of the children of Christie’s victims. Further, none of the cases – other than that of Ethel Christie (John Christie’s wife) were the subject of a trial, so very little information about the other victims was revealed in court.

The production team explained that the two definitive works about these murders did not help the programme try to make contact with the complainant. The team spoke to the relatives of Timothy Evans and his wife Beryl Evans (one of the main stories the programme focused on) in an attempt to contact surviving relatives of other victims.

According to the BBC, online searches (such as genealogical and historical record websites) were conducted. The researcher also reviewed a number of message boards. The BBC added that without the knowledge of their names, any searches on the electoral roll or censuses would be unproductive. Further, the death certificate of the mother of the complainant provided no information about her children. The complainant referred to an article in a local newspaper, which made reference to her. Unfortunately, the newspaper’s online archive started after the article was published.

The BBC said that in the past where it had not been able to contact surviving relatives, pre-transmission publicity sometimes result in relatives coming forward. Regrettably, this had not occurred on this occasion.

In conclusion, the production team said that it took this matter very seriously and it regretted that it could not get in contact with her. It understood the importance of informing those that may be negatively affected by the examination of past events which involve suffering.

The Head of Editorial Standards noted that the complainant had said to the BBC that her name and details had been lodged with the Home Office. The Head of Editorial Standards understood that it was unlikely that the Home Office could have directly given such private information (names and addresses) to a broadcaster. However she appreciated that it might have been possible to make contact through this route if the Home Office had been prepared to write on behalf of the BBC to the family. However she could understand why this route would not have occurred to the BBC.

Further, the complainant had said that one of the authors of the acknowledged definitive works had been in touch with the family in 2011/12. The Head of Editorial Standards understood that if the author had retained this information he might not have been able to give it directly to the BBC, however he might have been able to contact the family on behalf of the BBC. She regretted that the author had not been asked if he had had any contact for the family. However she could understand why this route would also not have occurred to the BBC as, according to the BBC, his book did not contain information that suggested he was in contact with the family.
The complainant also implied that the family had, in the past, written to the BBC about any future programmes involving John Christie and his murders. However, it was unclear when this had been sent and despite extensive research, the BBC was unable to locate any correspondence.

It is important that broadcasters, such as the BBC, are permitted to revisit past events such as Rillington Place. However, in order to minimise any potential upset it should make reasonable efforts to contact surviving family members. What is reasonable will depend on the individual circumstances and what is proportionate in the case. The complainant’s mother was not visually portrayed in any of the three programmes. There was also no reference to her in either of the first two episodes. However, her name was announced by the police officer when listing the bodies found at 10 Rillington Place. Her forename was also mentioned by John Christie. It was also noted that the portrayal of the murder of one of Christie’s victim was similar to the killing of the complainant’s mother.

The Head of Editorial Standards understood that whilst programme makers should make reasonably practicable attempts to contact surviving relatives failure to make contact does not mean that the series cannot be transmitted. It was extremely regrettable that the BBC was unable to contact the complainant before the programme was broadcast. However, she believed that Trustees would consider the production team made considerable efforts to try and contact the complainant and her family. Given the degree to which the complainant’s mother featured in the programme, the fact that the information is already in the public domain and the freedom of expression attached to such a programme, she believed the efforts made by the BBC (as described above) would be viewed by Trustees as both proportionate and reasonable. This in no way diminishes the distress and upset that has been understandably caused to the complainant.

**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.**
Question Time, BBC One, 30 June 2016

The complaint concerned comments made during Question Time by presenter David Dimbleby to UKIP MP Douglas Carswell. The episode was broadcast one week after the European Union Referendum.

The complainant made the following points:

- during the programme Mr Dimbleby asked Mr Carswell why he didn’t join the Conservative Party and stop working for a man who stood in front of a racist poster

- he also thought Mr Dimbleby may have labelled Nigel Farage as a racist.

Audience Services made the following points:

- a member of the audience referred to a poster in support of the Leave campaign which showed Nigel Farage in front of a long line of migrants

- Douglas Carswell replied that the poster was despicable and morally indefensible

- having taken that position, he was asked by David Dimbleby why he continued as a member of UKIP and to be led by Nigel Farage, “a man who you object to on racist grounds”

- Mr Dimbleby was simply reflecting what Douglas Carswell had said about the poster; he was not making personal comments about Mr Farage

- David Dimbleby was well aware of the BBC’s commitment to impartial broadcasting.

The Editorial Complaints Unit [ECU] said at Stage 2:

- the issue of the poster was in fact raised by a member of the audience and not by David Dimbleby

- the poster concerned was widely condemned by politicians across the political spectrum, and indeed across the referendum divide, as racist and with overtones of Nazi propaganda in the 1930s. It was also the subject of a complaint to the police of incitement to racial hatred

- Mr Carswell had very publicly denounced the poster

- in that context, it was legitimate for Mr Dimbleby to challenge Mr Carswell about how he could continue under the leadership of a man who endorsed the poster
• at no point did he directly call Mr Farage a racist: he referred to a racist poster and to Mr Carswell being “led by a man you object to on racist grounds”

• Mr Carswell did not take issue with this description

• the ECU did not consider it inappropriate for Mr Dimbleby, in his role as chairman of a programme in which robust exchanges are customary, to question the apparent inconsistency of Mr Carswell’s continued allegiance to a leader whose campaign policy he had publicly condemned as “angry nativism”.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He said that David Dimbleby had wrongly labelled both the poster and Nigel Farage as racist.

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 Editorial Guidelines define due accuracy and impartiality as follows:

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

The Head of Editorial Standards noted that during the programme Mr Dimbleby asked for contributions from members of the audience who had voted to leave the European Union in the previous week’s referendum. One man said:

“I voted Brexit and I did so entirely on economic grounds, not migration grounds. Indeed, I hope that the UK government going forward will sustain our overseas budget, er overseas aid budget, but Mr Carswell I, like you, voted to get out from underneath an EU that doesn’t work. I like you I suspect, want to see hotshot trade negotiators sent across the globe to bring back lucrative deals to make us richer and more successful. But unlike you I don’t work for an odious individual who stands in front of dreadful posters.”

Following a number of other contributions from members of the audience, Mr Dimbleby then returned to the point made by the man who challenged Mr Carswell.

David Dimbleby [DD]: “Douglas Carswell, just before you start, there was somebody there who attacked – who was it who said about the poster and Douglas Carswell? You. What was it you said? You didn’t like it?”

Man: “I didn’t. I thought it was a despicable thing.”

DD: “Which poster are you talking about? Are you talking about the bus or the other poster?”
Man: “I’m talking about the poster where Mr Farage was in front of a long line of migrants.”

DD: “The breaking point one yes?”

Man: “And these weren’t eastern European migrants you know, this was as I’m sure Douglas well knows, this was a very, very difficult and awkward...”

DD: “Douglas, did you stand in front of that?”

Douglas Carswell [DC]: “I did not and...”

DD: But you did stand in front of the 350 million one didn’t you, the financial one?

DC: “Can I just stress... you didn’t like that poster, I didn’t like that poster. I criticised it at the time and I criticised it on the night of the election which I was last being interviewed by David. And let me tell you why that poster was despicable and morally indefensible. As you pointed out those were Syrian refugees, fleeing a war, going to Slovenia. It had nothing to do with the debate in this country. Secondly I think that poster actually allowed the Remain side, who wanted to cast aspersions on the values and the integrity and the motivations of the Leavers, it gave them ammunition. But you know I’ve been campaigning passionately to leave the EU. I think people like me now need to recognise that yes we’ve won, but it was a very narrow mandate and we need to try to reach out to the 48%, recognise that there are good decent patriotic people who voted the other way. I listened during the debate to some people who made some very powerful arguments the other way. I think that it’s really important that we provide reassurance, first and foremost to the two or three million EU nationals living in this country. I think Theresa May today cast doubt on their status. I think she needs to urgently clarify that all EU nationals currently living in this country must absolutely have their rights here absolutely enshrined.”

DD: “Now just before we – no, no wait a moment, just before we leave you Douglas, you are the only UKIP MP in the House of Commons. How can you belong to a party led by a man who put out that racist poster which you constantly complain about? Why don’t you leave UKIP? You sit with Nigel Farage... or maybe you’re planning, maybe you’re planning, maybe you’re planning to leave UKIP. But you can’t be led by a man who you object to on racist grounds and still remain an MP”

DC: “Last time I changed from one party to another I felt it was beholden...”

DD: “When was that?”

DC: “2014... I felt that I had to put myself forward for a by-election. My constituents have faced a by-election in 2014, a general election in 2015, a referendum in 2016. I would think very carefully about inflicting another by-election on them.”
DD: “Or maybe you should just change the name of your party and call yourself a Tory or something.”

Emily Thornberry: “A leadership challenge.”

DC: “A leadership challenge, Emily suggests. Well, all the other parties seem to be doing that... the Greens are doing it, Labour are doing it, the Conservatives are doing it. Do you know I’m not sure which MP I would back though?”

DD: “Let’s just be serious for a moment though. I mean are you happy being led by Nigel Farage?”

DC: “I made it very clear in December, in the run-up to this referendum: angry nativism is no way to win elections in this country. It doesn’t work and it’s morally wrong.”

The Head of Editorial Standards noted that the complainant believed that David Dimbleby had wrongly labelled the poster racist for the following reason:

“The poster termed racist stipulates no race in the group of people shown. It has no anti-race text. It shows a trail of people, probably migrants, perhaps refugees, travelling across an undetermined landscape. The words ‘Breaking Point’ point to a desire, need to leave the EU, because of numbers of people coming, not a specific race, group of citizens from a specific country or nation.”

She noted that the poster was unveiled by Nigel Farage on behalf of the unofficial Leave.EU group during the Referendum campaign and that it became controversial because it used a photograph of migrants crossing the border from Croatia into Slovenia with the slogan “Breaking Point: the EU has failed us all.”

She noted that:

- Dave Prentis, the General Secretary of the Unison union said he had reported the poster to the Metropolitan Police because it was a “blatant attempt to incite racial hatred”

- the official Vote Leave campaign distanced itself from the poster: Boris Johnson said it was “not our campaign” and “not my politics”

- Mr Farage defended the poster on the grounds that the photo was accurate and that the EU was risking “the security of everybody.”

She noted that Douglas Carswell was UKIP’s only member of parliament and that he had campaigned as part of the official Vote Leave group, sharing a platform with Boris Johnson – whereas his party leader Nigel Farage had supported the unofficial Leave.EU campaign. During the BBC’s Referendum results programme, she noted that Mr Carswell had criticised the ‘Breaking Point’ poster, and Mr Farage’s role in promoting it because it

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was “morally the wrong thing to do: using a picture of people who had fled from a war in Syria going to Slovakia had nothing to do with the United Kingdom.”

The Head of Editorial Standards noted that the issue of the poster was raised by a member of the audience, who described it as “despicable” and Mr Farage (by implication) as “an odious individual who stands in front of dreadful posters”. She noted that Mr Carswell then agreed with the audience member about the poster as “despicable and morally indefensible”.

She noted that Mr Carswell did not use the word “racist” about Mr Farage or his approach to the campaign but she noted that he has regularly criticised (including on election night and later in this debate) what he calls “angry nativism” which he says allows others to cast aspersions on the motivations of those with pro-Brexit views.

The Head of Editorial Standards consider that Trustees would be likely to decide that:

- Mr Dimbleby’s comments served as robust devil’s advocate question to challenge Mr Carswell on why, as UKIP’s only MP, he continued to support a party when he ‘constantly complained’ about the approach taken by that party’s leader

- in doing so Mr Dimbleby was following up on the point raised by the audience member who asked why Mr Carswell continued to “work for an odious individual who stands in front of dreadful posters”

- the phrase “that racist poster” was followed by the clause “which you constantly complain about” and was therefore a provocative question suggesting that Mr Carswell considered the poster racist, but that he was not prepared to use the word

- similarly, by using the wording “a man who you object to on racist grounds”, Mr Dimbleby was again provocatively suggesting that Mr Carswell disagreed with Mr Farage’s approach and views “on racist grounds” but, again, was not prepared to use that expression explicitly

- Mr Dimbleby was not expressing his own opinion about Mr Farage’s motivations, nor the implications of the ‘Breaking Point’ poster

- viewers would have understood this to be a legitimate challenge given the ambiguity in Mr Carswell’s position, as he appeared to be implicitly criticising his leader when he described the poster as “despicable and morally indefensible”.

- This was in line with the robust political exchanges audiences expect on Question Time.

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The Head of Editorial Standards therefore decided that Trustees would be likely to decide that this was not a breach of the BBC’s 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.
Bias in favour of anti-EU MEPs on Question Time, BBC One

The complainant made the following points:

- BBC News in general and Question Time in particular demonstrated an anti-EU bias by not adequately representing the views of the UK’s pro-Europe MEPs.

- When BBC News interviewed MEPs it concentrated almost exclusively on the opinions of a very small number of MEPs, all from UKIP.

- With specific reference to Question Time, no MEP with pro-EU views appeared on the programme between November 2015 and the last programme before the Referendum in June 2016.

- Only one non-UKIP MEP has had a voice on the panel and that was the prominent anti-EU Conservative MEP Daniel Hannan.

- 22 out of the 73 MEPs representing the UK in the European Parliament were from UKIP and while their voice should be heard, pro-EU MEPs should also be allowed to explain to the electorate why their work was important.

- It was imperative that all stakeholders be included in the debate in the run-up to the Referendum. To exclude MEPs other than those who maintained an anti-EU position was a breach of the duty of the BBC to be impartial.

- MEPs who were anti-EU on Question Time were able to put forward their views about the negative aspects of the EU but no MEP who was pro-EU was allowed to put the positive side.

- The argument that other people were able to properly challenge the views of anti-EU MEPs was “completely fallacious.”

- An MEP could not comment as effectively on the intricate workings of the Westminster Parliament as an MP could because he/she did not work in that system and vice versa.

- When members of the general public applied to join a Question Time audience they were obliged to answer questions about their political persuasions so the audience had a balance of different viewpoints. However, this attempt at fair balance did not apply to representing the views of MEPs.

Audience Services made the following points at stage 1:

- Audience Services sent a generic response to the complainant which outlined the breadth and depth of the BBC’s coverage of the EU and outlined the wide range of
issues which were being covered during the Referendum campaign. The response also outlined the BBC’s commitment to impartiality in this area

- on the specific issue of Question Time the BBC sought to ensure that, over a reasonable period, all sides of any public debate were explored and explained so listeners could be better informed in coming to their own judgement on an issue. The BBC did not seek to denigrate any view, nor to promote any view but to identify all significant views, and to test them rigorously and fairly on behalf of the audience

- Question Time was a topical programme and that was reflected in the make-up of the panels

- in the lead up to the EU Referendum vote the approach was to balance the arguments across all of the programmes. Every edition had a minimum of two “Leave” and two “Remain” panellists. The fifth panellist was undecided

- over the course of the series the focus was to appropriately weight both sides of the argument rather than exclude any particular group

- the premise that pro-EU MEPs could only represent a pro-Europe case was not accurate. Question Time was a UK wide, high profile programme that relied on the inclusion of recognisable politicians from all parties, and the programme could not recall a situation during the EU Referendum campaign where most political parties were offering MEPs for inclusion

- while there was a requirement to observe broad political balance, it was not specific to categories of representatives. In some cases, e.g UKIP, it would be hard to achieve political balance without calling on UKIP’s MEPS, given UKIP’s 4 million voters and single MP.

Head of Public Policy & Corporate Affairs, BBC Scotland made the following points at stage 2:

- with the exception of Douglas Carswell MP, all UKIP representation at UK Parliamentary/EU level was through MEPS. Given their 3.88m votes in the last election their representation on the Question Time panel over the period was proportionate

- although no pro-EU MEPs appeared on Question Time in this period this did not constitute evidence of bias on the part of the BBC

- pro-EU views were espoused by other panel members across the period, both by elected politicians and by non-elected contributors, and the inclusion, specifically, of pro-EU MEPS was not necessary to ensure that the full range of arguments on both sides were given appropriate opportunities to be voiced and challenged
there was no deliberate decision taken to exclude MEPs with pro-EU views and the panel composition over the period did achieve a balance of views, both pro- and anti-EU.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. In his view as explained at the end of stage 2:

“An MP – or any other person for that matter – cannot comment as effectively on the work of the European Parliament as an MEP because he/she is not working in that system.....

The fact therefore – whether or not this was a conscious decision – to only have anti-EU MEPs present on Question Time panels in the time period of interest has not allowed the public to be informed in a balanced way, and de facto represents serious bias against the work of pro-EU MEPs.”

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 BBC News coverage of the EU Referendum campaign was governed by special editorial guidelines issued by the BBC Trust. These could be found at: http://www.bbc.co.uk/editorialguidelines/guidelines/appendix8

These guidelines required the BBC to meet the standard of “due impartiality” by achieving “broad balance” in its output and noted that:

Due impartiality is not necessarily achieved by the application of a simple mathematical formula or a stopwatch, but the objective – in a referendum with two alternatives - must be to achieve a proper balance between the two sides. This will be irrespective of indications of relative levels of support. However, referendums are seldom fought purely on the basis of just two opposing standpoints – on each side, where there is a range of views or perspectives, that should be reflected appropriately during the campaign.

The Head of Editorial Standards understood that the complainant felt that it was important during the Referendum campaign to hear the views of pro-EU MEPs on Question Time and that by not including those views the programme had demonstrated bias in favour of a number of anti-EU UKIP MEPs. She understood that the MEPs had very specific experience and knowledge to offer the public at a significant point which other guest could not match. She noted however that the BBC’s editorial guidelines were clear that individual programmes were charged with reflecting a range of views from both sides of the Referendum campaign and in achieving broad balance between the two sides. This meant finding a balance between the arguments rather than necessarily between particular representatives of those arguments.

She noted that over the period in question the Question Time panels had featured leading figures from both the Leave and the Remain campaigns and that the pro-EU argument had been put forward by both prominent MPs from the Remain side and by non-elected panel members. She also noted that it was an editorial decision for the BBC Executive to take as to whether they wished to include UKIP MEPs on the Question Time panels due to
their high profile within the Leave campaign and given, as the BBC had pointed out in its responses, that they had only one Westminster MP. Taking these points into account she could not agree with the complainant’s view that it was necessary to hear specifically the views of pro-EU MEPs in order to achieve balance.

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 Audience Services not to respond further to a complaint about Today, BBC Radio 4, 10 November 2016

The complaint concerned an allegation of political bias regarding the Today programme’s coverage of the United States presidential election result.

The complainant made the following points:

- He felt the coverage had been one-sided and was biased against the democratic outcome which saw Donald Trump elected as President.
- He said this bias was demonstrated in the Today programme’s focus on demonstrations against the election result.
- He considered Today’s reporting to be irresponsible with the possibility of such journalism leading to social unrest which the BBC would then report.
- The BBC had a statutory duty to be balanced but was failing to be so.
- In interviews, he felt the Today presenters were much more challenging towards Donald Trump’s supporters than they were towards his opponents.
- Given that the tone of an interview was hard to measure, he asked what steps the BBC took to ensure political balance amongst its staff, and why were these steps not working?
- He felt that the BBC should review its editorial processes within the Today programme and asked what steps would be taken to address this.

Audience Services made the following points:

- The recent US presidential election had been one of the most extraordinary in history. On the night of the election, BBC reporters conveyed the drama as the results were announced. They were careful to feature a balanced range of experts and commentators from across the political spectrum.
- Donald Trump winning the election had generated a lot of reaction, both positive and negative, in America, and across the world; this was reflected in the BBC’s coverage.
- BBC News did not have a view on whether or not Mr Trump would be a good president, nor did BBC News believe there had been anything in its coverage which would suggest that it did. However, this was obviously a huge news story, and as the audience would expect, BBC News analysed the results and outcome of the election, presenting the facts, so that members of the audience could make up their own minds.
• In response to a follow-up complaint, Audience Services acknowledged that their first response did not adequately address the complainant’s specific points and said their second response should be considered as the first reply to this complaint.

• The Today US election coverage considered a range of views following Mr Trump’s victory. The Republican Party’s endorsement of Mr Trump and reaction from his supporters informed leading reports. The programme also assessed why Mr Trump won and the man behind the public figure.

• The Today coverage examined the protests against President Trump’s win not to discredit his achievements but to underline vocal objection from opposing voters. Observations from business markets and international communities offered further context to the historic result, alongside analysis from Jon Sopel, Jim Naughtie and Laura Bicker from Washington.

• BBC news editors had striven to present balanced programming during these events, reflecting the genuine shock and reaction observed on the streets - given the predictions and polls the US expected themselves. BBC News would continue to address different angles and would welcome guests from every angle on the spectrum.

• The BBC did not take a view on the result or the suitability of any candidates, but would happily investigate specific examples the complainant believed proved otherwise. Aside from the coverage of the protests following the result, they had not received from the complainant any other specific examples.

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

Appeal

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

• Although a long standing supporter of the BBC, he was very disappointed by replies from Audience Services.

• He wanted answers to his specific questions about how the BBC ensured balance in its reporting.

• He felt the coverage of the US Presidential Election had been extremely biased against Donald Trump.

• He appreciated that allegations of bias were difficult to deal with, and that was why he had specifically asked what processes the BBC followed to ensure political neutrality, but he had not received an answer to this question.
• He did not feel it was enough to give each side in a debate equal time; much of the bias (particularly in news output) came from the tone and content of the questioning of guests by presenters. He considered that pro-Trump contributors were challenged by the presenters to a much greater extent than anti-Trump contributors.

• However professional the presenters were, it was apparent to the serious listener what their political leanings were.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust, understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Head of Editorial Standards noted that the BBC was required to deliver duly accurate and impartial news by the Royal Charter and Agreement and to treat controversial subjects with due accuracy and impartiality.

The Editorial Guidelines state that the term 'due' means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. News, in whatever form, must be treated with due impartiality, giving due weight to events, opinion and main strands of arguments. However, due impartiality is often more than a simple matter of 'balance' between opposing viewpoints. Equally, it does not require absolute neutrality on every issue or detachment from fundamental democratic principles. The BBC is committed to reflecting a wide range of opinion across the output as a whole, and over an appropriate timeframe, so that no significant strand of thought is knowingly unreflected or under-represented.

The Guidelines also state that:

Presenters, reporters and correspondents are the public face and voice of the BBC - they can have a significant impact on perceptions of whether due impartiality has been achieved. Our audiences should not be able to tell from BBC output the personal prejudices of our journalists or news and current affairs presenters on matters of public policy, political or industrial controversy, or on 'controversial subjects' in any other area. They may provide professional judgements, rooted in evidence, but may not express personal views in BBC output, including online, on such matters.

The Head of Editorial Standards noted that news teams were informed in their daily decision-making by the BBC Editorial Guidelines together with additional news editorial guidance on specific issues, such as individual election and referendum guidelines. She thought the complainant might be interested to watch the following online clips which showed examples of how presenters addressed the issue of political balance in BBC output:
1. [http://www.bbc.co.uk/programmes/p03xl7x9](http://www.bbc.co.uk/programmes/p03xl7x9)  
   “Political interviewers talk impartiality”

2. [http://www.bbc.co.uk/programmes/p03xl6l2](http://www.bbc.co.uk/programmes/p03xl6l2)  
   “What are the BBC’s Referendum Guidelines?”

The Head of Editorial Standards acknowledged the complainant’s view that the Today programme’s coverage of the US Presidential Election was too sympathetic towards Donald Trump’s detractors. She agreed with him that political balance was not simply about giving each side of a debate equal minuting during an interview or discussion. She also noted the complainant’s view that the edition of Today at the centre of the complaint focused too much on covering demonstrations against Mr Trump’s election. She considered that Audience Services had provided a reasoned response on this point, stating that the protests were covered not to discredit Mr Trump’s achievements but to underline the vocal objection from opposing voters. They had explained that BBC news editors had endeavoured to present balanced programming during these events, reflecting the genuine shock and reaction observed on the streets. BBC News would continue to address different angles and would welcome guests from every angle on the spectrum.

The Head of Editorial Standards noted that the Trust did not have a role in making decisions about BBC output unless a possible breach of standards was identified. She noted that the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “editorial and creative direction” of the BBC was defined as a duty that was the responsibility of the Executive Board under Article 38, (1)(b). She did not consider that Trustees would be likely to conclude that they had seen evidence that the Today programme was in breach of the editorial guidelines in terms of its US election coverage. That being the case, she considered that the Today programme team, which ultimately reported to the Executive Board, was entitled to report news stories without involvement from the Trust.

The Head of Editorial Standards noted the complainant’s dissatisfaction with the responses he had received from Audience Services. She noted that they had apologised for the first response, acknowledging that it had not adequately addressed his concerns. Overall, she considered that Audience Services had dealt with the substantive complaint appropriately.

The Head of Editorial Standards noted the complainant had asked for information on the steps the BBC takes to ensure political balance among its staff. She noted that it would not be appropriate for the BBC to recruit staff and allocate them to programmes on the basis of their political beliefs. What was relevant was what was actually broadcast and the BBC had addressed this.

In terms of the question put by the complainant regarding the measures taken by the BBC to ensure political balance, she hoped that this response had gone some way towards addressing that point. As he had acknowledged, allegations of bias could be complex and the Head of Editorial Standards noted that impartiality was a key priority for the Trust. She noted that regular impartiality reviews allowed the Trust to examine the BBC’s impartiality in a specific area of output through a rigorous review which could, when deemed necessary, lead to change.
The latest Trust Impartiality Review was published on 10 August 2016 and concerned the reporting of statistics. It could be found here: http://www.bbc.co.uk/bbctrust/our_work/editorial_standards/impartiality/statistics

Taking this into account, the Head of Editorial Standards, BBC Trust considered that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

Taking this into account the Head of Editorial Standards, BBC Trust considered that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.
Decision of BBC Audience Services not to respond further to a complaint about News Briefing, BBC Radio 4, 17 September 2016

The complaint concerned references to ‘Paratroopers’ which the complainant did not consider to be a factually accurate as it did not cover the 5,500 men who landed in Holland in gliders rather than by parachute in order to fight the Battle of Arnhem.

The reference was as follows:

“In 1944 the allies began a huge airborne assault to try and bring to an end to the war in Europe. Thousands of paratroopers were dropped behind enemy lines in Arnhem, in the Netherlands...”

The complainant made the following points:

- in the reference to the Battle of Arnhem, it was said that Paratroops were dropped. Whilst this was in itself correct, it ignored the much greater number that were landed in gliders: in round figures, 4,500 paratroops and 5,500 glider borne.

- It was impossible to jump from gliders, that is the reason that nobody in a glider had a parachute.

- It was too late to correct it but he was seeking an assurance that in 2017, the statement will be to the effect -10,000 Airborne soldiers were landed in Arnhem.

- The glider-borne soldiers were not members of the Parachute Regiment. To refer only to the Paratroops is to offend the greater number that were not Paratroops.

- When he made a previous complaint about this, the BBC had thanked him and said the error would not be repeated, but it had been.

Audience Services made the following points:

- The On This Day programme segment which featured within News Briefing was very brief and each item only contained a succinct headline rather than telling each story in the depth required to do it justice.

- There was no desire to omit detail or cause offence when touching briefly on any item in this way. The amount of detail included would depend heavily on the context of the piece and the time it permitted. On This Day features were very often brief reminders, for any type of story.

- The Editor responsible for the News Briefing programmes was very grateful for the complainant’s detailed feedback on this matter.

- The idea in On This Day was simply to remind listeners – in just a couple of short sentences and amongst a number of other topics in this segment – about one aspect of what was a large, important and complicated operation. When referring to something so briefly in this sort of context, it was not possible to mention all the strands that made up Operation Market Garden.
• In not mentioning the role of the gliders, the BBC had not intended to cause offence and they were sorry that the complainant was disappointed by the programme.

• They appreciated that this matter would have an huge resonance for the complainant personally as he had actually been there as a glider pilot himself, but they hoped he would be able to appreciate the BBC’s position as a general broadcaster providing programmes and services for a general audience, thus meaning it would not always be possible or practical to mention full details of every issue or subject on every single occasion. It depended on the context and the time available.

• Elsewhere, the BBC has fully explained the role of the gliders, for example within our WW2 People's War events and programmes right across BBC Radio, Television and Online. Audience Services gave weblinks to examples of this output.

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

Appeal

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

• He had recently learned that he was not the only person to be unhappy about this matter.

• He said that to change the term ‘Paratroops’ to the all-embracing ‘1st Airborne Division’ would not take up any more broadcasting time and would be more accurate.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust, understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Head of Editorial Standards, BBC Trust, noted that ensuring the accuracy of the BBC’s content was a key priority for the Trust. The Editorial Guidelines state that the BBC is committed to ‘due accuracy’, which means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

The Head of Editorial Standards noted the Trust’s finding on a similar complaint in July 2015:

Trustees understood the complainant’s point that it would have been easy to include a few words explaining that many men were landed in gliders. However, failure to include this information in the programme had not constituted a breach of the Guidelines.
The Head of Editorial Standards, BBC Trust, believed that Trustees would consider that the reference to ‘Paratroopers’ in the current complaint similarly met the requirement for due accuracy. She appreciated that the complainant had been personally offended by the use of the term ‘Paratroopers’ in that the words (although factually accurate) did not encompass the 5,500 men landed by glider (the majority of those who landed). She was very sorry he had been offended by this. However in the circumstances of this brief headline the accuracy was appropriate to the output.

Taking this into account the Head of Editorial Standards, BBC Trust considered that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.
Decision of BBC Audience Services not to respond further to a complaint about Today, BBC Radio 4, 1 December 2016

The complaint concerned the term ‘hideously white’ which was included in a report on the Today programme.

The complainant made the following points:

- The term ‘hideously white’ was racially offensive and should not have been used.
- The term was racist and it did not matter who was being quoted and in what context.
- His objection to what was said on Radio 4 was that it was racist to white people.
- As one of the main sources of news in the UK, the BBC had a duty to reflect all sides and not to use its own agenda to soothe the sensibilities of those who shouted the loudest.

Audience Services made the following points:

- The Today report in question covered the release of a report from the Andrew Lloyd Webber Charitable Foundation which found that there was a lack of performers from black and minority ethnic backgrounds. The Today programme was quoting from the Foundation report which itself used the phrase ‘hideously white’.
- It was the lack of diversity and representation which was being described as hideous in this phrase, not any particular ethnicity itself. Other media outlets quoted the phrase from the report too.
- The Andrew Lloyd Webber Charitable Foundation report was based on “the conclusion of more than 60 theatrical professionals, drama students and teachers, actors and theatre directors” who were worried that “if the theatre does not become more diverse it risks becoming irrelevant to the majority of the British population who now live in a multicultural society.”

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

Appeal

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

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust, understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.
The Head of Editorial Standards, BBC Trust, noted that the complainant believed the term ‘hideously white’ used during a report on the Today programme was racist against white people. She noted that the complainant did not consider that such a term was acceptable in any context; however, she believed that the context was key when considering this complaint.

She noted the appropriate guideline was in the Harm and Offence section of the Editorial Guidelines and was as follows:

**5.4.38**

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

The Today programme included a news item concerning a report just released by the Andrew Lloyd Webber Charitable Foundation about diversity in British theatre. The Foundation’s report, entitled Centre Stage could be read in full at:


The introduction to the Foundation report states

The UK theatre is ‘hideously white’. This is the conclusion of more than 60 theatrical professionals from drama students and teachers to actors and theatre directors interviewed for this report. That matters to them and the Andrew Lloyd Webber Foundation because if the theatre does not become more diverse it risks becoming irrelevant to the majority of the British population who now live in a multicultural society.

The Today programme reported these words directly from the Foundation report and this was made clear by the Today presenter, Sarah Montague, in her introduction to the programme item. This was the editorial justification for using these words. The findings in the report were then discussed on the Today programme in an interview with one of the authors of the report and an African actor. The reasons for a lack of diversity were explored and the suggestion in Centre Stage that there was a shortage of black actors coming through drama training to take up lead theatre roles was discussed. The item did not stereotype white people.

The Head of Editorial Standards, BBC Trust, considered that the discussion was balanced and she had not seen evidence to suggest that the term ‘hideously white’, as used in the context of the Today item, failed to meet the requirements of the Editorial Guidelines.

The Head of Editorial Standards, BBC Trust, noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC’s editorial and creative output” was defined as a duty that was the responsibility of the Executive Board. Editorial decisions about the
content of Today were the responsibility of the BBC Today programme editors rather than the Trust.

Taking this into account the Head of Editorial Standards, BBC Trust considered that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.
Decision of BBC Audience Services not to respond further to a complaint about Brexit and US election ‘among anxious young’s concerns’, BBC News website, 31 October 2016

The complaint related to an article about a report from the NSPCC which said that the number of young people in the UK seeking help for anxiety had increased sharply. The article included the story of one 17 year old young woman who had experienced mental health issues.

The complainant made the following points:

- the article used the phrase “People say that mental health has a stigma...”. It was “irresponsible” for the BBC to say there was a stigma to mental illnesses
- there was prejudice, discrimination and ignorance associated with mental health, all of which were hidden when using the term “stigma”
- all words that appeared on a page were selected by the editors. They were not imposed by anyone else
- the process of contacting the BBC was far too “convoluted”. The webform for contacting the President of the USA was one page and much more simple than the BBC complaints process.

Audience Services made the following points:

- this article was about the NSPCC’s assertion that the number of young people in the UK seeking help for anxiety had increased sharply
- in that context Childline supplied the BBC with a story from a young person in which she talked about dealing with anxiety and depression and gave a comment about mental health and stigma
- this was her view and not the BBC’s and the BBC did not believe it was necessary or desirable to censor her views on how some people view mental health issues
- regarding contacting BBC Complaints, the main reason the BBC designed the webform as such was because it dealt with over a million audience contacts every year and it had to ensure they could be efficiently tracked using the handling system
- the complaints webform asked for essential information such as channel, programme name and transmission date which meant the BBC did not have to write back to people unnecessarily
• using a webform also guaranteed the BBC could match a return contact to previous contacts from that person without the need to cross-check thousands of unformatted emails

• unfortunately there was no other way to glean this information without all the questions.

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

Appeal

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

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Head of Editorial Standards noted that the BBC Editorial Guidelines said:

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

The Head of Editorial Standards noted that the BBC had a tradition of allowing a wide range of individuals, groups or organisations to offer a personal view or opinion provided that view is clearly signposted to audiences. She noted the complainant objected to the use of the word “stigma” in the article in relation to mental health in the sentence "People say that mental health has a stigma, but we have the power to break that stigma by talking to others about how we feel." She noted that he said it was irresponsible for the BBC to itself say there is a stigma to mental illnesses. There was prejudice, discrimination, and ignorance, which cannot be overcome while they are obfuscated by the word stigma.

The Head of Editorial Standards noted that the article had been clear that this was the view of one young woman who had been affected by mental health issues. The article had the headline “Calleigh's story. This is a story supplied to the BBC by Childline. The girl's name has been changed to protect her identity.”

She understood that this was a sensitive issue and that the complainant had strong feelings about the use of the word “stigma”. However in this context it was clear that the views were being expressed by a contributor to the article who had been dealing with anxiety and depression for several years. The remark was clearly attributed and editorially justified. The article was about helping young people with anxiety and did not perpetuate prejudice or disadvantage. In her view this did not breach the Editorial Guidelines.
The Head of Editorial Standards also noted that the complainant felt the BBC complaints process was unnecessarily “convoluted”. She noted the response from Audience Services which had explained in some detail why it was necessary for the BBC to ask a series of questions about the complainant and the complaint itself. The BBC had explained that with over a million contacts to the organisation every year, the information was necessary to facilitate effective tracking of complaints. She noted also that the webform itself explained that “This form asks you to complete key information in stages so we can classify and report your complaint to the right people overnight.”

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 Andrew Marr Show, BBC One, 13 November 2016

The programme, which was broadcast on Remembrance Sunday, included an interview with the leader of France’s Front National (FN) party, Marine Le Pen MEP. Other interviewees included Labour leader Jeremy Corbyn MP, Chief of Defence Staff Sir Stuart Peach and Foreign Affairs Select Committee Chair Crispin Blunt MP.

The complainants made the following points:

- it was a “shameful insult to all who fought against and suffered under fascism” to broadcast an interview on The Andrew Marr Show with the FN leader Marine Le Pen on Remembrance Sunday

- it was “an ill-timed and disgustingly friendly chat”. As she was not going to become President of France the following week, there was absolutely no need to broadcast it on Remembrance Sunday

- the fact that Andrew Marr and the producers were aware beforehand that it would be seen as distasteful should have been enough to have stopped transmission

- the justification given in the introduction for broadcasting the interview was not valid. It would have been perfectly possible to report on what could be “the next big challenge to western security” by merely mentioning that Ms Le Pen might become France’s next President and then discussing the implications and risks of such a development with an expert from the centre of the political spectrum and including an anti-fascist organisation rather than a “Leave” member of the Conservative party

- even when CNN’s Christiane Amanpour pointed out that the Front National was not a right-wing but an “extreme” right-wing party, Andrew Marr continued to refer to it as simply ”right-wing”. Stronger language could have been used.

- the interview breached several sections of the BBC Editorial Guidelines on Impartiality, specifically section 4.4.14 which stated that “..we may need to make it clear to the audience when contributors are associated with a particular viewpoint, if it is not apparent from their contribution or from the context in which their contribution is made”; section 4.4.18 “…contributors expressing contentious views, either through an interview or other means, must be rigorously tested while being given a fair chance to set out their full response to questions” and section 4.4.23 “…we should ensure that appropriate scrutiny is not limited just to those who are in government, or hold power and responsibility, but is also applied to those who oppose them, campaigns, lobbyists, opposition groups and others, including views expressed interactively by the audience”
• Ms Le Pen was not challenged during the interview for her previously expressed - in particular related to Muslims - and Andrew Marr did not contextualise her history. This amounted to the “normalisation” of such views and groups.

• he did not rigorously test her opinions nor did he appropriately challenge Ms Le Pen when she voiced “contentious views” for example when she said “where fundamentalist Islam is progressing” in the English speaking world

• Andrew Marr did not respond when she said "I would like you to tell me what sentence, what proposal in the National Front’s programme is a racist proposal?"

• when Ms Le Pen failed to answer his question about how the FN would approach French Muslims he did not challenge or press her on this

• her appearance was particularly irresponsible given the increase in hate crimes in the UK following the EU referendum.

Audience Services made the following points at stage 1:

• Andrew Marr acknowledged beforehand that some viewers might have found the timing or content distasteful, but he also fully explained in the introduction the context and rationale for the interview with Marine Le Pen

• Ms Le Pen was a Member of the European Parliament and was standing as a candidate to become President of France in upcoming elections there

• there was a narrative that electorates in the UK and the USA were showing evidence of support for more nationalistic, protectionist policy-making thus the programme wanted to test this argument with her as a prominent European politician in this sphere

• this clear context guided Andrew’s line of questioning which was entirely relevant and the interview itself was timely and newsworthy.

The Editorial Complaints Unit (ECU) made the following points at stage 2:

• Andrew Marr acknowledged the potential for offence in the broadcasting of the interview and gave a very clear explanation of the reason for taking that risk in saying that “in a world that feels particularly unstable, even dangerous... I don’t think the best way to honour the fallen is to fail to report on the next big challenge to western security”

• he explained the reason for including the interview that particular Sunday, when the world was coming to terms with Donald Trump’s victory in the US presidential election earlier in the week and what the global implications of that, along with
Growing support for far right parties such as FN, might be and the introduction clearly flagged the potential for offence.

- FN was a legitimate political party and it would have been inappropriate for the BBC, with the commitment to impartiality enshrined in its charter, to place an embargo on its leader’s views being included in output or to conduct the interview in a hostile manner.

- Andrew Marr put criticisms of her party and its policies to Ms Le Pen and she addressed the points he raised.

- In an interview conducted through an interpreter the opportunity for a deeper and more probing exploration of her responses was inevitably limited.

- BBC guidelines on impartiality required a degree of neutrality on the part of presenters so that “Our audiences should not be able to tell from BBC output the personal prejudices of our journalists or news and current affairs presenters on matters of public policy, political or industrial controversy or on controversial subjects in any other area”. It would not have been appropriate for Mr Marr to have used the sort of language that had previously led to legal action for defamation.

- He did in fact describe Marine Le Pen as “the highly controversial leader of the right-wing, nationalistic French National Front” and CNN's Christiane Amanpour had previously said of right-wing European leaders including, specifically, Marine Le Pen “Of course it's not just right. It's extreme right. It is hard-line right. It is white nationalism... we're in a moment where it’s an individual, you know, it’s individuals who are saying all sorts of things, including things that they may never ever, ever, ever be able to deliver, and these are the people who are appealing to the fear, appealing to the genuine hurt and they have their own very narrow, white-backlash agenda.”

- BBC guidelines stated that “due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed”, provided that when dealing with controversial subjects this was clearly signposted. The introduction to the interview and the comments by Ms Amanpour provided adequate signposting and left the audience in no doubt about the degree of controversy surrounding Marine Le Pen's views and policies.

- With regard to Mr Marr’s question about whether Muslims could be good citizens who were welcome in France, the response she gave was pertinent in explaining her position and didn’t require a further challenge: “I don’t judge people based on their religion. I’m not interested. I’m in favour of secularism. It’s very important to me. I believe that it is part of France’s identity. So we judge French people obviously based on the way they respect the law, the French constitution, but
never based on their religion. For me, if some people refuse to accept the French constitution or to comply with French laws, if they refuse to comply with our codes, our values, our French lifestyles, well we will act accordingly. But we shouldn’t take into account once again their religion, no more than their gender or their origin.”

- with regard to Ms Le Pen’s demand to name one thing in the party’s manifesto that could be described as racist, a response was not necessary given that she went on to say: “Unless you consider, as I know the elite wish to do, and have done for a long time, that all those who are opposed to the process of mass immigration are racists. But I disagree. I don’t think it’s racist to say we cannot take care of all the poverty of the world. We cannot take care of hundreds of thousands of people arriving here because our first obligation is to protect the French people and establish solidarity amongst the French people – our own citizens. I don’t see how that’s racist.”

- there was scope for wider debate on issues such as Ms Le Pen’s description of the English-speaking world’s model of a multicultural society being one where “fundamental Islam is progressing” but, as the guidelines recognised, it was not possible to cover all angles of any debate in the space of a single programme and impartiality was necessarily achieved over time and a range of output.

**Appeals**

The complainants appealed to the BBC Trust on the substance of their complaints.

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

The Head of Editorial Standards decided that these appeals did not have a reasonable prospect of success.

She noted first the BBC Editorial Guidelines on Harm and Offence which said that when the BBC broadcast material that risked offending some of the 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 guidelines also stated that when considering audience expectations the BBC should also take account of “any special sensitivities surrounding the slot, for example religious festivals or anniversaries of major events”.

She noted the view that the decision to show the interview with Marine Le Pen on Remembrance Sunday was “extremely offensive and thus hugely insensitive to all the victims of World War Two and their families”. She noted the introduction to the interview which had been referred to by the BBC in its responses:

"Now, today we are remembering the fallen, particularly of two World Wars, and we are doing so in a context of a world which feels particularly unstable, even dangerous. Our greatest ally - the United States - has been going through great political change, but what of our other great wartime ally, France?"
"Since Donald Trump's victory, anything seems possible, and in France they're asking whether Marine Le Pen - the highly controversial leader of the right wing, nationalistic French National Front - will become their next President. She's polling strongly - at least 6 million voters so far - and most predict that she will reach the final round this spring. Now, if she won that would be a huge and significant moment for Europe - Marine Le Pen is hostile to Brussels, she's against NATO, she's against free trade, and she's a vehement supporter of Russia's Vladimir Putin.

"Now, I know this morning some people are offended and upset that I have been to interview Marine Le Pen, and that we are showing this interview on Remembrance Sunday. I understand that, but I would say this: Le Pen could - under some circumstances – become the next French President in the spring. This week in the immediate aftermath of the Trump victory, she's declared that the whole world has changed and that her brand of politics is on the march. What does that mean? In the end, we are a news programme and I don't think the best way to honour the fallen is to fail to report on the next big challenge to western security..."

The Head of Editorial Standards noted that Andrew Marr had gone to some lengths in this introduction to explain what the programme considered to be the editorial justification for broadcasting the interview at that time, pointing in particular to “the great political change” exemplified in the US election result that week and the growing support for the far right mirrored in the rise in popularity of Ms le Pen’s Front National. She noted that the programme had acknowledge that some might have found the timing offensive but, in the context of a topical news agenda, had clearly set out the reasons for going ahead with the interview. There was a clear editorial purpose and the content was signposted. The Head of Editorial Standards considered therefore that Trustees would be likely to conclude that The Andrew Marr Show had met the required guidelines on Harm and Offence.

The Head of Editorial Standards then noted the BBC’s guidelines on impartiality which complainants felt had been breached by the failure of the programme to make clear and then challenge the views of Ms Le Pen. These guidelines required the BBC to meet the standard of “due impartiality” defined as being “adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation” and noting that:

Due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed. When dealing with 'controversial subjects' this should be clearly signposted, should acknowledge that a range of views exists and the weight of those views, and should not misrepresent them.

She noted that complainants had also asked the BBC to consider the following guidelines on impartiality:

...we may need to make it clear to the audience when contributors are associated with a particular viewpoint, if it is not apparent from their contribution or from the context in which their contribution is made.

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

We should ensure that appropriate scrutiny is not limited just to those who are in government, or hold power and responsibility, but is also applied to those who oppose them, campaigns, lobbyists, opposition groups and others, including views expressed interactively by the audience.

The Head of Editorial Standards noted that Andrew Marr had described Ms Le Pen as “the highly controversial leader of the right wing, nationalistic French National Front” and that in its responses the BBC had also referred to the views of CNN’s Christiane Amanpour expressed earlier in the programme. She had said of right-wing European leaders including Marine Le Pen “Of course it’s not just right. It’s extreme right. It is hardline right. It is white nationalism..”. It was not necessary for Andrew Marr to describe Marine Le Pen’s views as extreme or far right to achieve due accuracy or impartiality in this context. The Head of Editorial Standards therefore agreed with the BBC that the audience would have been clear about the nature of the views held by Marine Le Pen and that they had therefore been adequately signposted. She noted also that Andrew Marr had challenged Ms Le Pen during the interview on several issues, including the reputation of the FN as a “racist” party, its attitude towards immigration and its relationship with Russia.

The Head of Editorial Standards noted that in its responses the BBC had answered points where complainants felt that Ms Le Pen could have been challenged further about her views. She considered that Ms Le Pen’s answer regarding the FN’s approach to French Muslims made her position clear: “we judge French people obviously based on the way they respect the law, the French constitution, but never based on their religion”. It was open to the BBC to change that further but it was not necessary to do so in order to achieve due impartiality. Likewise on her challenge to Andrew Marr to name something in the party’s manifesto that could be described as “racist”, the Head of Editorial Standards consider that a reply was not necessary in order to achieve due impartiality but that, in any event, it was a rhetorical question which Ms Le Pen went on to answer herself: “Unless you consider, as I know the elite wish to do, and have done for a long time, that all those who are opposed to the process of mass immigration are racists. But I disagree....”

The Head of Editorial Standards noted that complainants had also referred to policies of the FN and views of Ms Le Pen which had been previously expressed and which they felt should have been raised and challenged. However she considered that Andrew Marr’s description of Ms Le Pen as “highly controversial” and Christiane Amanpour’s view of the far-right expressed during the paper review provided sufficient context for the interview and that the decision not to raise and challenge other issues did not “normalise” such views and groups. She further noted that the BBC had explained that the BBC’s guidelines also recognised that it was not always possible to cover all aspects of an issue within a single programme and that balance was achieved over time and across a range of output.

Finally she noted that the complainant had objected to the format feeling a panel with an anti-fascist would have been appropriate. This issue however was not a matter for the Trust. The Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC’s editorial and creative output” is defined as a duty that is the responsibility of the Executive Board under paragraph 38, (1)(b).
Taking these points 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 complaint concerned a scene in an episode of Casualty in which a puppy was given as a Christmas present.

The complainant made the following points:

- A puppy was shown being given as a Christmas present to the sick daughter of one of the hospital consultants, but no mention was made of the responsibilities involved in caring for a puppy.

- She said the RSPCA campaign, “A Dog is for life not just for Christmas” was ignored. She felt the BBC had acted irresponsibly in broadcasting this scene two weeks before Christmas, when there was still time for viewers to buy a puppy as a present.

- She appreciated that Casualty was a work of fiction but it was set in the present day and her understanding was that it was meant to be realistic and credible. She believed that considerable emphasis was put on getting medical facts right.

- She felt that Grace’s mother, a hospital consultant, should have set a better example and her irresponsible action could lead to it being emulated by some viewers.

Audience Services made the following points:

- The puppy was part of a storyline involving Grace who had suffered a car crash and then a helicopter crash while being transferred to hospital.

- The programme makers felt it was important to note that the character, Grace, had been asking for a dog for a long time and well before her accident. It wasn’t a decision taken lightly by her consultant mother, Connie, but a considered one with positive reasons to aid Grace’s recovery.

- When Grace was in a coma, Connie talked to her about the dog and showed her a picture to encourage her to come back to life, which worked. The programme makers felt they had followed due diligence in the story line overall. They agreed that the decision to get a pet is a serious one and not one taken lightly just because it was Christmas.

- Casualty was a fictional drama and the majority of viewers would appreciate that not all actions were to be imitated.

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

**Appeal**

The complainant appealed to the BBC Trust on the substance and handling of her complaint. She made the following points:
She considered that programme makers deliberately incorporated irresponsible behaviour by the lead character, consultant Connie Beuchamp. While a real fluffy white dog/puppy was placed in her daughter's arms no mention was made of the practical issues involved in puppy care.

She did not accept that her complaint had not raised a significant issue of general importance that might justify further investigation. She felt the BBC had brushed aside all criticism of the plot line and its potential damaging impact on animal welfare and child safety.

She felt the tone of the BBC's responses was patronising. The first pointed out that Casualty was a fictional drama and that the majority of viewers 'will appreciate that not all actions are to be imitated'. The second response gave some information from the programme makers, including 'When Grace was in a coma Connie talked to her about the dog and showed her a picture to encourage her to come back to life. And it worked' (My italics) The scriptwriters were thus deliberately linking the purchase of a puppy with a recovery from illness.

The subsequent episode was screened on 31 December 2016 and a flashback of the presentation of the puppy was shown at the start. The dog was referred to by name 'Simba' but not shown. No reference was made to the arrangements in place for its care.

She felt that since some programmes were followed or preceded by reference to support groups or warnings of upsetting scenes, the BBC was presumably aware of the potential influence of its fictional output. She requested that the BBC Trust investigated her concerns about this plotline from an animal welfare and child welfare perspective.

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

The Head of Editorial Standards, BBC Trust, understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Head of Editorial Standards, BBC Trust, considered the complaint against the harm and offence editorial guidelines relating to generally accepted standards. The introduction to these guidelines states the BBC's aim to reflect the world as it is, including all aspects of the human experience and the realities of the natural world. In doing so, the BBC balances its right to broadcast innovative and challenging content, appropriate to each of its services, with its responsibility to protect the vulnerable and avoid unjustifiable offence.

She noted that the Harm and Offence Guidelines relating to Imitative Behaviour state:

**5.4.49**

Very careful judgements are required about content which might lead to dangerous imitation, particularly when they include the use of domestic objects (such as knives, hammers and scissors) in violent acts. Such content must not be featured in output made primarily for children unless there is a strong editorial justification. Factual programmes designed for children should ensure that care is taken to discourage imitation of techniques, experiments and so forth.
The Head of Editorial Standards, BBC Trust, noted that the Editorial Guidelines for Harm and Offence were intended to protect vulnerable groups – including children – from material that might be harmful. In terms of assessing whether specific output would be appropriate for broadcast, the likely audience expectation was a significant factor. She noted that the scene in question was a fictional one, in a drama not made primarily for children, and it did not feature any dangerous behaviour likely to lead to imitation as defined in the Guidelines. She appreciated that the complainant had found Audience Services’ response on this point to be patronising, but she agreed that the scene would have been well within the expectations of the Casualty audience and that the broadcast did not contain anything that amounted to a call to action which would have led viewers to think they should consider purchasing a pet without due consideration and preparation.

The Head of Editorial Standards, BBC Trust, noted that the storyline leading up to the acquisition of the puppy had played out over a protracted period (as pointed out by the programme makers in the Stage 1 response) and had involved an awareness of the responsibility involved in owning a dog. She noted that Grace had wanted a puppy for a long time and, following her severe injuries, her mother had finally agreed to the puppy as a Christmas present, hoping it would assist her daughter’s recovery. She considered Trustees would be likely to conclude that the programme makers had demonstrated a clear editorial purpose, taking account of generally accepted standards.

The Head of Editorial Standards, BBC Trust, had not seen evidence to suggest that the fictional scene at the centre of the complaint failed to meet the requirements of the Editorial Guidelines. She noted that decisions about what stories to include in dramas were matters of editorial judgment that rested with the BBC Executive, as long as they met the BBC’s editorial standards. She believed Trustees would be likely to conclude that these standards had been met, and that the responsibility for decisions about dramatic content rested with the Casualty programme makers.

Taking this into account the Head of Editorial Standards, BBC Trust considered that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.
Request to remove name from BBC online article, published in 2014

The complaint concerned a BBC online article first published in 2014. In July 2016 the complainant made a request to have the article removed from the BBC website. The BBC website team agreed to remove his surname but the complainant believed that he had not been sufficiently anonymised following this amendment to the article.

The complainant made the following points:

- He originally asked for the article to be removed from the BBC website because he was concerned that it could affect his job prospects if it was seen by potential future employers.

- Following an appeal to the Trust when his request was declined, BBC website agreed to remove the complainant's surname from the article. However, he did not consider that this was sufficient to obscure his identity; he felt that anyone who knew him would know that the article was based on him. He was also concerned that the article appeared easily in Google search.

- He was unhappy that it had taken an eight month correspondence with the BBC before any action was taken to anonymise the article by removing his surname. He said the continuing presence of the article online had affected his personal life and invaded his privacy. He considered that his human rights had been breached.

- He continued to request that either the article be removed completely from the BBC website or be made completely anonymous by removing his entire name, not just his surname. He said that there were many facts relating to his identity still in the article such as the title of his job, the fact that he grew up in London, and the name of the country in which he resided.

Stage 1

The Editorial Director, BBC.com, declined the complainant’s request to remove the article from the BBC website. He made the following points:

- The archive of the BBC’s online content was a matter of public record and there was therefore a presumption that material published by the BBC online would become part of a permanently accessible archive and would not normally be removed or changed.

- The BBC had agreed to stop actively promoting the content of the article through social media, but it would not prevent the article being ranked on Google and to address that issue, the complainant would need to make a request to Google directly. However, even if such a request was successful, the results would only be removed from EU versions of the search engine and the article would remain on the BBC Capital site.
Stage 2

Following further correspondence, the Head of Editorial Standards, BBC Worldwide, spoke to the BBC website team who agreed, as an act of goodwill, to anonymise the complainant’s details by removing his surname from the article. He made the following points:

- Removing the complainant’s surname from the article meant that the only link to him would be his first name and the fact that he worked for the company mentioned in the article.

- He pointed out that this amendment would only affect the original article published on the BBC website; any copies made by third parties were beyond the BBC’s control. However, he said it appeared that only the original article appeared at a high ranking in search engine results.

- He believed that by removing the complainant’s surname, the BBC had taken reasonable steps to accommodate the complainant’s concerns. He noted that the complainant had co-operated with the journalists who wrote the article and had consented to his name being used at the time of publication.

Appeal

The complainant appealed to the BBC Trust on the substance and handling 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.

She noted that the complainant believed that the removal of his surname from the article in question did not anonymise him sufficiently. She also noted that he was unhappy about the length of time it had taken for the BBC to act on his concerns since he first entered into correspondence about the issue. She noted that the complainant felt that he had been sent round in circles because he had been advised to get in touch with the BBC Trust by BBC Worldwide Editorial Standards, and he believed the Trust had subsequently advised him to get back in touch with BBC Worldwide Editorial Standards.

In terms of the substantive complaint, the Head of Editorial Standards, BBC Trust, believed Trustees would be likely to conclude that BBC Worldwide had taken reasonable steps to anonymise the complainant’s identity by removing his surname. She noted that the complainant had consented to his name being used by the authors of the article at the time of its publication. As explained by BBC Worldwide at Stage 1, the archive of the BBC’s online content was a matter of public record and there was therefore a presumption that material published by the BBC online would become part of a permanently accessible archive and would not normally be removed or changed.

She considered that BBC Worldwide had given the complainant’s request full consideration and had operated BBC policy appropriately. She noted that the decision to remove the complainant’s surname from the article had been made as a gesture of goodwill and the BBC had not been under an obligation to do so.
The Head of Editorial Standards noted that the Trust did not have a role in making decisions about BBC output unless a possible breach of standards was identified. She noted that the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “editorial and creative direction” and the “operational management” of the BBC were defined as duties that were the responsibility of the Executive Board under Article 38, (1)(b) and (c). She considered that the content of BBC online articles, and decisions about the operation of BBC policy concerning requests to amend articles after publication, were the responsibility of BBC Editors and were not matters for the Trust.

With regard to the complaint handling issue, the Head of Editorial Standards, BBC Trust, reviewed the correspondence between the complainant, BBC website, BBC Worldwide and the Trust Unit. She noted that the complainant first raised his request for the article to be removed on 11 July 2016 and received a response within a week of his first contact with Audience Services. He received a response from the Editorial Director, BBC.com on 12 August 2016 confirming that the BBC would not comply with his request and advising him that if he wished to escalate his concerns, he should contact the Head of Editorial Standards, BBC Worldwide. She noted that the complainant did not appear to have had any further contact with the BBC on this matter until 11 December 2016 when he sent an email to the Head of Editorial Standards, BBC Worldwide, who responded on 22 December 2016 stating that as a gesture of goodwill, the complainant’s surname would be removed from the article. The correspondence with BBC Worldwide continued during December 2016 and January 2017. On 6 January 2017, the complainant was advised to contact the BBC Trust if he wished to escalate his concerns further. The complainant’s appeal to the Trust was received on 16 January 2017. The Head of Editorial Standards, BBC Trust, believed that the complainant had received timely and appropriate replies to his correspondence.

With regard to the complainant’s concern that he had been given misleading information by the BBC Trust in terms of progressing his complaint, the Head of Editorial Standards, BBC Trust, noted that although he believed he had spoken to the Trust by telephone on Saturday 7 August 2016, there would not have been anyone present in the office at the weekend. She believed, therefore, it was probable that the advice given to him to contact BBC Worldwide was given by Audience Services, who are available to contact at weekends, but who would not have had the entire record of correspondence available to them when they spoke to the complainant on 7 August. The Head of Editorial Standards, BBC Trust, regretted that the complainant felt he had been misled when trying to make his complaint but she considered that, overall, the complainant had received good, considered and timely responses to his concerns.

**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 Audience Services not to respond further to a complaint about the Political Editor’s question to President Trump at a press conference in Washington on 27 January 2017

The complaint concerned a question posed by the BBC’s Political Editor to US President Trump at a joint press conference with the British Prime Minister in Washington on 27 January 2017. Laura Kuenssberg was invited to put forward a question by Theresa May. She asked:

“Prime Minister you’ve talked about where you agree but you have also said you would be frank where you disagree with the President. Can you tell us where in your talks you did disagree and do you think that the President listened to what you had to say?

... and Mr President you’ve said before that torture works, you’ve praised Russia, you’ve said you want to ban some Muslims from coming to America, you’ve suggested there should be punishment for abortion. For many people in Britain those sound like alarming beliefs. What do you say to our viewers at home who are worried about your views and worried about you becoming the leader of the free world?”

The President turned to Theresa May and asked, “This is your choice of a question?” To laughter from the audience he said, “There goes that relationship.”

Mrs May replied that she had been listening to the President and he had been listening to her: that was the point of a dialogue. She said there were times when they would disagree but the point of the ‘special relationship’ was that they were able to have an open and frank discussion. President Trump said:

“We have a great general who has just been appointed secretary of defence, General James Mattis. And he has stated publicly that he does not necessarily believe in torture and water boarding - however you want to define it. "He’s an expert, he’s highly respected, he’s the general’s general. I’m going to rely on him. I happen to feel it does work but I am going with our leaders."

The Complaint

The complainant made the following points:

- The Political Editor appeared to believe that she was speaking for the entire nation but he was not “alarmed” about President Trump
- The question could have risked an important political relationship
- It showed bias.

Audience Services made the following points:

- Audiences expected BBC correspondents to hold leaders to account and to ask the key questions on their behalf, wherever they are
• The Political Editor did so clearly, robustly and fairly.

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

Appeal

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

Decision of the Head of Editorial Standards, Trust Unit

The Head of Editorial Standards, Trust Unit decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that the complainant’s appeal did not have a reasonable prospect of success.

She noted that no output had been specified but that all BBC output was required to meet the standard of “due impartiality” which, under the Editorial Guidelines, was defined as follows:

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

The Head of Editorial Standards noted that the complainant said that the Political Editor appeared to believe that she was “speaking for the entire nation”. She noted that the BBC’s Political Editor had stated that “for many people in Britain these sound like alarming beliefs” and she had asked President Trump to respond to “viewers at home who are worried about your views”. The Head of Editorial Standards considered that the Political Editor had made it clear that she was asking the President to respond to those people who disagreed with him, and that she did not suggest that these were the entirety of the nation. She also noted that President Trump was free to respond to the question. The Head of Editorial Standards decided that Trustees would be unlikely to consider that a robust question to which there was an opportunity to reply constituted a breach of impartiality.

The Head of Editorial Standards also noted the complainant’s view that it was not appropriate for the Political Editor to put forward such a question as it may have a detrimental impact upon the relationship between the UK and the USA. However, she noted that:

• the Royal Charter guarantees the editorial independence of the BBC

• the BBC’s Editorial Values emphasise the importance of serving the public interest by asking searching questions of those who hold public office

• the Editorial Guidelines on impartiality state

4.2.5 “We exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.”
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 Audience Services not to respond further to a complaint about “Berlin lorry attack: Muslim community holds vigil for victims”, BBC News website, 21 December 2016

The complaint concerned an online story with a 37 second video clip of a group of Muslims in Berlin who were holding a vigil for the victims of the lorry attack on the Christmas market on 19 December.

The complainant made the following points:

- the article omitted the fact that the group of Muslims holding the vigil were from the Ahmadiyya Muslim community
- the omission of this “one salient detail” amounted to bias
- it was always the Ahmadiyya who held these vigils and they clearly identified themselves because they did not wish to be associated with “the horrific crimes committed in the name of mainstream Islam”
- the BBC consistently reported the honourable actions of “the most persecuted and despised sect of Islam” as though it were the mainstream view “utterly ignoring the reality that the people holding that vigil, worthy though it was, were a tiny minority held in utter contempt, persecuted, and killed, by other Muslims”
- the Ahmadiyya subscribed to many of the values of a modern, pluralistic, western country entirely at odds with the views of most Sunni or Shia Muslims. The failure to refer to the group by name was “poor journalism at best and outright mendacity and deliberate obfuscation at worst”.

Audience Services made the following points:

- the text and video report offered a brief overview of the event as police continued their investigations. It included a small number of interviewees in Berlin and witnessed the crowds in attendance
- this was a short piece of video and in that context, it was not necessary or especially relevant to give details about the particular allegiances of the organisers
- the BBC had no information that the people interviewed were Ahmadiyya and they did not refer to any particular branch of Islam in their comments
- while the BBC aimed to provide extensive news coverage, it was not always possible or practical to reflect every element of a subject within individual reports
- BBC editors were charged with ensuring that over a reasonable period they reflected the range of significant views, opinions and trends in their subject area. The Berlin lorry attack received detailed coverage on the BBC news service.

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

The complainant appealed to the BBC Trust on the substance of his complaint. He said it was misleading to consistently present Ahmadiyya Muslims as “Muslims” generally.

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

The Head of Editorial Standards understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

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

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

The Head of Editorial Standards understood that the complainant felt it was misleading not to refer to the fact that the group holding the vigil was made up of Ahmadis. She noted the introduction to the video clip:

“Muslims in Berlin have held a vigil to show their solidarity with the victims of an attack on a Christmas market in the city centre, in which 12 people were killed.”

and what had been said in the clip:

We want to clearly distance ourselves from every person that attacks our society. Germany is our home. We love Germany. We want to live here. Berlin is our city and we will not allow our life to be threatened.

Islam is a peaceful religion like any other religion. Some people misuse religion and that is why we need to show a clear line, saying that Islam stands for peace.

She noted that the BBC had pointed out in its responses that they had no knowledge that those at the vigil were Ahmadis and that this was a very short clip which was not intended to reflect anything more than one small element of the Berlin lorry attack story. She noted that the clip had not suggested that the views put forward were those of anyone other than those filmed in the video, members of a group clearly identifying themselves by wearing T-shirts bearing the message “Muslime für friedien”. Given this context she did not consider that the reader would have assumed the views were those of all Muslims and would not therefore have been misled. She considered therefore that using the clip in this way without referring to those at the vigil as Ahmadis was duly accurate and this did not amount to bias.

**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 Audience Services not to respond further to a complaint about BBC news reports on the Berlin market attack, 23 December 2016

The complainant made the following points:

- the BBC stated in its news reports that ISIS claimed responsibility for the terrorist attack on the Berlin Christmas market. The BBC said that this information came from the Amaq News Agency yet information was not provided to verify the existence of such a news agency or any corroborating evidence as to the reliability of the information

- what were the sources of these “claims” and how are they verified?

Audience Services made the following points:

- there was a history of such organisations contacting media to lay claim to events. It was widely reported that this was the case here, together with a video of the suspect pledging allegiance to IS in advance of the attack: http://www.bbc.co.uk/news/world-europe-38396987

- Audience Services included links to several web pages which outlined some background on the BBC’s approach to verifying sources and the role of Amaq in the Middle East.

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

Appeal

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

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Head of Editorial Standards noted that in its responses Audience Services had sent several links to the complainant which had outlined the BBC’s approach to reporting claims of responsibility and which had illustrated how this claim had been reported in this case.

She noted that the BBC had referred the complainant to the BBC’s Editorial Guidelines which in the section “Gathering Material” stated that the BBC was required to take steps to achieve “due accuracy”:

In all our content we must check and verify information, facts and documents, where required to achieve due accuracy. If we have been unable to verify material sufficiently, we should say so and attribute the information.
The Head of Editorial Standards also noted that the BBC had included in its responses links to the BBC Journalism Academy which featured several interviews exploring the difficulties faced by journalists in verifying information, whether it be video footage, photographs or claims of responsibility. These articles had also referred to the effectiveness of the propaganda machine of so-called Islamic State which today used YouTube, Facebook and Twitter to spread its message and to the need for journalists to treat all material with a sceptical approach.

She noted that one of the articles referred to by Audience Services, “Berlin attack: So-called Islamic State claims responsibility” on 20 December 2016, said that:

“So-called Islamic State (IS) has said one of its militants carried out the lorry attack on a Berlin Christmas market, which left 12 people dead. The identity of the attacker has not been established and there was no immediate way of verifying the claim.

"IS said through its news agency that one of its "soldiers" had carried out the attack, in which 49 people were also injured, "in response to calls to target nationals of the coalition countries". German Interior Minister Thomas De Maiziere reacted cautiously to the claim, saying "several lines of investigation" were being pursued."

Later in the same article the BBC’s Security Correspondent had analysed the news under the heading “IS opportunism?”

“The IS claim does not prove much in terms of the attack in Berlin. The group often refers to individuals who carry out attacks as its "soldiers" but the crucial question is firstly whether the individual had any form of direct contact with IS.

"Face-to-face or online communication are possible but far from certain. If there was no direct contact, it could still be the case that an individual was inspired rather than directed by the group.

"In this case, an individual may leave his or her own pledge of allegiance in written form or online or in a video.

"But until such evidence emerges, it remains hard to know if this is just an opportunistic claim by the group rather than one based on real substance."

The report on 24 December 2016 “Berlin lorry attack: What we know” stated that:

“So-called Islamic State (IS) has said one of its "soldiers" carried out the attack on Breitscheidplatz Christmas market, without offering evidence.”

She noted that Audience Services had also included a report by BBC Monitoring "Mosul: How is IS selling the battle?“ which examined the “propaganda offensive” of so-called Islamic State and referred to its “self-styled news agency Amaq”. She also noted in news articles since the Berlin attack the agency was referred to as "IS-affiliated Amaq news agency", “the IS-supporting Amaq news agency” and IS’s “self-styled news agency".
She considered therefore that Audience Services had provided a detailed and reasonable response to the complainant and the BBC had therefore acted appropriately in declining to enter into further correspondence.

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 Audience Services not to respond further to a complaint about BBC News at Ten, BBC One, 25 January 2017

The complaint concerned a special report on BBC News at Ten about the marked increase in knife crime. It was the first headline and the first report on the bulletin. The report was also posted online on the BBC’s YouTube channel and was titled ‘We have to walk round with knives’ – a direct quote from one of the interviewees featured in the item.

The presenter’s introduction included the facts that in 2016 a knife or blade was used in a crime every sixteen minutes somewhere in the UK and that new information from police showed that there were more than two thousand victims of knife crime last year aged 18 or younger, a rise of over 45% in three years in England and Wales.

The extended report was filmed in Liverpool. It included personal testimony from those who carried and used knives to those who were the victims of knife crime in the city. The reporter said: “Tonight it’s Liverpool but this story could be told in many cities. It’s one of knives, fear and wasted lives.”

The complainant made the following points:

- The report was prejudiced against Liverpool. Liverpool should not have been featured because its crime statistics (including knife crime) are lower than other large UK cities like London and Manchester.

- The production staff for the report were not based in Liverpool. The BBC could have filmed it where they were based i.e. London or Manchester.

- When the BBC first posted the report on YouTube it was ‘disgracefully’ titled “Liverpool: ‘We have to walk round with knives’ – BBC News”.

Audience Services made the following points:

- The BBC is not prejudiced against Liverpool. BBC News made it clear in the report that Liverpool was no different from any other big city in Britain.

- The report had to be filmed in a place where crime levels were concerning and where the problem was publicly acknowledged, as in Liverpool.

- The quote in the YouTube video title accurately reflected the actual words spoken by the Liverpool resident featured in it.

- It is not relevant to the filming of a report where reporters or editors are based.

Audience Services said they had nothing further to add and that they did not believe the complaint had raised a significant issue of general importance that justified further investigation.

Appeal

The complainant appealed to the BBC Trust and said the specific points raised in her complaint had not been answered properly; the sensationalist report would have scared
local people and it would have been cheaper to make the report in London or Manchester and save licence fee payers money.

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

The Head of Editorial Standards, BBC Trust decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

The 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...

The Head of Editorial Standards noted the context of the BBC News report and the reply from Audience Services, which explained that the BBC was not prejudiced against Liverpool and that the city had been chosen to illustrate the issues raised by knife crime across the UK because the issues in Liverpool were the same as any other big city in the country. The Head of Editorial Standards also noted that Audience Services said it was irrelevant where production staff making such a report were based. She concluded that the decision to film in Liverpool was a decision relating to the direction of the BBC’s editorial and creative output and was the responsibility of the BBC Executive (Royal Charter 2006, article 38(1)(b).

The Head of Editorial Standards also noted that Audience Services said the YouTube headline was a direct quote from an interviewee in the report. She concluded that its use was in line with the long established journalistic technique for headline writing. This was also a decision relating to the direction of the BBC’s editorial and creative output and was the responsibility of the BBC Executive (Royal Charter 2006, article 38(1)(b).

The Head of Editorial Standards concluded that the report, first broadcast on BBC One, and then available online, would not perpetuate prejudice or disadvantage 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 Audience Services not to respond further to a complaint about BBC News at One, 17 January 2017

The complaint concerned a report by the BBC’s Economics Correspondent on the BBC News at One shortly after Prime Minister Theresa May had set out her plans for Britain’s departure from the European Union.

The complainant made the following points:

- the report was biased and based on suppositions
- negative reporting did not help Britain get the best from negotiations, nor did it help unite the country
- the BBC should report some positive Brexit stories instead of only negative stories
- the BBC should report the news rather than the opinions of their experts, as BBC pundits did not know what will happen in future.

Audience Services made the following points:

- the BBC was concerned to learn of the complainant’s unhappiness and had reviewed the output
- the complainant’s concerns had been discussed with senior editorial personnel within BBC News
- the BBC’s coverage was impartial
- the programme had reported Theresa May’s speech in detail and had gathered a range of reactions from voices both supportive and critical in order to allow a wide range of views to be heard on Mrs May’s main points.

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

Appeal

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

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided it did not.
The Head of Editorial Standards noted that the principles relating to the BBC’s coverage of politics are set out in the BBC’s Editorial Guidelines:

- “We must treat matters of politics and public policy with due accuracy and impartiality in news and other output” [10.2.1]
- “We must not express an opinion on current affairs or matters of public policy…” [10.2.2]
- “Our audiences must be able to trust the BBC and be confident that our editorial decisions are not influenced by… political or commercial pressures…” [14.1]

The Head of Editorial Standards noted the complainant’s view that the BBC should not weaken the UK government’s negotiating position by reporting “negative stories” or by its actions perpetuate the power division in the country, but she noted that, were the BBC to take such a position it would be in breach of its guidelines which require the BBC “to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output”.

The Head of Editorial Standards noted that this episode of the BBC News at One was broadcast shortly after the Prime Minister had set out her much-anticipated plans for her approach to Brexit.

The opening headline stated:

“The Prime Minister says the UK cannot remain a member of the single market after it leaves the EU. In her most detailed speech since the Brexit vote Theresa May said instead a global Britain would seek a bold and ambitious free trade agreement with the EU.”

The programme included the following reports:

- Political Correspondent Ian Watson on “Theresa May’s vision of Brexit Britain”
- Economics Correspondent Andy Verity on the single market, tariffs and the European customs union: “what exactly does it all mean?”
- Assistant Political Editor Norman Smith’s assessment of how much detail had been revealed and how much clarity had been shown
- reporter Gavin Lee on the reaction in Brussels
- Business Editor Simon Jack on the reaction from business leaders at the World Economic Forum in Davos
- Phil Mackie interviewed people in a café in Birmingham (a city where people voted by a narrow margin to leave the EU) on what they made of Mrs May’s speech.
The Head of Editorial Standards therefore decided that Trustees would be likely to consider the BBC had given “due weight to events, opinion and main strands of argument”.

She noted that the complainant had found the Economics Correspondent’s report to be negative, biased and full of suppositions. She noted that in this he had said that:

- the EU was the UK’s biggest trading partner, with half of all UK exports going to the EU
- membership of the single market entailed free movement of goods, capital, services (“in theory at least”) and, “more controversially”, people
- “the fear is if we leave the single market our exporters won’t be able to sell as much to our main trading partner”
- members of the customs union did not pay tariffs and there was a risk that leaving the customs union might make, for example, the UK’s car industry less competitive
- this was one reason the pound fell so sharply after the Brexit vote
- sterling’s fall had, in turn, driven up costs for some businesses, though producers had not (as yet) passed most of these costs onto consumers
- if they did, there may be a rise in inflation and this may be a temporary one-off adjustment
- if workers started demanding higher wages, however, inflation may become a more permanent phenomenon.

The Head of Editorial Standards noted that the report aimed to explain the significance of Mrs May’s stated intention to leave the single market and, given the importance of the existing trading relationship between the EU and the UK, she considered that Trustees would be unlikely to decide that the report breached the BBC’s guidelines on impartiality by reporting the risks involved in doing so. She also noted that the earlier reporting had made it clear that Mrs May was seeking a “bold and ambitious free trade agreement” with the EU and, were this not to succeed, she was prepared to create a lower tax jurisdiction to entice multi-national companies to move to the UK.

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 Audience Services not to respond further to a complaint about Today, BBC Radio 4, 23 January 2017

The complaint concerned an interview on the Today programme on Radio 4 with Tzipi Hotovely, Israel’s Deputy Foreign Minister. This was the studio introduction:

“Israel has approved the building of hundreds of new homes on land it has occupied in east Jerusalem. The settlements are illegal under international law, although Israel disputes that. The deputy mayor of the city, Meir Turgeman, is reported as saying since Donald Trump became US President “now we can finally build”.

The complainant contended that the interview was not impartial. She made the following points:

- beyond the presenter pointing out that the land was occupied, Ms Hotovely was allowed to speak “entirely uninterrupted or challenged”
- Ms Hotovely said that the land on which the settlements stood belonged to Israel and that Palestinians did not want a good life, did not want to negotiations and obviously don’t want their own state, or they would have accepted all the offers Israel has made them over many decades
- there was no Palestinian voice for balance
- “As usual, Israel is treated differently to any other subject and its spokesman allowed to say, what from anyone else, would be totally unacceptable, racist and against human rights and international law”

Audience Services made the following points:

- Ms Hotovely was invited on to explain Israel’s view of the new American President, Donald Trump, and the Israeli Government’s decision to approve new homes in Jewish settlements in East Jerusalem
- the presenter pressed the Deputy Foreign Minister on the legality of such a move
- there was a programme interview the following morning at a similar time with Haneen Zoabi, a Palestinian member of Israel’s Parliament

Audience Services said they had responded as fully as they could and that they did not believe the complaint had raised an issue that justified further investigation.

Appeal

The complainant appealed to the BBC Trust on the substance of her complaint. She said:
“The crux of my complaint was that an Israeli politician was allowed, uninterrupted and unchallenged, to make statements about the Palestinians that were not only untrue, but racist and counter to international law and human rights.”

The complainant did not consider the interview with Ms Zoabi provided the necessary balance because the audience were not told that there would be an alternative perspective the next day. The complainant said:

“the effect was therefore to leave Ms Hotovely’s statement as factual for those who are ill-informed of the situation”.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. The 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 all BBC output was required to meet the standard of “due accuracy” and “due impartiality” which, under the Editorial Guidelines, were defined as follows:

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

The Head of Editorial Standards noted the content of the interview and the points on which the complainant considered Ms Hotovely should have been challenged.

The Head of Editorial Standards noted where Audience Services contended that the presenter did press her interviewee following exchange:

PRESENTER: 566 new homes approved in occupied east Jerusalem. On occupied land. Are we going to see more settlement building now that President Obama has gone?

TZIPI HOTOVELOY:
Well this is not an occupied land. This is the Jewish land forever and I must say that every time this terminology has been used, I must say this is a political terminology, this is not legal terminology. Because according to International Law, when you think about Judea and Samaria, look at the words Ju-dea, this is a part of the Jewish heritage. Think about Jerusalem the only capital that it was of the Jewish people...

PRESENTER:
Of course that is only Israel’s interpretation of International Law

TZIPI HOTOVELOY:
No no no. This is history. This is pure history. Because International Law and according all the peace agreements that were signed never said that Israel can’t build on Jewish land. This is definitely a Jewish land.
PRESENTER:
Of course as I say, the majority of the rest of the world take a very different view.

Elsewhere the Head of Editorial Standards noted the following interventions by the presenter:

- in response to a comment by Ms Hotovely suggesting that Palestinians had been living in a flourishing democracy when, for example, Gaza had been under Israeli control, the presenter said:

  “You are talking about flourishing of ... the Israeli Jews, in settlements. They are flourishing. Of course, the Palestinians are not.”

- In response to Ms Hotovely's statement that Palestinians did not want their own state or they would not have “said no to every international or Israeli offer”, the presenter said:

  “Do you really believe that Palestinians don’t want their own state... What is it that you think they want if they don’t want their own state?”

- picking up on her first question as to whether settlement building would continue, the presenter said:

  So, settlements will continue and more settlements will be built on land that had for decades has been considered to be the future Palestinian state?

  TZIPI HOTOVELY:
  Since 1967 this is a Jewish land as you know. And of course when we built there...

  PRESENTER:
  Since Israel occupied it in 1967.

The Head of Editorial Standards considered that the extracts demonstrated that the complainant’s contention that Ms Hotovely had been allowed to speak “entirely uninterrupted or challenged” was not correct. The Head of Editorial Standards considered also that Ms Hotovely was clearly identified to the audience as a representative of the Israeli government, and that as such listeners were in a position to make an informed judgement as to what weight to place on her claims regarding historical fact and regarding the actions and desires of the Palestinian people.

The Head of Editorial Standards considered this was sufficient to conclude that the complaint did not qualify to proceed to appeal. Whilst the Head of Editorial Standards noted the interview with Ms Zoabi the following day, and agreed with Audience Services that it provided an alternative perspective, she did not consider it was required in order for the Today programme's interview with Ms Hotovely to achieve due impartiality.
Taking this into account the Head of Editorial Standards considered that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.
**Decision of BBC Audience Services not to respond further to a complaint about BBC News online coverage of stories involving Russia**

The complainant made the following points:

- BBC News stories about hacking, doping and other issues published online demonstrated bias against Russia

- the BBC only seemed to select negative stories about Russia and was spreading hate about Russians


- the complainant also included a series of links to stories about accusations that Russia hacked the US election. He said that America did this around the globe but this was never reported by the BBC

- if all the BBC published was articles about Russia hacking other countries and no articles about America hacking other countries then it was inadvertently endorsing this viewpoint and only telling one side of the story

- the complainant included links to stories from 2014, 2015 and 2016 about accusations of Russia doping their Olympic athletes. He said that again there was no mention of any other countries doing the same thing (for example Australia in 2013)

- the BBC played a large role in encouraging negative and racist thoughts towards Russians. If the audience heard next to nothing in the media about Russia and only had BBC news stories to form an opinion about Russia from, then obviously the reader would associate Russia with cheating and hacking and not much else

- where were the articles on the BBC website in the last 3 months which showed Russia and Russians in a positive light.

Audience Services made the following points:

- quotes or claims in headlines had no bearing in terms of value over the content of the actual article. Claims in the headline did not take precedence over the content nor did it ever imply that the BBC endorsed claims made in the headlines

- for example, "Russia used Syria as live-fire training - US general" used as an example by the complainant contained the claim made by Lt Gen Ben Hodges. In
the third paragraph, the article said: "Russia's defence minister said on Thursday that its air force had killed 35,000 fighters in Syria." In the closing nine paragraphs there were quotes from not only the Russian Defence Minister Sergei Shoigu, but also President Vladimir Putin in all but one paragraph

- articles were not published on the basis of them being positive or negative towards a country but on whether a story was newsworthy

- the Russian stories about hacking and doping were multi-faceted in nature and no-one would seriously dispute that they were hugely newsworthy stories which had also been covered extensively by all major media outlets

- including articles which “showed Russia and Russians in a positive light” was not how impartiality was determined. Articles were required to adhere to “due impartiality” which was explained in the BBC’s guidelines as needing to be “adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation” and as “often more than a simple matter of 'balance' between opposing viewpoints”

- what was important was that the BBC reported newsworthy developments in an impartial manner, which was partially dependent on the day’s news agenda and did not mean seeking out “positive” stories simply for the sake of it


- it also reported Angela Merkel’s reaction to receiving information in 2013 that the US had hacked her phone “Merkel calls Obama about 'US spying on her phone” (http://www.bbc.co.uk/news/world-us-canada-24647268)

- the suggestion that the BBC was unwilling to do stories about US surveillance painted a picture of coverage that the BBC did not recognise

- the complaint about the failure to cover the Australian doping story was based on the assumption that the two must have equal news values simply because they both involved doping. In fact the Australian story was published on the basis of findings from a year-long study by the Australian Crime Commission, a domestic agency. In the URL provided by the complainant correspondent Nick Bryant made the point that: ”Traditionally, sport has been an arena where Australia has
projected itself onto the world stage. There is great pride in how a nation of just 23 million people enjoys so much per capita success. If its sporting reputation is tarnished, then so too is its global reputation. That said, two sporting codes under particularly close scrutiny, Aussie Rules (AFL) and rugby league (NRL) do not have much of an international profile."

This, along with the fact that the investigation was nearly four years old, had not materially developed and did not implicate the state, went some way towards explaining why it was not something the BBC covered today

- by contrast the Russian doping story involved indications in the McLaren report of “systematic state-sponsored subversion of the drug testing processes by the government of Russia”

- this aspect of the complaint was not making a like-for-like comparison in suggesting this was evidence of inequitable treatment purely because of the countries involved

- there were no pro or anti-Russia articles on the BBC News website. The BBC as an organisation had no view or position itself on anything it reported -- the aim was to identify all significant views and to test them rigorously and fairly on behalf of audiences providing the information which would enable readers to make up their own minds.

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

**Appeal**

The complainant appealed to the BBC Trust on the substance of his complaint. He included a list of countries accused of hacking which appeared in BBC news articles at the beginning of January 2017. He said that Russia appeared 18 times yet nowhere did the BBC mention that the US government was also “involved in the very same underhand modus operandi”. By contrast, the complainant said, Russia was not even in the top 10 of countries carrying out attacks. He said this was not “due impartiality” but “clear racism and propaganda”.

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

The Head of Editorial Standards decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

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

> The term “due” means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.
In addition she noted that:

"Due" impartiality is often more than a simple matter of "balance" between opposing viewpoints. Equally, it does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

The Head of Editorial Standards noted that in its responses the BBC had explained in detail the approach taken by BBC journalists when deciding which stories to cover. The key criteria for publishing a story were whether it was newsworthy and would be of interest to the audience and decisions were not based on whether stories were “positive” or “negative” in tone. She noted that “due” impartiality was not dependent on providing a balance between “positive” or “negative” stories but was determined by the manner in which each individual story was reported.

The Head of Editorial Standards also noted that in its responses the BBC had looked at some of the individual stories highlighted by the complainant and had explained why the stories each met the requirements for due impartiality. In addition they had pointed out where BBC News had reported several stories involving “hacking” by the US and had explained why the BBC did not feel it was possible to make a “like for like” comparison between stories of doping involving Russia and Australia.

Overall therefore the Head of Editorial Standards considered that Audience Services had provided a reasonable and reasoned response and that the complaint did not raise an issue under the Editorial Guidelines. She noted that decisions about which news stories were covered on any given day and the content of those news stories were the responsibility of individual news editors. Such issues were editorial decisions which were the responsibility of the BBC’s Executive Board. They were not a matter for the BBC Trust unless they involved a breach of editorial standards which she did not consider was the case here.

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.
Flog It!, BBC One, 29 November 2016

The complaint concerned a line of commentary in an episode of the television series Flog It!, in which members of the public bring antiques to be valued and potentially auctioned. The edition in question was filmed at Southwell Minster in Nottinghamshire. Viewers heard that the 13th century Chapter House was renowned around the world, not only for its architecture but also for the extraordinary mediaeval stonework; in particular the numerous depictions of what became known as “the green man”.

The complainant’s point related to this section of commentary which accompanied a montage of stone carvings from around the walls of the building:

“As well as the Green Man there is a Green woman. This is extremely rare and valuable, and she’s over there. There are other faces as well that you can spot. One above the door. Now that’s the Jewish usurer. He was the money lender who probably financed the Chapter House.”

The complainant made the following points:

- Assuming the presenter knew what the word usury meant, he had no way of knowing what rates of interest, if any, were charged
- He might have questioned the fact that the builders had to go to a Jew for the money when virtually all the wealth in the land was controlled by the church
- Flog It should not have been used as a platform for the presenter to air his anti-Semitic opinions

Audience Services said:

“Whilst discussing the history of the Chapter House and outlining the significance of the various faces carved into the stonework, Paul pointed out "the Jewish usurer", before proceeding to explain that "he was the moneylender who probably financed the Chapter House".

“I am sorry to read you are unhappy with James's description of the carving and the information provided, please be assured, it is never our intention to cause offence.”

Audience Services said they had responded as fully as they could and that they did not believe the complaint had raised an issue that justified further investigation.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He said the Oxford English Dictionary defined usurer as:

“a person who lends money at an unreasonably high rate of interest”
Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. The 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 all BBC output was required to meet the standard of “due accuracy” and “due impartiality” which, under the Editorial Guidelines, was defined as follows:

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

The Head of Editorial Standards considered also the following section from the Harm and Offence chapter of the Editorial Guidelines:

"In some instances, references to disability, age, sexual orientation, faith, race, etc. may be relevant to portrayal. However, we should avoid careless or offensive stereotypical assumptions and people should only be described in such terms when editorially justified.”

The Head of Editorial Standards considered the interpretation of “usurer” suggested by the complainant. She noted the complainant’s citation from the Oxford English Dictionary (OED) and his contention that the OED defined usurer as “a person who lends money at an unreasonably high rate of interest”.

The Head of Editorial Standards noted the full entry for “usurer” from the current edition of the OED which she considered was more nuanced than the complainant had suggested:

“One who practises usury or lends money at interest; a money-lender, esp. in later use one who charges an excessive rate of interest.”

The Head of Editorial Standards noted information from the OED entry that the literal meaning of usurer is from the medieval Latin for “moneylender”, and that it only took on the pejorative sense identified by the complainant in later use.

She considered the context in which the word was used in Flog It!, which was in relation to a character depicted in a 13th century stone carving.

The Head of Editorial Standards noted the relevant line of commentary:

“Now that’s the Jewish usurer. He was the money lender who probably financed the Chapter House.”

She noted that the presenter had used precise language to contextualise his description of the carving as a representation of the “Jewish usurer”. He clarified that he was using the noun in its literal 13th century sense of money lender. The Head of Editorial Standards noted too that no mention was made of interest charges – excessive or otherwise. The factual information that the usurer had probably financed the Chapter
House was in the opinion of the Head of Editorial Standards, appropriately neutral. She noted also the general agreement amongst medieval historians that Jewish moneylenders financed both Southwell and York Minsters.

The Head of Editorial Standards disagreed with the complainant that the script reflected the presenter’s anti-Semitic opinion. She saw no evidence that the presenter intended any derogatory meaning to be derived from his use of the word “usurer”.

She noted the response from Audience Services, which explained that the presenter was giving information about the history of the Chapter House and that his description of the carving was in that context. She noted that Audience Services had expressed regret that the complainant had been unhappy and said that it was never the BBC’s intention to cause offence.

In summary, the Head of Editorial Standards considered the reference to the “Jewish usurer” appeared to be editorially justified: the sense in which it was used was consistent with the historical nature of the segment, which sought to explain to the audience the significance of the carvings and the story they told.

**Taking this into account the Head of Editorial Standards considered that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence.** She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.
BBC iPlayer – editing of BBC Two documentary: *40 Minutes - The Outcasts*, originally broadcast on 7 February 1985

The complaint concerned an edited version of this documentary which was made available on BBC iPlayer as part of BBC Four’s Culture Shockers Collection. The programme was a portrait of a small motorbike gang in the UK who called themselves “The Outcasts”.

The complainant made the following points:

- He produced the programme for the BBC in 1984 and had noted that in the version recently made available on iPlayer, some material, mostly relating to drug use, had been removed. He said this was a key component of the biker gang’s lifestyle and removing it affected the historical understanding of the programme, the story itself, and its artistic integrity.

- He said that over one and a half minutes of material had been removed, which amounted to 4% of the running time. He felt that the edited version of the film was insipid and had lost its sense of menace and danger. He said that in the new version, the gang members looked “more like a group of small-town scallywags”.

- He felt that viewers of the new version had been deceived because the film had been carefully re-edited to appear as if the removed material never existed.

- He said he realised that drug use was a contentious issue but the current BBC production guidelines were very similar to those in place in 1985.

- He said there had been no change in public attitudes towards the programme’s contentious material and had stayed almost the same, or slightly more relaxed, since the programme was first broadcast in 1985.

- He requested the BBC to re-instate the original version of the programme on iPlayer and said he was very happy if the BBC wanted to put a warning at the start of the programme concerning the drug scenes.

- He did not accept the reasons put forward by the BBC to explain the re-versioning of the programme and felt that the drug related material was editorially justified. Without it, he felt the film did not make sense.

- He explained that prior to the original transmission of the programme in 1985, there were careful discussions with the Executive Producer, the Head of Documentary Features, the Controller of BBC Two, and himself as Producer. He said the mid-1980s were difficult times for the BBC’s documentary output and drug use was a sensitive issue. Nevertheless, it had been decided to include the material which had been removed for the recent iPlayer version precisely because
it was journalistic, editorially relevant and artistically important to the programme. The editorial justification then had not faded with the passage of time.

- The purpose of re-releasing archive programmes was not to censor and sanitise history but to give viewers the opportunity to re-evaluate the past with the benefit of hindsight and, perhaps, to use the technique to understand where present-day events were leading. The UK biker war that broke out a few years after the original transmission gave the programme an added historical relevance.

- He said that the original version of the programme was widely available on several internet platforms and had received well over 100,000 hits without any reported problem with the content.

- With regard to contributors who might have ‘moved on’ since 1985, he did not agree that this was a potential problem. He had had contact with the gang leader during the intervening years and this was not an issue that had been raised. He noted that the gang members used several aliases and would not be easily recognised after a period of 33 years.

BBC Complaints Management said the edit had been made because it was felt that:

- The sequence where drugs were prepared did not meet current editorial guidelines on harm and offence which state that the BBC should “avoid revealing explicit detail of how to use illegal drugs or abuse solvents, unless clearly editorially justified”.

- The programme was now available in an archive context, and the drug use was not revealing a contemporary situation, it did not meet the ‘editorially justified’ criteria.

- While viewers may have found that side of the ‘Outcasts’ lifestyle interesting, it was felt that the removal of the scene for the archive version would not be detrimental or materially affect the general narrative.

- An additional consideration was the fact that the contributors involved in the programme may have moved on from that period of their lives.

BBC Complaints Management acknowledged the excellence of the film, and explained that it was for that reason the BBC wished to make it available to a new audience. They appreciated the complainant’s personal attachment to the documentary and understood his desire for it to be made available on the BBC iPlayer in an unedited form, but the BBC had no plans to reinstate the original version.

**Appeal**

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

- He said his appeal centred on BBC values of truth and accuracy.
The BBC Editorial Guidelines (13.4.13) made provision for showing contentious material as long as there was adequate signposting. On the BBC iPlayer, the programme was flagged with a warning and its appearance in an archive collection entitled ‘Culture Shockers’ was a clear indication that it was of ‘historical/cultural’ interest and might be found to be ‘shocking’.

Similarly, Guidelines 5.4.43 made provision for historic use of illegal drug-misuse material to be shown as long as it was signposted in an historical context.

The concern raised by BBC Complaints about how the programme’s contributors might have “moved on from that period of their lives” was without foundation because over the last few years there had been several public uploads of the original version of the programme to social media sites, therefore giving the contributors considerable recent and wide exposure.

Journalistically, the ‘censored’ version was false and did not paint an accurate picture of the gang, their motivation and their biggest problem. He gave the example of a beach scene which he said did not make sense unless it was clear to viewers that the whole gang set about getting stoned just after they arrived. The film’s storyline was the preparation for an anniversary bonfire party at which a gang member was accidentally killed the previous year and the reasons for this accident only made sense if the gang’s heavy drug use was properly covered in the story.

Without the sense of threat and menace introduced by the drugs material, the gang looked anodyne.

He said the BBC should not be censoring its own programme to present a sanitised view of British history.

He emphasised that he did not condone illegal drug misuse and said he had not been responsible for any of the uploads of the original programme to internet sites.

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.

She acknowledged the complainant’s view that the film engaged Editorial Guidelines on Accuracy and was misleading in that the edited iPlayer version had removed scenes related to illegal drug use in such a way that it looked as if they had never been in the film. He felt this had been done to present a sanitised view of British history and had detrimentally affected the artistic and journalistic integrity of the story.

She noted that all BBC output was required to meet the standard of “due accuracy” which, under the Editorial Guidelines, was defined as follows:
The term ‘due’ means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. 3.1

The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences' trust in our content. 3.2.3

She also noted that the complainant considered that the drug related material that had been edited out of the programme was editorially justified and met the requirements for editorial guidelines relating to Harm and Offence which state that:

When archive content contains material that does not reflect current standards or attitudes towards smoking, alcohol, substance abuse or the use of illegal drugs, the historical context and integrity of the content may provide sufficient editorial justification. However, the content should be appropriately scheduled and, where necessary, signposted and it should be clear to the audience that it is not contemporary. 5.4.43

When archive material would not normally be broadcast by the BBC today because standards or attitudes have changed, there may be reasons to make it available now because, for example, it is of historical or cultural interest. However, the material should be appropriately scheduled and/or signposted and it should be clear to the audience that it is not contemporary. 13.4.13

The Head of Editorial Standards, BBC Trust, sympathised with the complainant in that he wanted to ensure this film retained its integrity. She noted that the complaint concerned material that had been edited out of a previously broadcast version of the programme. She acknowledged the complainant’s view that omitting the drug related material was both detrimental to the narrative and misleading for viewers in terms of how the gang was portrayed. She considered whether the complaint engaged the Editorial Guidelines. Having viewed the material in question she did not agree that the removal of the material in this context meant that the programme failed to be duly accurate and misled the public. In deciding this she took into account that this was an archive programme and was not about illegal drug use by a current ‘gang’. She believed Trustees would be likely to agree conclude that this complaint did not raise a potential breach of the Guidelines.

The Head of Editorial Standards concluded that the BBC was the rights holder of the programme and unless a possible breach of editorial standards was identified the Trust did not have a role in making editorial decisions about BBC output. She noted that the Royal Charter (2006) drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “editorial and creative direction” of the BBC was defined as a duty that was the responsibility of the Executive Board under Article 38, (1)(b). She considered that decisions about the compliance of programme material in The Outcasts were the responsibility of the team responsible for editing archive content for inclusion on iPlayer and were not matters for the Trust.

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 Michael McIntyre’s Big Christmas Show, BBC One, 24 December 2016, 19.25

The complaint concerned a segment of Michael McIntyre’s Big Christmas Show, which was filmed in front of a live audience at the Theatre Royal, Drury Lane. The programme included a special guest appearance by Aled Jones, accompanied by The Snowman, who played Celebrity Send To All. This is a segment of the show when Michael McIntyre takes a celebrity’s mobile phone and sends a text of his choosing to their contacts and then, towards the end of the show, reads out some of the replies.

This is a transcript of the segment of the Big Christmas Show referred to by the complainant, when Michael McIntyre revealed how one of Aled Jones’ contacts had responded to the text:

Michael McIntyre: Now ladies and gentleman. It’s time to find out what replies Aled Jones has received this evening in tonight’s Christmas Celebrity Send to All. Let’s just remind ourselves of the text that I sent for Aled earlier tonight, which was:

I may be having some kind of midlife crisis, but I’ve decided to get a tattoo in the morning. I’m thinking either classic Welsh dragon, Aled in Chinese or The Snowman. Need advice on any other ideas and where to put it? Al x

...Michael McIntyre: Dr Hilary. Is that Dr Hilary from the tele? Aled Jones: Yes.
Michael McIntyre: Dr Hilary Jones? (Yes) I think he’s texted that Welsh word that goes on forever.
Aled Jones: Llanfairpwllgwyngyllgogerychwyrndrobwllllantysiliogogogoch.
Michael McIntyre: Yes. Oh no he’s basically, he’s, I didn’t read the text he said the word
Aled Jones: Llanfairpwllgwyngyllgogerychwyrndrobwllllantysiliogogogoch.
Michael McIntyre: On your willy. There’s more. "I could do this for you under local anaesthetic in red ink. Dr H.” That is a great text. Hilary Jones how dare you. Oh that is brilliant.

...

The complainant made the following points:

- The suggestion that the Welsh place name Llanfairpwllgwyngyllgogerychwyrndrobwllllantysiliogogogoch should be tattooed on the "willy" was in poor taste and clearly offensive and unsuitable for children.

- The comment, with its connotation, was not signposted and was beyond audience expectations for a family entertainment show particularly one broadcast on Christmas Eve and being made about an upstanding citizen-personality like Aled Jones.
• The programme’s inclusion of the suggestive lengthy and detailed tattooing of the adult penis could lead to dangerous imitation by children and the vulnerable (specifically self-harm cutters).

Audience Services made the following points at stage 1a of the complaints process:

• Before the 9pm watershed, except in exceptional circumstances, all programmes on the BBC’s domestic channels should be suitable for a general audience, which includes children.

• Viewers would be aware of Michael McIntyre’s humour and this was a segment that usually features in his programmes.

• This reply was sent to Aled Jones’ phone and it was not a suggestion by Michael McIntyre himself.

Commissioning Editor, Michael McIntyre’s Big Christmas Show made the following points at stage 1B of the complaints process:

• Did not agree with the complainant’s interpretation of the particular meaning behind the joke or with its level of offence.

• The word “willy” was not delivered in an aggressive manner or in an overtly explicit context. It was delivered by Michael McIntyre, a performer who the family audience know and trust and who has within his repertoire the ability to position such a word in a way that is naughty and playful rather than harsh and upsetting.

• The spirit in which the word was delivered was clearly understood by the theatre audience as evidenced by the way it responded to the humour of the situation.

• The word does not make any explicit reference to the nature or dimension of the male member. That aspect of the joke was entirely implicit and not at all explicit. A connection must be made in the mind of the viewer to infer anything particular.

• It is a complete misunderstanding of the joke, as well as being an unreasonable interpretation of it, to assert that Michael McIntyre was in some way referring to an erect penis.

• Use of the word “willy” on the programme was given particular consideration well in advance of its pre-watershed transmission.

• There is a history dating back some time in British comedy and comedy entertainment where terms such as this have featured pre-watershed, either as word play, double entendre or nomenclature.
The show secured an audience of six million and received only one other complaint about the joke.

Editorial Complaints Unit made the following points:

- The BBC’s Harm and Offence guidelines require programme-makers to judge the suitability of content against the context of when it is broadcast and the likely expectations of the audience. They do not require the BBC to never offend, or demand that programme-makers never include material which some may object to, since taste is subjective.

- There was no failure to protect the vulnerable from harm when Michael McIntyre read the text received from Dr Hilary Jones, using the word “willy”. There was nothing sexual or otherwise prurient in what was said.

- The word does not appear on Ofcom’s list of potentially offensive language\(^\text{21}\).

- The reference to part of his anatomy, which was very mildly rude but far from obscene, was in keeping with a previous reference to “bum”. There was some implied adult humour at the idea that a penis might accommodate a lengthy tattoo, but the presenter did not linger on that idea or otherwise draw attention to the potential connotations.

- It did not amount to “pornographic” humour, or go so far beyond audience expectations for this kind of programme that it amounted to a breach in standards.

- The material was not adult in nature and it would be unlikely that anyone watching would be likely to self-harm, or self-tattoo, because of it.

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 and specifically in this case the guideline about Audience Expectations which says:

\[
\text{We should judge the suitability of content for our audiences including children, in relation to the expectations of the likely audience, taking account of the time and day on which it is available, the nature of the service and the nature of the content.}
\]

And the guidelines about Television Scheduling and the Watershed, which says:

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 Michael McIntyre’s Big Christmas Show was broadcast on BBC One on Christmas Eve. It started at 19.25 and the segment which is the subject of this appeal began forty-three minutes into the program and was therefore shown just after 8.05pm. She also noted that the Celebrity Send to All segment would be known to audiences.

The Head of Editorial Standards noted that the BBC’s website described the sixty minute Christmas Special in the following way:

Michael McIntyre hosts a festive edition of his family entertainment series. Michael is joined on stage by comedians Harry Enfield and Catherine Tate and there’s a duet from Michael Ball and Alfie Boe. Plus a choir is given a surprise when they become the unexpected stars of the show. There is also new comedy material from Michael himself, and Aled Jones hands over his phone in Celebrity Send to All.

The Head of Editorial Standards noted that Aled Jones is a Welsh singer, who as a teenage chorister reached widespread fame in the mid 1980’s, when in 1985 he recorded Walking In The Air, a song from the Christmas animation film The Snowman, as a Christmas single. As an adult he’s become famous for his television and radio work including the BBC’s Songs of Praise, and ITV’s Daybreak with Lorraine Kelly. He also currently presents a three-hour radio show on Classic FM on Sunday mornings.

The Head of Editorial Standards noted that Michael McIntyre read out six texts in total, in response to the one he sent earlier in the programme from Aled Jones’ phone. Three of the text replies suggested where to put the tattoo. Two suggested tattoos on his bottom and one a tattoo on his “willy”.

The Head of Editorial Standards noted that the suggestion to tattoo the longest town name in the world referenced Aled Jones Welsh heritage by suggesting the town name as a tattoo and that this was picked up by Michael McIntyre when encouraged Aled Jones to showcase his ability to pronounce the fifty eight character name twice on the show, as they exchanged remarks in a good-humoured teasing way about the text. She also noted that there had been a suggestion to tattoo a flying snowman on Aled Jones’ bottom and another to tattoo a dragon there too.

The Head of Editorial Standards did not consider that the word ‘willy’ was unacceptable pre watershed. Indeed it was a word generally used by children. It was not used in a sexualised way and it was not used in an aggressive way. There was an implicit joke in the length of the word but this was not stressed to the audience. An adult may have drawn a passing inference about length from it but not a child.

The Head of Editorial Standards noted that the live theatre audience had responded in a very positive way to the humour of the Celebrity Send to All segment of the programme.
The Head of Editorial Standards concluded that the tattoo text and related jokes had been within expectations of the Christmas Eve pre-watershed audience for the well-known BBC One family entertainment show. The Celebrity Send to All segment would not have harmed the vulnerable or caused unjustifiable offence 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 Audience Services not to respond further to a complaint about Jeremy Vine, Radio 2

The complaint was prompted by a discussion on the Jeremy Vine show on 10 November 2016 which included a phone-in relating to protests taking place across the USA and in London against the then President-elect Donald Trump.

The complainant made the following points:

- the BBC and Jeremy Vine in particular “inadvertently discriminated” against certain groups, particularly “older white men”

- whilst he enjoyed Jeremy Vine on Eggheads he was concerned about the Jeremy Vine show on Radio 2.

- “recent comments concerning ‘older white males’ (today refined to ‘those without a college education’) can only be interpreted as derogatory to the millions of people who fall into these ‘broad-brush’ categories.”

- Jeremy Vine also displayed a lack of fairness, sensibility and knowledge in his comments concerning the financial crisis, which he attributed solely to bankers (often preceded by a derogatory term), without due reference to the many other crucial components of the financial system, including global government policies, central banks, regulators and ratings agencies

- he attributed blame for the results of recent votes such as Brexit and the US election to “older white men” and they were portrayed by the BBC as due primarily to anti-immigrant and misogynistic views, which conveniently ignored the many other issues central to the outcome of the votes

- Jeremy Vine interrupted when anyone expressed a view apparently different from his own

- it was “arrogant and ironic” that the BBC had been unable to predict the outcome of key votes, yet expected its users to rely on its analysis of the demographics less than one day after the US vote had occurred. The use of demographics in this context was potentially misleading, divisive and arguably irrelevant. To be meaningful, related terms such as “older white male” needed to be clearly explained and justified, particularly when used in isolation in reference to one side of a vote. What exactly was meant by the terms “older white men” and “those with a college education”?

- was this the only complaint about this issue and was Jeremy Vine’s reference to older white men (which was biased and offensive) intended to be derogatory?
• did the BBC consider that Jeremy Vine put his political views to one side when carrying out his work for the BBC and could listeners look forward to some glowing references to older white men, with or without a college education, and a more considered and balanced portrayal of the workings of the financial services industry?

Audience Services made the following points:

• all BBC staff were expected to put any political views to one side when carrying out their work for the BBC, and they simply tried to provide the information and context on the story or issue using their professional insight to allow viewers, listeners and web users to make up their own minds

• the BBC aimed to show the political reality and provide a forum for discussion on issues, giving full opportunity for all sides of the debate to be heard and explored. The BBC did not take a view or position itself on anything reported

• news editors ensured that over a reasonable period of time a range of significant views, opinions and trends on particular issues were reflected but the BBC’s Editorial Guidelines explained that not every issue or viewpoint necessarily had to be included in each individual report to achieve balance

• the range of tastes and opinions held by the BBC’s audience was so diverse that it was inevitable some listeners would dislike or disapprove of certain presenters. It was a rare radio personality who met with everyone's approval, and it was clear that opinions on individual presenters could vary considerably

• presenters were not engaged unless they were competent and could meet the specific demands required of them. They were appointed on the basis of their experience and talent, but judgements were often subjective and the BBC would never expect everyone to agree with every choice made

• the BBC received a range of feedback from listeners voicing an array of views about BBC presenters including Jeremy Vine, and it was not aware that there was a general feeling that he was biased against older white men or that he was rude and poorly informed. The programme had a weekly reach of over 7 million listeners, so the BBC would expect to receive lots of complaints about this topic if it was a general concern amongst listeners

• as the complainant had not provided specific broadcast times for the comments concerned the BBC was unable to investigate that element of the complaint in any detail

• if the BBC executive had concerns about Jeremy Vine’s impartiality they would be raised with him through internal processes and the BBC would not comment on them.
Audience Services said they had nothing further to add and that they did not believe the complaint had raised an issue that justified further investigation.

**Appeal**

The complainant appealed to the BBC Trust on the substance of his complaint. He said that the responses had been “dismissive” and had failed to acknowledge that the comments made might have been offensive to certain people. The reply implied that the only tangible measure of the validity of a complaint (or, in this case, whether the comments against older white men - with or without a college education - were offensive or unwise) is the volume of related feedback received from the public. It would not have been difficult to determine the dates of the shows concerned as clear reference was made to “today” and “less than one day after the vote has occurred” in the case of the USA vote.

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

The Head of Editorial Standards understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She was sorry that he had found the response from Audience Services dismissive but she had decided that the appeal did not have a reasonable prospect of success.

The Head of Editorial Standards thought that the complainant might not be aware of the editorial complaints and appeals procedure which can be found at this link


The procedure (which will be replaced on 3 April) also explains that:

Your complaint should include:

- the name / title of the broadcast or publication you are complaining about;
- the date and time of the broadcast or publication;
- the channel or service on which it was broadcast, or the web address on which it was published;
- the nature of the complaint (giving reasons why you are dissatisfied with the BBC) and (where possible) the particular parts of the programme or publication you are complaining about;

... The inclusion of these details (or as many of them as possible) is very important. A failure to provide them may mean that the BBC is not able to look into your complaint.

It seemed to the Head of Editorial Standards that where the BBC had said they wanted certain details provided this was in line with the procedure which had been set by the Trust following public consultation. These points were to aid complainants and ensure that Audience Services could identify complained about content swiftly and answer...
complaints easily in the interests of all licence fee payers. However she understood that the complainant had referred to ‘today’ within the text of his first webform complaint and so in answering his appeal she would look at the programme he had mentioned in the first part of his complaint.

The Head of Editorial Standards also noted that the complainant felt that the BBC had not acknowledged that the comments may have been offensive to some people but she noted that the first reply from Audience Services had specifically said:

I also appreciate that you feel Jeremy Vine is a poorly informed and rude presenter.

so, in her view, his concern had been acknowledged. However she would address offence in her reply.

Turning to the substance of his complaint the Head of Editorial Standards noted that the complainant had been offended by the use on the Jeremy Vine programme of the phrases “older white men” and “without a college education”. She noted that the Editorial Guidelines required that decisions about potentially offensive output were made bearing in mind the nature and context of the output, audience expectations, editorial justification and an awareness of generally accepted standards. She considered the programme broadcast on 10 November 2016 which had prompted the correspondence. She noted that during the phone-in relating to anti-Trump protests across the US and in London, a caller had been introduced who was reacting to the fact the Donald Trump had been elected against the expectations of the US pollsters:

Jeremy Vine: A lot of people are saying Brexit and Trump is almost the same result - they are giving us the same message - is that what you think?

Caller: I think that is an oversimplification. I think there is a groundswell of opinion that does want to put up two fingers to the liberal-leaning political elite who are completely, on a global level, disconnected from the people but I think to categorise people demographically or by education or by gender is very, very dangerous because then you pigeon-hole people into boxes and we don't get the right polling result. For instance if we keep banging on with the claim that the vast majority of Donald Trump's supporters are white, angry men without a college education then we're never.....

JV: Well that's true....

C: It may be true but I cannot believe.....

JV: They may not be angry but demographics certainly suggest that they are older white men without a college education....

C: Yes, I'm not arguing that they didn't vote for him but the automatic corollary is not that every single person who voted for Trump had those poor qualifications or are we going to indeed disqualify voters from voting if they haven't got....are we going to disenfranchise people who have got a poor education level....

JV: Understood.
The Head of Editorial Standards noted that Jeremy Vine’s comments were related to a specific group of voters in the US election which had just taken place and referred to what had been reported about the demographic make-up of the Trump vote at the time. She did not consider that most listeners would have understood the conversation to relate to all older white males and she considered Trustees would be likely to conclude the phrases had not been used in a way that was likely to cause offence to the majority of the audience. It was within generally accepted standards. Nor would this amount to a failure to be duly impartial.

The Head of Editorial Standards also noted that the complainant had referred to what he saw as “a lack of fairness, sensibility and knowledge in Jeremy Vine’s comments concerning the financial crisis” and that the results of recent votes such as Brexit and the US election were portrayed by the BBC “as due primarily to anti-immigrant and misogynistic views”. However she noted that Audience Services had explained that without specific broadcast times it was not possible for them to investigate this particular aspect of the complainant’s concerns.

She noted that the complainant had also been concerned about what he considered to be Jeremy Vine’s tendency to interrupt his callers “when anyone expresses a view apparently different to his own”. She noted that in its responses the BBC had accepted that not everyone would agree with the approach taken by all presenters. However she considered that phone-ins were by their nature designed to stimulate debate and play host to a range of opinions with which not everyone would agree. Techniques used by presenters which were clearly designed to help callers make their points succinctly or to move conversations on were therefore within the expectations of the audience to a phone-in which was well-known and highly regarded for its direct and straightforward style of presentation.

The Head of Editorial Standards also noted that the complainant had felt that the implication of the reply from Audience Services was that the validity of a complaint was judged by the feedback received. She wished to reassure him that the BBC (and the Trust) had upheld complaints based on one complaint only.

**Taking these points 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 complaint concerned a news bulletin within Today which said “the Syrian regime and its ally Russia have halted air strikes”.

The complainant made the following points:

- the Syrian government had been elected in 2014 in a democratic process comparable to any elections in the US or UK

- the use of the word ‘regime’ was misleading and gave a false perception of the Syrian government and suggested a bias on the part of the BBC in support of those who opposed the Syrian government.

Audience Services made the following points:

- the choice of the term ‘regime’ reflected the fact that President Assad’s position as leader of his government was threatened by internal opposition and that he has been urged to resign by other world leaders, including President Obama.

The Editorial Complaints Unit [ECU] made the following points:

- the ECU accepted that the word ‘regime’ had, for some people, a critical connotation and may be understood to imply an authoritarian body, or one which did not enjoy the full support of its people

- in this case, the word would be unlikely to mislead audiences because the Syrian government had bombed those citizens who opposed it, and had stood accused of repressing minorities, suppressing free speech and imprisoning, torturing and killing opponents, critics and journalists

- the elections held in 2014 took place in the midst of a civil war; citizens in parts of the country then under rebel control were not able to vote, nor were the large numbers of refugees who had fled the country unofficially in consequence of the war, or who lived in countries without formal diplomatic relations with Syria; electoral laws required nominees to have the backing of 35 members of parliament, which critics said effectively meant that no-one could run for office without government approval; election rules also prevented opposition figures who had fled abroad or who had faced criminal charges such as “weakening national sentiment” from putting themselves forward for election.

Appeal

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

“I have since noticed that the BBC no longer – as far as I can tell – no longer use the term ‘regime’ in reference to the Syrian Government. What has changed that has enabled the BBC to change its description from ‘regime’ to government?”
Specifically:

1. What criteria are issued to programme makers defining under what circumstances they can refer to a national government as a regime?

2. Does such criteria exist? If not, how do you ensure consistency and that the use of this pejorative term is not the personal opinion of individual staff members?

3. What national governments do the BBC currently regard as ‘regimes’?

**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 complainant raised four new points in his appeal. The BBC’s Editorial and Appeals complaints procedure makes it clear that new points cannot be considered on appeal to the Trust.

The Head of Editorial Standards noted that at Stage 2 (and in his appeal to the Trust) the complainant asked, “what editorial guidance is at work here?” She noted that the relevant guidance was the BBC’s editorial guidelines relating to “due” accuracy and impartiality which is defined as follows:

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

The Head of Editorial Standards noted that the complainant made a number of analogies with other countries and periods of UK history in support of his complaint, asking for instance why the BBC did not describe the British government as a regime during the 1980s when the IRA was “conducting a major terrorist campaign against the elected government of the UK”. She noted, however, that the role of the Trust was to examine whether a specific piece of broadcast content met the standards set out in the Editorial Guidelines. She therefore decided that these points fell outside the complaints process.

Instead she considered the complainant’s point that the term ‘regime’ was pejorative and misleading because the Syrian government was elected in elections that were held to be ‘free and fair’ by monitors from 30 countries; and that the use of the term therefore demonstrated bias.

The Head of Editorial Standards agreed that the word ‘regime’ could be taken to imply that a government was undemocratic, harsh or authoritarian.

She noted that the ECU had provided web links to reports by the United Nations, Human Rights Watch and Amnesty in which:

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• Human Rights Watch concluded\(^\text{24}\) that the Assad government had imprisoned its political opponents and that thousands of detainees had died in military facilities.

• Amnesty stated\(^\text{25}\) that Syrian security forces had arbitrarily detained thousands of citizens including human rights defenders, media and humanitarian workers, peaceful activists and children, and had carried out extrajudicial executions.

• a panel mandated by the UN Security Council\(^\text{26}\) concluded that the Syrian government had used chemical weapons against civilians.

The Head of Editorial Standards considered that Trustees would be likely to decide that there was evidence which suggested that the Syrian government’s actions fell within the definition of an authoritarian administration which used unacceptable methods, and listeners would be unlikely to be misled by the use of the term.

While the complainant believed the Syrian government was entitled to bomb “foreign insurgents” acting within its borders, the Head of Editorial Standards decided that Trustees would agree with the ECU that it would not be necessary to prove that all those bombed by the Syrian government were Syrian citizens in order to justify the use of the word ‘regime’, given the significant civilian casualties involved.

She noted the complainant’s view that the Assad government had been elected in a free and fair manner and she understood that, given the complexity of the Syrian political situation, it was possible that President Assad might be re-elected in a fully democratic process, despite the civil war. However, she noted that voting in the 2014 elections was only held in government-controlled areas. She also considered that Trustees would be likely to agree with the ECU that the government’s human rights record described above, meant the term ‘regime’ might be fairly applied regardless of the nature of the elections in 2014.

She therefore considered that Trustees would be likely to decide there was no breach of the BBC’s guidelines on due accuracy.

In terms of impartiality, she noted that Human Rights Watch, the UN and Amnesty have also reported human rights violations and chemical weapons use by some of the opponents of the Assad government, including the organisation which calls itself Islamic State. However, she considered that Trustees would be likely to decide that listeners would be unlikely to understand from a brief mention of the ‘Syrian regime’ in a news bulletin that the government’s opponents had ‘clean hands’. She therefore considered that Trustees would be likely to decide there was no breach of the BBC’s guidelines on due impartiality.

**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.**

