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

March 2017, issued March 2017

Decisions by the Head of Editorial Standards, Trust Unit
February and March 2017 issued March 2017
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In order to provide clarity for the BBC and licence fee payers it is the Trust’s policy to describe fully the content that is subject to complaints and appeals. Some of the language and descriptions used in this bulletin may therefore cause offence.
Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

However, not all requests for appeal qualify for consideration by the ESC. The Editorial Complaints and Appeals procedure\(^1\) 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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\(^1\) http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_ed_complaints.pdf

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

\(^3\) For example, if an appeal raises a relatively minor issue that would be complicated, time-consuming or expensive to resolve, the Trust may decide that the appeal does not raise a matter of substance, and decline to consider it.
In deciding whether an appeal qualifies for consideration, the Committee may also decide to take only part of the appeal, and consider only some of the issues raised. Where an appeal or part of an appeal qualifies for consideration, the Committee will aim to provide the complainant with its final decision within 80 working days of accepting the request for an appeal.

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

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

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

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

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

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

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

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

Panorama: Pensions Rip Offs Exposed, BBC One, 11 July 2016

Summary of finding

This was a first party appeal by The Resort Group Plc (TRG), a property development company with a string of holiday resorts in Cape Verde, an island off the coast of North West Africa. The company was represented by a law firm.

This edition of Panorama reported that the UK government’s new pension freedoms were being exploited by TRG to fund its property empire.

An undercover investigation revealed that a call centre and associated advisory service, both owned by TRG, advertised free pension reviews but did not disclose to customers that the ultimate purpose of those reviews was to get them to invest their pension pots in Cape Verde.

The point the complainant raised on appeal related to a section in the programme about a police officer (‘X’) who was concerned about what had happened to his £112,000 pension pot.

The scheme into which he had transferred his entire final salary pension was the London Quantum Occupational Benefit Scheme (LQPS). The Pensions Regulator had conducted an investigation into the scheme and found that overseas investments by the scheme – which included four apartments in one of the TRG developments in Cape Verde – were not suitable investments for a pension scheme.

The complainant contended that Panorama wrongly implied that X’s pension pot had itself been invested in TRG and that TRG was in some way responsible for any difficulty he had experienced in withdrawing his pension pot from LQPS.

The complainant contended that the output was not duly accurate and that it was unfair to TRG.

The Committee concluded that:

- the programme made clear that X had dealt with a different company in relation to the handling of his pension transfer
- this was reinforced by the inclusion of a statement from that company which was broadcast as the conclusion to that section of the programme
- the programme did not state that X was invested in the Cape Verde development or imply that TRG was obliged to refund X
- information from the complainant that TRG had agreed to buy back the apartments was not passed to Panorama prior to broadcast
- in any event it was clear that any such agreement was voluntary; this reinforced the Regulator’s conclusion as to the illiquid character of the investment
- the relevant information was that X was a member of a Scheme which the Pensions Regulator had found to have made unsuitable overseas investments, including in the Resort Group development in Cape Verde
that X was not personally invested in TRG was evidently irrelevant given that the
position he was now in was a result of the way the Scheme was structured and
the nature of the investments it had made

regardless that the funds of individual investors were not pooled, the issues
identified by the regulator had affected all investors in the Scheme as evidenced
by the problems the Scheme was facing

there was interconnectedness between X’s membership of the Scheme, the
substantial investment by the Scheme into TRG, and X’s inability to transfer out of
the Scheme or even get a valuation of his assets.

The complaint was not upheld.

Good Morning Scotland, BBC Radio Scotland, 4 November 2016

The complaint concerned news bulletins broadcast during Good Morning Scotland on 4
November 2016, in which it was anticipated (and then confirmed) that eight new Type 26
frigates would be built on the Clyde.

The complainant said that several news bulletins stated that the UK Government had
pledged to build eight Type 26 frigates should Scotland return a No vote in the
independence referendum. He said the number of Type 26 frigates promised before the
referendum was 13, and the number was not reduced to eight until the Strategic Defence
Review of late 2015, so the bulletins gave a misleading impression that a UK Government
pledge was being honoured when it was being broken.

The BBC acknowledged at Stage One of the complaints process that two of the eight
radio bulletins broadcast that morning referred without qualification to eight frigates having
been promised before the referendum; a third raised the issue and also said “repeated
delays sparked concerns the UK Government was reneging on the commitment”. This
information was incorrect and the BBC apologised for the error. The complainant
requested a broadcast correction and on-air apology as he believed listeners were misled.

The Committee concluded that:

• while they agreed that various UK ministers had warned of the possible impact of
a Yes vote on future MoD contracts, they had seen no evidence that the UK
Government had made a specific campaign pledge to build 13 Type 26 frigates or
eight Type 26 frigates on the Clyde before the referendum

• in the circumstances, it had not been correct to say

“The project to construct eight new ships was promised before the
independence referendum...”

“The project to construct eight new ships, with the option also to build a
number of smaller vessels, was promised before the 2014 Scottish
independence referendum.”

“The deal was promised before the Scottish independence referendum but
repeated delays sparked concerns the UK Government was reneging on the
commitment.”
• as BBC Scotland had apologised for giving incorrect information about the Type 26 frigates at Stage One of the BBC’s complaints process, in these circumstances a broadcast correction was not required and the apology at Stage One had resolved the matter.

The complaint was considered resolved.

Good Morning Scotland, BBC Radio Scotland, 31 March 2016 7.36am

The complaint concerned an interview broadcast on Good Morning Scotland between the presenter Gary Robertson and the BBC political correspondent Glenn Campbell on 31 March 2016, during the campaign period for elections to the Scottish Parliament. The subject of the interview was Scottish Labour’s tax policy. Mr Robertson said that Scottish Labour (who intended to add a penny to all income tax rates in Scotland to raise additional revenue) had confirmed that it would no longer offer as part of its plans a £100 rebate to the lowest paid because changes to the UK personal allowance meant the rebate was no longer necessary. Mr Campbell said:

"Now to those of us like me the anoraks who’ve been following this closely, it’s not a surprise that they’re not offering that rebate should they win the Holyrood election because they always made clear that was a proposal for this financial year if they’d been able to persuade the Scottish Government to adopt their idea."

The complainant said that this statement was inaccurate because the rebate was not conditional on persuading the Scottish Government to vote for it: Labour was still planning to implement the proposal under an emergency budget if it won the election, until there was a U-turn on 30 March 2016.

He said that Kezia Dugdale (leader of Scottish Labour) had confirmed her intention – in Good Morning Scotland on 18 March 2016 – to hold an emergency budget to implement the policy should she win. He said that she had also signalled her intention to introduce the rebate in a BBC television debate of 24 March 2016, and he said that the inaccuracy was compounded by Good Morning Scotland choosing not to use clips from the debate of Ms Dugdale discussing the rebate.

The Committee concluded that:

- though the complainant provided a number of web-links to articles which he cited as evidence that Ms Dugdale had intended to pursue the rebate scheme in the event of a Scottish Labour election victory, Trustees were not persuaded that these articles provided conclusive evidence that the rebate scheme was still planned
- they agreed with the complainant that, in an interview on Good Morning Scotland on 18 March 2016, Ms Dugdale confirmed her intention to hold an emergency budget but she did not say she would be using the budget to raise taxes
- the interview did imply that the rebate was under consideration, by referring to the cost of administering the system but when specifically questioned about the
£100 rebate, Ms Dugdale referred to it as a proposal linked to “this year’s budget within the Scottish Parliament” [GMS, 18 March] and “in the budget that’s just passed” and “it’s what we’d have done in the previous budget” [Election debate 24 March 2016]. She did not explicitly confirm that the rebate was a continuing policy in 2016-17 and beyond

- whilst noting the complainant thought this point was not relevant as politicians can promise what they cannot deliver, Trustees noted that Ms Dugdale did not have the power to raise taxes in 2016-17 as UK legislation forbids changes to the Scottish Rate of Income Tax during a financial year
- there was no breach of the BBC’s guidelines on due accuracy because listeners would have been unlikely to be misled as they would have understood from the interview that Scottish Labour’s proposals to protect low earners from its planned tax rises were evolving: from a formal £100 rebate, through the use of new powers to raise tax thresholds, to reliance upon the UK Government’s increase in the personal allowance; and that the majority of the discussion related to the tax year 2017-18
- in the BBC’s Scottish Leaders debate of 24 March 2016, Ms Dugdale clearly linked the rebate to “the budget that’s just passed” and “what we’d have done in the previous budget”
- the omission of these clips from the Good Morning Scotland interview did not therefore result in a breach of the BBC’s guidelines on due accuracy so the choice of which clips to include fell firmly within the BBC’s right to make editorial and creative decisions without the Trust’s intervention.

The complaint was not upheld.
Appeal Findings

Panorama: Pensions Rip Offs Exposed, BBC One, 11 July 2016

Background

This was a first party appeal by The Resort Group Plc (TRG), a property development company with a string of holiday resorts in Cape Verde, an island off the coast of North West Africa. The company was represented by a law firm.

This edition of Panorama reported that the UK government’s new pension freedoms were being exploited by TRG to fund its property empire.

A six-month undercover investigation by the programme revealed that a call centre and associated advisory service, both owned by TRG, advertised free pension reviews but did not disclose to customers that the ultimate purpose of those reviews was to get them to invest their pension pots in Cape Verde.

Panorama set out the focus of the programme in the introduction:

REPORTER
We go undercover to investigate one man whose company targets pensions to help fund a foreign property empire

CALL CENTRE EMPLOYEE (UNDERCOVER FILMING)
What this company wants is everyone to invest in Cape Verde. However, we can’t tell the customers about Cape Verde

REPORTER
And we ask: should more be done to keep our pensions safe?

The TRG investigation was presented in the context of the legislative changes to pension access. The programme included a clip from an advert about the Government’s new free pensions advice service, and an interview with the Chief Executive of the Pensions Advisory Service who talked in general terms about the need to raise customer awareness of the need to obtain impartial advice.

Summary of appeal to the Trust

The point the complainant raised on appeal related solely to a section towards the end of the programme which highlighted the case of a police officer ("X") who was concerned about what had happened to his £112,000 pension pot.

The scheme into which he had transferred his entire final salary pension was the London Quantum Occupational Benefit Scheme (LQPS). The Pensions Regulator had conducted an investigation into the scheme and found that overseas investments by the scheme – which included four apartments in one of the TRG developments in Cape Verde – were not suitable investments for a pension scheme.
The complainant contended that Panorama wrongly implied that X’s pension pot had itself been invested in TRG and that TRG was in some way responsible for any difficulty he had experienced in withdrawing his pension pot from LQPS.

The complainant contended that the output was not duly accurate and that it was unfair to TRG.

**Applicable Editorial Guidelines**

The following BBC Editorial Guidelines are applicable to this complaint:

- Section 3, Accuracy
- Section 6, Fairness, Contributors and Consent

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

**Point of appeal**

The Trust’s Editorial Standards Committee (ESC) was asked to consider whether the programme implied that X’s pension pot had been invested in TRG and/or that TRG was responsible for the position he faced in relation to his pension, and thereby failed to achieve due accuracy. The complainant also contended that TRG should have been offered a right of reply on the issues highlighted in this section of the programme, given that in the complainant’s view the wording implied that TRG bore responsibility for X’s situation.

**The section about X in the wider context of the programme**

The section about X and his pension fund which the complainant alleged was inaccurate and unfair to TRG was towards the end of the programme. Up until that point the focus had been on the activities of TRG and its subsidiaries, particularly the outcome of Panorama’s undercover investigation into the company’s call centre and pensions advice activity.

The programme presented two case studies prior to X’s: one was of a woman who had been persuaded to transfer her entire £118,000 final salary pension into a scheme to buy two apartments in Cape Verde owned by TRG. The second case study, which had been set up purely for the purpose of the investigation, involved undercover filming of a pension review in progress. The consultant on that occasion worked for the TRG company First Review Pension Services and was featured seeking to get the “customer” to invest in the TRG Cape Verde development.

Separately, Panorama had sent in a reporter undercover to train as a call centre employee for the TRG company, Lifestyle Connections, which set up the free pension advice sessions and was the first link in the chain. The sequences filmed by Panorama suggested that the call centre was a front for securing investment into the Cape Verde resorts and that employees were told they could not tell prospective customers that this was the aim.
The Committee’s decision

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

Trustees noted the section of the programme relevant to the complaint on appeal:

REPORTER
[X] is a police officer from [...]. He fears he has lost his final salary pension after inviting an unregulated consultant into his home for a pension review.
So you were sitting around this table?

X
Exactly the same place.

REPORTER
What did you say to him?

X
Well I was very keen to be able to access the pension at 55. That was one point that I was happy with and obviously that was what was getting advertised.

REPORTER
The consultant was [NAME], from a different company, Viva Costa International, in Sunderland.

X
He was very relaxed and his role was to get all my financial details and I filled in what was called a rigorous assessment, asking about what your risk value was to money and I remember clearly saying low, on that sort of money, and also about what my financial circumstances were. He said we would have to find an IFA, we've got a bank of these that we use. We will find one appropriate for you who will then look at your figures and make a decision for you.

REPORTER
X didn’t have any direct contact with an independent financial adviser.

X
I was just told the IFA company had found me a scheme that was appropriate to me and then, you know, this is what it would be, go ahead with that.

REPORTER
[X] signed papers to transfer his £112,000 pot and a form saying he was a sophisticated investor. Soon afterwards, he wished he hadn't.

X
I got all my paperwork out and went through it with a fine tooth comb. I really did, first of all, think oh well, I am in a high-risk scheme, which I shouldn't have been.

REPORTER
[X] contacted the Pensions Regulator. An investigation into the scheme discovered it had bought four apartments in a Resort Group development in Cape Verde. It ruled that neither these nor any of the other overseas investments were suitable for the scheme. So far, [X] hasn’t been able to get his money back.

X

We are no further forward in knowing what our value of our pension is, if it’s worth anything. I’ve asked to try and transfer it to a legitimate scheme, with any assets left, which has fallen on deaf ears.

REPORTER

Viva Costa International told us: “[X] signed a declaration confirming that he understood we do not give advice and we referred him to a licensed adviser.

The grounds on which the complainant considered that the content was not duly accurate and that it was unfair to TRG

Trustees noted the following points from the complainant’s correspondence:

- none of X’s pension pot was invested in TRG
- the framing of the section in the programme which referred to the outcome of the Pensions Regulator’s investigation suggested that X’s money was invested in TRG
- the BBC had contended earlier in the complaints process that it had made it clear that X dealt with Viva Costa; this was not the point. The complainant said:

  “The critical point is not his dealings with Viva Costa, but in which stocks X invested. The plain implication was that he had invested in TRG, and had been prejudicially affected as a result. Viewers were not told the highly significant fact that no part of his pension pot was invested in TRG.”

- although the scheme in which X’s pension had been placed, the London Quantum Pensions Scheme (LQPS), had made an investment into TRG, the viewers were not told that investments were not pooled and that X’s individualised funds were completely separate and did not involve any investment in TRG there was no reason (other than the implied association with TRG) to include X in a programme which (bar the introductory section) did not have one single part that did not relate to TRG, its subsidiaries, its employees and/or self-employed persons associated with it in the circumstances, the clear meaning implied from the sentence, “So far [X] hasn’t been able to get his money back”, is that TRG failed to refund [X]; as none of his pension is invested in TRG there is nothing for it to refund

Trustees noted the complainant’s assertion that:

“The ‘condensation’ of the complexities of the issue by the BBC was clearly designed to portray TRG in a negative light and did not properly reflect that TRG was in no way responsible for the problems that had arisen in respect of the alleged maladministration of this scheme.”

Trustees noted the grounds on which the complainant contended that unfairness had resulted to TRG from the Panorama broadcast:
the way in which the programme presented [X]'s investment implied that he had an investment in TRG which was at best worthless and at worst a scam.

those members of the LQPS who did invest in TRG have TRG assets that are safe and worth more than when they acquired them and they have received a return on investment.

even if LQPS’s investment in TRG had proved to be valueless (which the complainant strongly refuted), it would not have affected [X]’s position given that his investment was not pooled.

given the implied involvement of TRG in the problems [X] appeared to be having, the company should have been offered a right of reply:

“TRG considers that to be extremely unfair, not least because of some of the extremely damaging comments [X] made during the Programme about suicides and relationship break-ups.

“Had the BBC in fact raised the assertions relating to [X] prior to broadcast of the Programme, it would have given TRG an opportunity to investigate them and to respond. It would have been able to set out the true position, which should then have been reflected in the Programme. It is beyond doubt that if TRG had been given the opportunity to investigate and comment on [X’s case] ahead of broadcast of the Programme, the Programme content would have been changed by the BBC and TRG would not be making this complaint now.

“The BBC’s attitude appears to have been that by including TRG’s on-the-record response in the Programme, it absolved the BBC of the need to act fairly and accurately. This is obviously not the case.”

The Committee noted that in correspondence with the programme prior to broadcast the complainant advised it had been in discussions with the new LQPS Trustee regarding assisting with the resale of the four Cape Verde properties. The Committee noted the complainant’s letter of appeal, which said that TRG had agreed with LQPS’s new trustees, Dalriada, that it would buy back the four Cape Verde properties at full purchase price by the end of April 2017 and that the Fund would keep all the investment returns accrued until that point. The Committee noted the following information which was provided by the complainant in its final pre-appeal correspondence:

“TRG wants the ESC to be very clear that it was approached by Dalriada for assistance in helping to solve general liquidity issues for the pension scheme despite having no obligation to do so. Agreement had already been reached prior to the broadcast that TRG would assist by buying back properties from the scheme. None of this was reflected in the Programme.”

Comments on a separate BBC programme which previewed this edition of Panorama

Trustees noted that an interview on the Radio Four consumer affairs programme You and Yours was cited by the complainant as relevant to consideration of this appeal. The item in question was broadcast on the morning of 11 July 2016, shortly before Panorama was aired. It featured an interview with the reporter for the forthcoming Panorama during which she discussed the outcome of the programme’s pensions investigation. During the
You and Yours interview the reporter said, amongst other things, that X’s money had been invested in TRG. Trustees noted that the BBC had admitted this was incorrect and that an apology was broadcast on 31 August 2016.

Trustees considered the complainant’s contention (notably in their appeal letter of 7 December 2016 and subsequently in a letter to the Trust dated 3 March 2017) that Radio Four’s apology was “highly significant” in the context of this appeal because it gave the “best guidance” as to what viewers were likely to have concluded. The complainant said:

"Viewers of the Programme (watching it for the first time) would have been in much the same position [as the Panorama reporter]...There is simply no basis upon which the Programme’s viewers would have reached a different conclusion to the presenter of the Programme. This is why the contention that Panorama did not suggest [X] had invested in TRG is hopeless."

Trustees did not agree. They noted that their role for this appeal was to consider whether the content of this edition of Panorama was duly accurate, and that the question of what evidence was relevant to their decision (and the weight to give any relevant evidence) was one for them. They considered that every item of content had to be judged on its own merits, and different content in separate output was not relevant to the question of accuracy raised by the complainant. Comments made elsewhere about the programme before it was broadcast (even those made by the same reporter) were irrelevant to Trustees’ judgement of what the audience would have gained from watching the programme. Trustees considered the complainant’s contention that the fact that the reporter had evidently formed the impression that X was invested in TRG brought her remarks within the scope of consideration for this appeal. Trustees disagreed, concluding that the reporter was not “in the same position” as a Panorama audience, and that there was no basis on which to conclude that a Panorama viewer of the Panorama programme as it was broadcast would have reached the same conclusion. Trustees concluded therefore that the content of the You and Yours interview and the fact of the apology on that matter was irrelevant to considering the merits of this appeal.

**BBC responses**

The Committee noted the general response from the Deputy Editor of Panorama at Stage One:

"The Programme carefully stated that the consultant with whom [X] dealt was '[NAME] from a different company". That is to say, a different company to the others previously mentioned in the Programme, including FRPS and your client [TRG]. That company was named as 'Viva Costa International in Sunderland’ and the programme carried Viva Costa’s separate right of reply statement.”...

"The Programme did not say that [X] invested in TRG, which is why this point was not raised with your client prior to publication. The Programme stated that [X] transferred his final salary pension into a scheme and went on to discuss the investments made by the scheme and the Pension Regulator’s findings in relation to it...

"In my view, the Programme’s formulation was an appropriate condensation of the complexities of the situation. The distinction between the “overarching scheme” (i.e. the London Quantum Occupational Pensions Scheme), which included investments in four TRG apartments in Cape Verde and [X]'s specific pension pot
which did not include these apartments is not, I believe, material in light of the fact that investors’ individual pension pots actually were affected by adverse events in the wider scheme – and so need to be seen in that context…”

Trustees noted the Adviser’s summary of the key points from Panorama’s response to the appeal. Regarding the complainant’s assertion that individual investments into the LQPS scheme were ring-fenced, and therefore it was misleading to mention TRG in relation to X, the Deputy Editor of Panorama said:

“(...) The attempt ... to claim that the section which featured [X] reflected on the actions of TRG and that “the critical point is...in what stocks [X] invested” is fundamentally misguided and overlooks the complicated backdrop to the scheme, particularly in relation to the proper allocation of costs amongst members...

Panorama included the scheme because of the broader public interest concern encapsulated in the Pensions Regulator’s ruling that the scheme consisted almost exclusively of high risk and highly illiquid investments meaning that it was not suitable for [X] (and other members). The issue Panorama sought to highlight was not a narrow focus on the notionally segregated individual pension pots of members of the scheme, but rather the broader concern about companies, like the one with which Mr X dealt, taking advantage of new pensions freedoms to engage in highly questionable practices...

“A material distinction cannot properly be sustained between individual investors’ notionally segregated pension pots and the fate of the overarching scheme. The investments of individual investors, including [X], and the investments of the wider scheme, including in TRG, are inextricably linked. Investors’ individual pension pots actually were affected by adverse events in the wider scheme and need to be seen in that context. TRG’s attempt to separate them out is artificial because of the complex and likely very costly situation in which investors now find themselves as a result of the Pension Regulator’s ruling. The independent trustee has made it clear that it is not in a position to value members’ funds until the realisable value of the investments is known, the final costs are known and it knows how the costs and any investment losses are to be apportioned between the scheme and members (regardless of their individual pots).”

Trustees noted the Deputy Editor’s view, that [X]’s inability to transfer out of the Scheme those 25% of his investments that could potentially be realised, had been hampered by
the fact that the Scheme included TRG investments. They noted too her observation, based on the content of the Pension Regulator’s report, that the presence in the Scheme of the TRG investments was instrumental in the Regulator’s decision to appoint an independent Trustee to the Scheme – and effectively closing it down for the foreseeable future.

Trustees noted the complainant’s assertion that there was no other reason to include [X] in a programme which was otherwise wholly about TRG, unless the aim had been to imply that he was invested in TRG. They noted the Deputy Editor had refuted this:

"The decision to include [X] as a stand-alone case study and to explain the involvement of Viva Costa International in the transfer of his final salary pension was taken before Panorama became aware of the scheme’s investment into TRG, and the Pensions Regulator’s ruling. This decision was made because we wanted the programme to include more than one pension transfer investigation. The decision to include [X] was the result of a separate line of inquiry to the investigation into TRG. By the time of broadcast Panorama was aware that [X]'s investments did not include an investment into TRG and that, as correctly stated in the programme, the scheme of which he was a member had made a number of overseas investments including into TRG.

"We reject the complainant’s assertion that there was no other reason to include [X]'s story in the programme other than its connection with TRG. [X]'s case concerned the actions of Viva Costa International and it was not until further investigations had been conducted that Panorama became aware of the scheme’s investment into TRG.

"Later still, we discovered the Pensions Regulator’s determination of LQPS which made a number of highly significant and critical judgements of the investments. The over-arching concern of the regulator was that they were unsuitable for pensions for a variety of reasons, including but not limited to their high risk profile, cost, volatility, lack of diversity and illiquidity. The nine investments made by the scheme included an investment in four hotel rooms in a hotel said to be under construction in Cape Verde...

"..The programme needs to be viewed as a whole and seen in its proper context. For example, the programme clearly referred to concerns about free advice being offered by companies as a first step to getting their hands on people’s valuable pension pots; and fears the new freedoms could trigger pensions mis-selling on a grand scale."

Trustees noted the Deputy Editor’s response to the assertion in the complainant’s appeal that the programme had implied that TRG had failed to refund X, and had not reflected the information it had provided that TRG had agreed to buy back the Scheme’s Cape Verde properties:

"We do not accept the suggestion that the programme inferred that it was up to TRG to refund [X]. In any event, most viewers understand that investments are sold, not refunded by the original supplier upon request.

"We also dispute the complainant’s claim that had a viewer inferred that TRG investors within the scheme had also failed to get their money back this would have been unfair to TRG. In fact it would have been an accurate and fair
description of the position at the time of broadcast and indeed at the time of this submission. At the time of the programme, members of the scheme invested in TRG were in the same position as [X] and unable to value their assets let alone transfer them out of the scheme. Even with the offer of a refund, TRG members are unable to transfer their money out of scheme because all assets in the scheme need to be liquidated as far as possible first. This is the nature of the scheme: personal accounts are only nominally separate.”

Trustees noted the following extract from the programme:

X
We are no further forward in knowing what the value of our pension is, if it’s worth anything, I’ve asked to try and transfer it to a legitimate scheme with any assets left, which has fallen on deaf ears.

Trustees noted the Deputy Editor’s response to the complainant’s assertion that the clip in the context of what had gone before implied that X’s investment, which the audience had been falsely encouraged to believe was in TRG “was at best worthless and at worst a scam”, whereas the complainant contended that Members of the LQPS who did invest in TRG had assets that were safe and worth more than when they acquired them and had received a return on investment.

“Panorama does not accept that there was any suggestion in the programme which might reasonably lead viewers to leap to the stark conclusion that an investment in TRG may be worthless; viewers were explicitly told that [X] dealt with “a different company”, Viva Costa International. As part of this section the programme included Viva Costa’s right of reply. Even if there was a remote risk of such confusion arising – which is not accepted - the programme later carried TRG’s unequivocal statement that “all investments with TRG are safe, and investors have received all payments due”...

“Nevertheless, we consider that there is sufficient uncertainty about the future and value of the scheme to support an assertion that, to an investor trying to exit TRG investments, in the absence of an offer from TRG to refund them, they may be worthless since they depend on an unknown secondary market. Two subsequent FSCS (Financial Services Compensation Scheme) investigations have failed to establish the worth of TRG investments including an investment in the same resort as the LQPS investment. The value of something is not known until a buyer is found. The Pensions Regulator had liquidity concerns about TRG investments precisely because this secondary market hadn’t been tested. It is important to note that the investments made in TRG by the scheme were for proportions of yet-to-be built apartments creating further difficulties for resale.”

Trustees noted that the Pension Regulator’s report highlighted the way in which prospective clients were introduced to the LQPS Scheme by companies such as TRG’s First Review, which featured in the Panorama programme:

“The Scheme was promoted to potential new members by introducers. These included the following entities: GoBMV; Baird Dunbar; What Partnership; the Resort Group PLC; Friendly Investments; Premier Mark Consultants and Quantum Wealth Management Solutions Limited.
“It appears that some of the introducers had agents working on their behalf. For example, the Resort Group PLC had an agent called First Review, which ran a call centre through which it promoted the Scheme to potential members. The introducers received commission for each new member who transferred their pension pot into the Scheme. New members were given a limited selection of investments from which to choose. The introducers would receive commission based upon the combination of investments chosen by each member.”

Trustees noted the Deputy Editor’s reference to a section in the Pension Regulator’s report critical of the Scheme’s investment into TRG:

“The report said of the Resort Group investment,

“The scheme has no property rights but rather a profit sharing right in hotel rooms currently under construction in Cape Verde (with a completion date of 31 December 2016). The investment is in a class of investments which has recently been highlighted by Action Fraud as potentially fraudulent.”

“All of this of course undermines TRG’s claims that the investments are safe but we nevertheless included this statement in their response.”

Trustees noted that Panorama had sent two right of reply letters to the complainant, the second of which reflected the Pensions Regulator’s findings and invited TRG to comment on assertions by the Regulator that the investments were risky. Given the clear statement from Panorama for this appeal that it was aware that X was not invested in TRG at the time it sent the invitation, Trustees agreed there would have been no reason for the programme to have put X’s predicament to the company for response. Viva Costa International had been approached regarding X, they had provided a response, and the programme had broadcast that response.

Trustees noted the Deputy Editor’s reference to another section from the Pensions Regulator’s report, in which the Regulator noted that the deeds of the LQPS Scheme gave the Scheme Trustees wide discretionary power to change investments of individual pension pots within the overarching scheme as they saw fit, without prior reference to the Members:

“in respect of all or part of such part of a Member’s Personal Account in relation to which the Member has not chosen one or more investment Alternatives, in such percentages as the trustees think fit”.

Trustees noted that this suggested that individual investor’s pots could not be said to be ring-fenced as the complainant had claimed; the most that could be said was that at any point in time individual members of the scheme were invested individually in assets held by that Scheme.

The Committee noted also the programme’s reference to statements published in November 2016 by the new Trustee, Dalriada, who had been appointed to LQPS following the Pensions Regulator’s ruling. Trustees noted the following points from Dalriada’s statement:

- the illiquid nature of investments made by the Scheme (which included the TRG apartments in Cape Verde) were causing problems when the Scheme was required to provide various benefits under the Scheme
• in addition the sponsoring employer of the Scheme, Quantum Investment Management Solutions (QIMS), had gone into liquidation and had little in the way of assets: the costs of administering the scheme would therefore need to be met out of Scheme funds (i.e. members’ investments)
• the liquidator had confirmed that QIMS had very little in the way of assets and was unlikely to be able to meet its obligations to pay the costs of appointing the new Trustee
• those costs would be significant and may impact on the value of the scheme’s funds
• Dalriada was “not in a position to value members’ funds until the realisable value of the investments is known, the final costs are known”, and until it was known how those costs would be apportioned between the Scheme and members
• because of this it may be some time before the Scheme would be able to pay out any benefits

Trustees noted that the situation in November 2016 when Dalriada published its statement remained the same as it had been four months earlier when Panorama told X’s story: the Scheme remained frozen with no benefits being paid out, and with members not in a position to be able to transfer their funds.

Trustees noted that in response to the draft of the background note prepared for this appeal, the complainant took issue with the citing of the Dalriada statement because its publication post-dated the Panorama broadcast by four months. Trustees agreed that it would not have been acceptable had the BBC sought, after the event, to rely on its framing of the relevant content by reference to information which would not have been available at the time. But there was no indication that this was what Panorama were seeking to argue. Pre-broadcast, Panorama had evidently placed weight on the Regulator’s findings, and in doing so had reached the conclusion that it was not possible to ring-fence any individual pension pot in the Scheme because of the way the Scheme was structured. Thus Panorama said it had framed the relevant section of commentary to reflect that. Whether it was a duly accurate formulation was the matter which Trustees were obliged to consider for this appeal. In doing so the Committee was entitled to take account of any relevant material which it considered might assist it in reaching a decision, regardless of the fact that, as in this case, it might have been published after the Panorama broadcast.

Trustees noted again the section in the programme which discussed X’s story, and in particular the following extracts:

REPORTER
The consultant was [NAME], from a different company, Viva Costa International, in Sunderland.

REPORTER
[X] contacted the Pensions Regulator. An investigation into the scheme discovered it had bought four apartments in a Resort Group development in Cape Verde. It ruled that neither these nor any of the other overseas investments were suitable for the scheme. So far, [X] hasn’t been able to get his money back.

X
We are no further forward in knowing what our value of our pension is, if it’s worth anything. I’ve asked to try and transfer it to a legitimate scheme, with any assets left, which has fallen on deaf ears.

REPORTER
Viva Costa International told us: “[X] signed a declaration confirming that he understood we do not give advice and we referred him to a licensed adviser.

Trustees reached the following conclusions:

- the programme made clear that X had dealt with Viva Costa International in relation to the handling of his pension transfer, i.e. a “different” company to TRG
- this was reinforced by the inclusion of a statement from Viva Costa International which was broadcast as the conclusion to that section of the programme
- it was clearly separate from the right of reply response TRG had made to the allegations concerning them
- the framing of X’s problem did not imply that TRG was obliged to refund X
- neither did it state that he was invested in the Cape Verde development
- the correspondence shows that information from the complainant that TRG had agreed with Dalriada to buy back the apartments was not passed to Panorama prior to broadcast
- in any event, the information from the complainant that TRG had not been obliged to buy the apartments back, so it was clear that the agreement was voluntary, reinforced the Regulator’s conclusion as to the illiquid character of the investment
- the relevant information was that X was a member of a Scheme which the Pensions Regulator had found to have made unsuitable overseas investments, including in the Resort Group development in Cape Verde
- that X was not personally invested in TRG was evidently irrelevant given the position he was now in as a result of the way the Scheme was structured and the nature of the investments it had made regardless that the funds of individual investors were not pooled, the issues identified by the regulator had affected all investors in the Scheme as evidenced by the problems the Scheme was facing
- there was interconnectedness between X’s membership of the Scheme, the substantial investment by the Scheme into TRG, and X’s inability to transfer out of the Scheme or even get a valuation of his assets.

In reaching its view, the Committee noted that it was not required to find the Scheme’s investment in The Resort Group responsible for X’s predicament in order to decide that the content was duly accurate. It was sufficient to conclude that the Scheme’s £485,000 investment into The Resort Group (15.5% of the Scheme’s total investment and the largest of the “unsuitable” overseas investments), was a relevant factor in the Pension Regulator’s conclusion that the Scheme was in breach of “its various common law and statutory duties to invest Scheme assets”. Trustees noted, with regard to The Resort Group investment in particular, that the Regulator had documented concerns about the legitimacy of the investment, its illiquidity and its unsuitability for inclusion in a pension portfolio.

Trustees were therefore satisfied that the investments of the wider LQPS scheme were inextricably linked in the way the Pensions Regulator had highlighted. The structure of the Scheme had left X unable to ascertain what value (if any) his pension pot retained. It
was reasonable therefore for the programme to reflect these facts in the telling of X’s story. The content was duly accurate

Finding: not upheld
Good Morning Scotland, BBC Radio Scotland, 4 November 2016

The background

The complaint related to news bulletins broadcast during Good Morning Scotland on 4 November 2016, in which it was anticipated (and then confirmed) that eight new Type 26 frigates would be built on the Clyde.

The complainant said:

- several news bulletins stated that the UK Government had pledged to build eight Type 26 frigates should Scotland return a No vote in the independence referendum
- this was inaccurate as the number of Type 26 frigates promised before the referendum was 13
- the number was not reduced to eight until the Strategic Defence Review of late 2015 when five less expensive vessels replaced the remaining five Type 26 frigates
- the bulletins gave a misleading impression that a UK Government pledge was being honoured instead of a pledge being broken, as it coincided with an announcement that day that eight Type 26 frigates would indeed be built on the Clyde. The impression given by the news broadcasts was of a UK Government independence referendum pledge being honoured.

BBC Audience Services said:

- it regretted that on this occasion the information regarding the Type 26 frigates was incorrect and the BBC was sorry it had fallen short of the usual standards expected of its output.

The complainant said, given that thousands of listeners would have been misled by the three erroneous bulletins, the programme should broadcast corrections and issue an apology.

BBC Audience Services consulted BBC Radio Scotland’s News Editor who said:

- there were eight radio bulletins between 0600 and 1000
- two of the bulletins specifically referred without qualification to eight frigates having been promised before the referendum. This information was incorrect and the BBC apologised for the error
- of the remaining six bulletins, five did not raise this issue at all; the sixth raised the issue and also said “repeated delays sparked concerns the UK Government was reneging on the [pre-referendum] commitment”
- Good Morning Scotland also heard from Gary Smith of the GMB union who said:

  “The Tories have not made good on all the things they originally said we would get... the number of ships in the programme has been cut”
- Good Morning Scotland also featured a spirited exchange between the UK Defence Secretary Sir Michael Fallon and presenter Gary Robertson, who asked:

  "Why are you short-changing the Clyde over the number of boats? ...Initially you pledged 13 – and that was something that David Cameron was adamant about in the run-up to the 2014 referendum."

- given this context, the BBC considered its initial apology and assurances were a proportionate response to the complaint.

The Editorial Complaints Unit [ECU] said:

- it was the case that a number of news bulletins used wording which suggested eight new ships were promised before the independence referendum
- the ECU did not agree that this amounted to a serious breach of the BBC's editorial standards for due accuracy, for two reasons:
  - firstly:
    - o the Strategic Defence & Security Review of 2010 was widely understood as saying that the Royal Navy’s existing 13 Type 23 frigates would be replaced by the new Type 26 frigates
    - o the ECU understood why this may have created an expectation in some quarters that 13 new frigates would be built but there was a clear distinction between an expectation and a specific campaign pledge
    - o ministers had indicated that it was highly unlikely new frigates would be built in Scotland if the country voted for independence, but the ECU’s understanding was that the UK Government had not committed to any particular number
    - o the ECU would be prepared to consider any evidence supplied by the complainant which demonstrated that the UK Government had committed, during the campaign period, to building 13 frigates in Scotland.
  - secondly, the news bulletins provided additional context which would have ensured that listeners were aware that, for example, “the UK Government was reneging on its commitments”, “the programme has been hit by delays leading to accusations by the SNP among others that the UK Government is reneging on its pre-referendum commitment” and “repeated delays sparked concerns the UK Government was reneging on the commitment”.

The complainant provided three web links which he said proved that the UK Government had promised to build 13 Type 26 frigates on the Clyde.

The ECU disagreed that the links provided evidence of a specific campaign pledge. One link pre-dated the announcement of the independence referendum; a second did not confirm how many ships were to be built; a third included a comment from the then UK Defence Secretary who said in July 2014, “The programme for Type 26 envisaged 13 frigates being ordered. It is likely that the fleet will be split, as the current frigate fleet is split, but no final decision has yet been made.” The ECU stated that the use of the word “envisaged” indicated something foreseen or predicted or contemplated, rather than something definite or certain; the Defence Secretary also confirmed that no decision had been made as to where the ships would be built.
The ECU concluded that there were no grounds to uphold the complaint.

**Appeal to the BBC Trust**

The complainant appealed to the Trust on the substance of his complaint. He said BBC Scotland had already acknowledged that the news bulletins were inaccurate and he requested a broadcast correction and apology to make this clear. The complainant also disagreed with the ECU’s suggestion that 13 Type 26 frigates were never promised.

**Applicable Editorial Guidelines**

The Committee considered the article against the BBC’s guidelines on Accuracy:

- 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 correspondence file, a short time-line provided to Trustees by the Head of Editorial Standards, Trust Unit, and comments on the time-line by the complainant.

The Trustees listened to the bulletins and considered the points made by the complainant and the BBC.

They noted that, of the eight radio news bulletins broadcast that morning, three had referred to a pre referendum commitment to build eight new Type 26 frigates:

0630 “The Ministry of Defence is to make a significant announcement concerning shipbuilding on the Clyde. Unions believe a number of new warships – Type 26 frigates – will be built at Govan and Scotstoun, helping to safeguard thousands of jobs. The project to construct eight new ships was promised before the independence referendum but has been hit by delays, sparking concern the UK Government was reneging on the commitment. [Name] is from the GMB union:

“Shipbuilding in Glasgow supports 6,000 jobs. It supports something like £163m in wages in the Glasgow economy so from that perspective it’s good news, but let’s be clear – the Tories have not made good on everything they said we would originally get – the numbers in the programme for new ships has been cut, and the factory that we were promised, the frigate factory that was going to be built in the Clyde won’t be built.”

0700 “It’s expected that the MoD will today confirm that it will definitely go ahead and build the Type 26 frigates, the next generation of Navy warships on the Clyde. The project to construct eight new ships, with the option also to build a number of smaller vessels, was promised before the 2014 Scottish independence referendum. Unions are describing this as a massive announcement which will help protect the jobs of thousands of workers in Glasgow.”

0830 “The Ministry of Defence has confirmed that work will begin on building a new generation of Navy warships on the Clyde next year. The Defence Secretary Sir Michael Fallon says the announcement guarantees work until 2035. The
contract for the eight Type 26 frigates is worth almost £2billion. The deal was promised before the Scottish independence referendum but repeated delays sparked concerns the UK Government was reneging on the commitment. Mr Fallon told us it was a huge day for the Clyde:

“We’re confirming that we’re going ahead with the steel cut next summer, quite a bit earlier than some suggested, we’re going ahead with the steel cut next summer of the first of the eight Type 26’s that we pledged to in the Strategic Defence Review last year. After that we will be building a lighter frigate. BAE Systems will obviously be in poll position; they’re the principal warship builder.”

Trustees noted that the point of complaint was that listeners would have been misled because the bulletins gave the impression of “a UK Government independence referendum pledge being honoured instead of a pledge being broken”. They noted that, at Stage Two of the BBC’s Complaints Process, the ECU had disagreed that there was a specific campaign pledge. Trustees noted that of the links provided by the complainant at stage 2: one in September 2012 referred to an order for 13 frigates with BAE Systems but did not specify where they would be built; a link to a BBC article in November 2013 confirmed the Type 26 class would be built in Scotland but did not say how many there would be; one in July 2014 (after the referendum had been announced) used the wording: “The programme for Type 26 envisaged 13 frigates being ordered” which Trustees agreed was not a firm commitment.

Other links provided by the complainant in response to a short time-line provided by the Trust Unit included a link to an article by the then BBC’s Political Editor in November 2013 which referred to orders for 13 new frigates but Trustees agreed that was also not evidence of a Government pledge. Nor was the link to a newspaper article evidence of a pledge. The third article by the BBC in November 2013 mentioned 13 frigates again but explained clearly that firm orders had not been placed: “The frigates are still on the design board and no firm orders have been placed. The current plans are to build 13 ships over a lengthy time period”.

Trustees noted that:

- the Strategic Defence & Security Review 2010 (SDSR 2010) stated that Type 23 class frigates would be replaced with the new Type 26 class after 2020. There were 13 Type 23 frigates.
- in August 2012, the Ministry of Defence [MoD] unveiled the design of the Type 26 frigates but said it would not give a commitment on numbers until the precise unit cost was known.
- the Scottish Government announced on 21 March 2013 that the independence referendum would be held on 18 September 2014.
- on 6 November 2013:
  - BAE Systems confirmed that 800 jobs would be cut at its Scottish yards. The Govan and Scotstoun yards were working on a contract for an aircraft carrier; this was due to be completed in 2015.
  - BAE Systems and the MoD announced that three new ocean-going Offshore Patrol Vessels for the Royal Navy would be built in the yards with

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the aim of sustaining shipbuilding there until work began on the Type 26 frigates
  o while the yards had been earmarked for the Type 26 work, the Defence Secretary Philip Hammond said he would not place contracts for the Type 26 class until the design was “mature”; this would be at the end of 2014, after the Scottish Referendum
  o the Scottish Secretary Alistair Carmichael told MPs that plans to build the frigates in Scotland could be endangered by a Yes vote in the referendum.

- on 18 September 2014 the referendum took place
- on 1 December 2014, the Defence Secretary confirmed that the Type 26 class would be built on the Clyde
- this was followed on 20 February 2015 with news that the MoD had signed an initial development deal for the Type 26 class to be built on the Clyde
- the Strategic Defence & Security Review of November 2015 announced that the Type 26 project would be scaled back from 13 to eight frigates (all of which were to be built on the Clyde), but with “another five at least of a new type of frigate” bringing the total number back to 13.”
- on 4 November 2016, the Defence Secretary announced that work would begin on the eight Type 26 frigates in the summer of 2017. He also announced that a contract for two new offshore patrol vessels would be signed soon to secure jobs on the Clyde before the Type 26 work was underway.

Trustees agreed that while various UK ministers had warned of the possible impact of a Yes vote on future MoD contracts, they had seen no evidence that the UK Government had made a specific campaign pledge to build 13 Type 26 frigates or eight Type 26 frigates on the Clyde before the referendum.

Trustees agreed that in the circumstances it had not been correct to say that:

  “The project to construct eight new ships was promised before the independence referendum...”

  “The project to construct eight new ships, with the option also to build a number of smaller vessels, was promised before the 2014 Scottish independence referendum.”

  “The contract for the eight Type 26 frigates is worth almost £2billion. The deal was promised before the Scottish independence referendum but repeated delays sparked concerns the UK Government was reneging on the commitment.”

Trustees noted that BBC Scotland had apologised at Stage One of the BBC’s complaints process for giving incorrect information about the Type 26 frigates.

Trustees decided that in these circumstances a broadcast correction was not required and that the apology at stage One had resolved the matter.

Resolved
Good Morning Scotland, BBC Radio Scotland, 31 March 2016 7.36am

Background

The complaint related to an interview about Scottish Labour’s tax policy in the run-up to the 2016 elections to the Scottish Parliament.

Since 1999 the Scottish Parliament has been able to vary income tax (up or down) by 3p in the pound. On 6 April 2016, a Scottish Rate of Income Tax [SRIC] was introduced. The UK income tax rates paid by Scottish taxpayers were reduced in all tax bands by 10p in the pound. The Scottish rate could then be set at any value from 0% upwards. However, the SRIC had to be replicated across all bands, restricting the ability of the Scottish Government to redistribute the tax burden from one income group to another.

In April 2017, further new powers will be introduced in Scotland involving greater flexibility over tax rates, and providing the ability to set different thresholds for tax bands from those in the rest of the UK.

In preparing the draft budget for 2016-17 the SNP said it intended to keep income tax rates in Scotland at the same level as those in the UK. Scottish Labour called for an immediate 1p increase in Scottish income tax rates and said they proposed a rebate of £100 for those earning less than £20,000. The rebate system would be administered by local councils. The proposed tax increase and the potential cost of administrating the rebate system were the subject of political debate.

On 24 February 2016 Members of the Scottish Parliament (MSPs) agreed the 2016-17 budget in which Scottish citizens paid an equivalent rate of income tax to tax payers in the rest of the UK.

Elections to the Scottish Parliament were held on 5 May 2016 and income tax became a prominent issue during the campaign: should the new tax-raising powers be used and, if so, how, and to what end?

The complaint concerned an interview broadcast on Good Morning Scotland [GMS] between the presenter Gary Robertson and the BBC political correspondent Glenn Campbell on 31 March 2016 (during the election campaign period). Mr Robertson introduced the item as follows:

“So Scottish Labour has confirmed it will no longer offer a £100 payment to workers earning less than £20,000 as part of its income tax proposals. The party said in February the annual boost would offset its plans for a 1p increase in the basic income tax rate. But it now says changes to the personal allowance for income tax means the rebate is no longer necessary.”

Mr Campbell said [adviser’s emphasis in bold]:

“Labour wants to put a penny on all income tax rates in Scotland to raise additional revenue, and that includes raising the basic rate of income tax. But they said they would offset that with this £100 rebate for the lowest paid. Now to those of us like me the anoraks who’ve been following this closely, it’s not a surprise that they’re not offering that rebate should they win the
Mr Campbell went on to discuss the evolution of Labour’s tax policy in some detail. He included a clip of the Scottish Labour leader Kezia Dugdale from a BBC TV election debate which he had chaired on 24 March 2016. He said that during the debate Ms Dugdale described using the new powers to set different tax thresholds in Scotland. He also featured a clip of Ms Dugdale from an STV debate broadcast on 29 March 2016. In the clip, Ms Dugdale said she would use changes to the UK personal allowance to protect those on low incomes.

Gary Robertson asked: “I suppose the big question here is – is this a U-turn by Labour?” Glenn Campbell replied:

“This is a change in Labour’s tax policy, a change that appears to have taken place in the space of less than a week. Between Thursday of last week and Tuesday of this week and remember that the Chancellor’s budget predates both of those events, so it’s not that they didn’t have the detail from that – but clearly they have decided that it is too difficult, and perhaps too expensive in terms of lost revenue, to use the tax system and changes in the allowances to give people on low incomes something back to offset the impact of the raising of all rates of income tax under their plans.”

The complaint

The complainant said that Mr Campbell’s statement (that “they always made clear that was a proposal for this financial year if they’d been able to persuade the Scottish Government to adopt their idea”) was inaccurate because the rebate was not conditional on persuading the Scottish Government to vote for it: Labour was still planning to implement the proposal under an emergency budget if it won the election.

He said that Kezia Dugdale had confirmed her intention – in GMS on 18 March 2016 – to hold an emergency budget to implement the policy should she win. He said that she had also signalled her intention to introduce the rebate in the BBC TV debate of 24 March 2016, and he said that the inaccuracy was compounded by GMS choosing not to use clips from the debate of Ms Dugdale discussing the rebate.

Applicable Editorial Guidelines

The Committee considered the article against the BBC’s guidelines on Accuracy:
  - 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 Scotland.
Point (A)

Trustees noted the complainant’s view that Mr Campbell’s statement was inaccurate because, while Scottish Labour was setting out its proposals for 2017-18, it had also been planning to introduce an emergency budget for 2016-17, if it won the Scottish parliamentary elections, with the intention of increasing tax rates by 1p and introducing the £100 rebate scheme, until there was a U-turn on 30 March.

An independent editorial adviser carried out internet research but she was unable to find definitive evidence that Scottish Labour had committed to the rebate scheme in the event of an election victory. For instance, Scottish Labour’s manifesto5 gave an “absolute guarantee” that “nobody earning less than £20,000 a year, including pensioners, will pay a single penny more than they do today” but the manifesto did not state how it intended to deliver the guarantee. It did not refer to a rebate scheme, nor to the introduction of an emergency budget for 2016-17. Trustees noted that the complainant had commented that this was because Scottish Labour had performed a U-turn on the rebate which pre-dated the manifesto and so the manifesto was not relevant.

The complainant had provided web-links to articles which he cited as evidence that Ms Dugdale had intended to pursue the rebate scheme in the event of a Scottish Labour election victory. Trustees reviewed these articles but they were not persuaded that they provided conclusive evidence that the rebate scheme was still planned, after the budget-setting process had been completed.

The complainant also said that Ms Dugdale confirmed her intention to hold an emergency budget in an interview on Good Morning Scotland on 18 March 2016.

Trustees listened to the interview and they noted that Ms Dugdale outlined her proposal to use the powers of the Scottish Parliament to “increase the basic rate of income tax by one pence” and to have a “50p top rate of tax for those people who earn over £150,000 a year”. This would suggest she was setting out her proposals for the 2017-18 tax year.

Presenter Gary Robertson [GR] then asked:

“Given that your 1p tax raise will be compensated... or... to compensate some of, some of the people affected by that you’re offering a £100 rebate... since coming up with this plan have you now got independent evidence to back up your claim that this £100 rebate could be administered for just £1million?”

[KD]: “Well of course the rebate element of that proposal was linked to this year’s budget within the Scottish Parliament. We were saying that when the 2017 powers come in there are more finessed, more nuanced, more elegant ways of ensuring that those on the lowest incomes don’t pay any more tax.”

[GR]: “So you won’t be offering the rebate from now on then?”

[KD]: “Gary you won’t need the rebate because the Scottish Parliament powers will mean that we can use a 1p rate, a new income threshold to deliver that same protection for people earning less than £20,000 a year. Now what was important was that we came up with a mechanism to say, I can’t wait until 2017 to stop the cuts. We have to stop the cuts now because they’re eating into the very fabric of our society”

5 http://www.scottishlabour.org.uk/page/images/Manifesto%202016/Scottish%20Labour%20Manifesto%202016.pdf
[GR]: “So if you win in May will there be an emergency budget?”

[KD]: “Well we’ve said before Gary that’s not new information”

[GR]: “So you’ll need this £100 rebate then if you bring in a new emergency budget in May so can it be administered for just £1m.”

[KD]: “There are a number of different ways it can be administered. The cost that we have put upon the administration of that system is £1m.”

Trustees agreed with the complainant that Ms Dugdale confirmed her intention to hold an emergency budget but they noted that she did not say she would be using the budget to implement the rebate policy; they noted that the presenter himself had raised this possibility but that Ms Dugdale said the rebate element was “linked to this year’s budget”. Trustees noted however that Ms Dugdale had answered a question about the administration of the rebate by saying there were ‘a number of ways it can be administered’. This wording was not conditional and appeared to suggest that Ms Dugdale was considering including the rebate in the emergency budget. Trustees then went on to consider other evidence.

Trustees noted the complainant’s view that Ms Dugdale signalled her intention to introduce the rebate in the BBC’s Scottish Leaders television debate on 24 March 2016.

They noted that Ms Dugdale said:

“In the budget that’s just passed we advocating using a rebate mechanism so anybody who earns less than £20,000 a year wouldn’t pay a penny more.”

When Mr Campbell asked whether she intended to provide a rebate from 2017 she said:

KD: “It’s what we’d have done in the previous budget”

GC: “No but that’s gone... let’s move into the next year...”

KD: “Moving into the next year you can use the powers of the Scottish Parliament to make a difference here.”

Trustees decided that Ms Dugdale had been explicit in her commitment, as part of the budget-setting process, to raise taxes in 2016-17 and to introduce a rebate. They decided that it was much less clear that the rebate was a continued commitment to the electorate.

They noted, for example, that:

- whilst she confirmed her intention to hold an emergency budget [GMS 18 March 2016] in an attempt to “stop the cuts now”, she did not confirm her intention to raise taxes
- the 18 March interview did imply that the rebate was under consideration, by referring to the cost of administering the system.
- but when specifically questioned about the £100 rebate, Ms Dugdale referred to it as a proposal linked to “this year’s budget within the Scottish Parliament” [GMS, 18 March] and “in the budget that’s just passed” and “it’s what we’d have done in
the previous budget” [Election debate 24 March 2016]. She did not explicitly confirm that the rebate was a continuing policy in 2016-17 and beyond.

- whilst noting the complainant thought this point was not relevant as politicians can promise what they cannot deliver, Trustees noted that Ms Dugdale did not have the power to raise taxes in 2016-17 as UK legislation forbids changes to the SRIC during a financial year.

Trustees decided that the two-way was duly accurate because listeners would have been unlikely to be misled because they would have understood from the interview that Scottish Labour’s proposals to protect low earners from its planned tax rises were evolving: from a formal £100 rebate, through the use of new powers to raise tax thresholds, to reliance upon the UK Government’s increase in the personal allowance; and that the majority of the discussion related to the tax year 2017-18. They therefore decided there was no breach of the BBC’s accuracy guidelines on this point.

**Point (A) finding: not upheld**

**Point (B)**

The Committee noted that in the GMS two-way broadcast on 31 March 2016 Glenn Campbell played a clip of the BBC Scottish Leaders debate in which Ms Dugdale explained that Scottish Labour intended to use new powers to set tax thresholds “to protect low income earners”.

Trustees noted the complainant’s view that the inaccuracy of the GMS broadcast was compounded by editing out Ms Dugdale’s comments about the rebate. Trustees noted the relevant section of the debate, in which the excerpts in bold are those used in the GMS broadcast of 31 March 2016:

GC: “Kezia Dugdale has said she would protect those on low earnings. How would you do that?”

KD: “In the budget that’s just passed we advocated using a rebate mechanism so anybody who earns less than £20,000 a year wouldn’t pay a penny more.”

GC: “How would you do that? What mechanism would you use?”

KD: “So we would use local authorities, they already handle lots of ways to use cash…”

GC: “This is how you’d do it from 2017?”

KD: “It’s what we’d have done in the previous budget”

GC: “No but that’s gone... let’s move into the next year…”

KD: “Moving into the next year you can use the powers of the Scottish Parliament to make a difference here.”

GC: “But which power would you use?”
KD: “We’re talking about substantial new tax and welfare powers. But this is the point: **if you earn less than £20,000 a year you won’t pay a penny more under Labour’s proposals**”

GC: “But how would you ensure that’s the case?”

KD: “Hang on Glenn. There’s a really important next point here.”

GC: “But you’re not answering my question. How would you do that?”

KD: “I’m trying to establish the point here. So if you earn £21,000 a year and you might be in the audience tonight, worried about what that would mean for your pocket, the answer is £1.80 a week. But the choice of not doing that is far greater. Nicola Sturgeon’s ripped £500 million…”

GC: “Last chance, last chance. Hang on a second. How would you ensure that those on lower earnings, those earning less than £20,000 do not pay the basic rate?”

KD: “So you have new powers in the Scottish Parliament which allow you to set the threshold rates, we’d be able to set new thresholds to protect low income earners....”

Trustees noted the complainant’s view that Kezia Dugdale first explained her plans for the rebate year [2016/17] before going on to explain why the plans would not be required for the year following. They did not agree with his assessment, however, as they decided that Ms Dugdale clearly linked the rebate to “the budget that’s just passed” and “what we’d have done in the previous budget”.

Trustees noted BBC Scotland’s view that the story was structured for valid journalistic reasons:

- Scottish Labour put forward three successive positions over the course of several weeks: firstly a £100 rebate, then using a new income tax threshold, then the UK personal allowance
- the rebate plan had been superseded – twice – by alternative proposals, with Scottish Labour arriving at a position, at the time of the 31 March broadcast, where their aspirations to protect those earning under £20,000 p.a. would be met by proposals made by the UK Chancellor of the Exchequer
- at the time of reporting, Mr Campbell judged that to be the important part of the story and this was a valid editorial judgement.

Trustees did not agree that the omission of the clips resulted in the two-way breaching the BBC’s guidelines on due accuracy and they decided that, at the time of the 31 March 2016 broadcast, the choice of which clips to include fell firmly within the BBC’s right to make editorial and creative decisions without the Trust’s intervention.

**Finding Point (B): not upheld**

**Overall finding: not upheld**
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 Procedure6 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 taking down a photograph from BBC News Online

The complaint concerned the publication on the BBC News website of a photograph of the complainant’s mother and sister. The complainant’s mother was in a care home. Her sister had given permission for the picture to be used as part of a story on abuse in care homes. The story and the picture were originally published in October 2013.

On 21 November 2016, BBC One’s Panorama: Nursing Homes Under Cover was broadcast. The programme used secretly filmed footage at the care home of the complainant’s mother. In pre-broadcast publicity on the BBC website, there was a link to the original 2013 article which contained the picture of the complainant’s mother and sister. The complainant said that the original story and photograph was now getting many more ‘hits’. On the 18 November a news story was published that used the photo.

On 20 November 2016, the complainant contacted the BBC region responsible for the story saying that her mother had not given permission for the picture to be used. She wanted the photograph removed immediately or the image pixelated. The BBC explained that the complainant’s sister had given consent for the picture to be used, but it would pass on her request to the online team. By the end of the day on the 20 November it had been explained that it was most unlikely that the picture would be removed from the website.

At 10.49am on 21 November 2016, the complainant forwarded an email from local Council services, who said that they had visited the complainant’s mother and she did not want her photograph used on the BBC website. During the day of the 21 November, various contacts between the complainant and the BBC took place. The relevant management became aware of the email in the early afternoon. At 8.00pm, there was a call at the Council’s instigation with the relevant BBC manager. At 8.18pm the manager contacted BBC online to ask them to remove the photograph. It was removed at around 9.00pm.

The complaint

The complainant complained to BBC Audience Services. In summary, she said:

- That it took an “estimated 32 hours” to remove the photograph from the website.
- The BBC ignored the advice of the local council.
- The continued publication of the photograph caused the complainant and her mother distress.
- There was no public interest in showing her mother in connection with the story of care home abuse.

BBC Audience Services made the following points:

- The BBC received the photograph from the complainant’s sister who gave permission to use it and therefore it had no reason to believe that there would be an issue.
• The discussions on 21 November 2016 centred around whether or not the BBC should continue to use the image, since the complainant’s sister had confirmed again that the BBC could still use it.
• After a telephone conversation with the Council representative, the BBC removed the photograph.

The complainant was unhappy with Audience Services’ response and escalated the complaint. The BBC Executive responded saying:

• It was sorry for any upset caused.
• The photograph was used in good faith and permission had been given from the complainant’s sister.
• The BBC must follow proper processes when taking down material from the website.
• On 21 November 2016, there were conflicting opinions from different relatives.
• The image was taken down once the Head of New Media had spoken by telephone to the Council.
• While the BBC was sorry for any extra worry, there is a public interest in illustrating stories of importance through experience and examples of individuals.

Appeal to the Trust

The complainant remained dissatisfied with the BBC Executive’s response and appealed to the BBC Trust.

• The complainant believed that it took the BBC too long (approx. 10 hours) to remove the photo of her mother after she forwarded the Council’s email to the BBC at 10.49am, on 21 November 2016
• It was only after a telephone conversation between the BBC Head of New Media and the Council that the material was taken down.
• The complainant remained of the view that there was no public interest in using her mother’s photograph in the article.

The Panel’s decision

The Trustees considered the points raised by the BBC and the complainant. The panel noted that the issue in front of them was whether or not to admit the appeal.

The Trustees appreciated why this issue had caused the complainant concern. They understood that, from her point of view, the time taken to remove the photograph seemed too long. The Trustees also recognised that, at the time of the complaint, her mother was in a care home and there was a difference of opinion within the family as to whether or not the image should be online. This must have been a difficult time for all those involved.

This was therefore a difficult decision for the Trustees in that it concerned a family matter, but they had to decide whether this issue was likely to be in a breach of the Editorial Guidelines on privacy. Privacy can only be infringed when it is warranted. Normally the greater the infringement of privacy the greater the public interest required to justify the intrusion.
If informed consent is given by an appropriate person (the individual or someone acting on their behalf) then it follows that there has not been a breach of privacy.

The Panel looked first at the complainant’s concern that the publication of this picture was not in the public interest. Trustees considered that the story of abuse in care homes is one of huge public interest and national importance. It is important that, when the media uncovers such scandals, it can provide evidence of them. Showing a family photo of an identifiable person (with the appropriate consent) who resided at one of the care homes which was subject of the latest journalistic investigation (and where the family had expressed long-standing concern about the care provided) was in the public interest. Trustees agreed that if this aspect of the matter came before them on appeal there would be no reasonable prospect of success on this point.

Trustees then turned to the time taken to withdraw the photograph. They concluded that:

- The BBC had published the photograph of the complainant’s mother in good faith and it had been on the BBC website for three years. The complainant had been aware of this but had not sought to challenge its use.
- It was clear that, in November 2016, there was a dispute over whether there was consent for publication of the picture. But until the dispute was resolved, the presumption in such a case is for the material to remain published.
- Removal of material from the BBC website is a serious decision and requires the broadcaster to go through its appropriate processes.
- While the Trust noted that the Council had sent an email saying that the photograph should be removed, and that the complainant’s mother wished it to be removed, the BBC still had conflicting evidence (from the complainant’s sister). At the time the BBC would not have known which sister spoke on behalf of the mother and would not have been entirely clear if the mother herself was in a position to give or withhold informed consent.
- It was therefore right for the BBC to consider fully the facts of the case and take a well-judged and informed decision.
- The action in taking down the photograph and apologising for any distress caused by the delay was sufficient to have resolved a breach if there had been one. However, the Trustees agreed that if they took this matter on appeal they would not have concluded there had been a breach of the Editorial Guidelines relating to privacy in leaving the photo on line from early afternoon on 21 November until the picture was removed at around 9.00pm after the Council had spoken to the relevant manager.

The Panel appreciated that the removal of the photograph from the BBC website could have been quicker from the point of view of the complainant. However, given the circumstances of the case: the time the photo had previously been on the website; the disputed consent; the seriousness of the issue; and the public interest attached to the story (see above), it did not believe the time taken was unreasonable. As a consequence the Panel did not believe that that there was a reasonable prospect of success for an appeal about the time taken to remove the photograph.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.
The Panel therefore decided that this appeal did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further to a complaint about BBC News coverage of the Labour Party

The complainant made the following points:

- BBC News demonstrated “extreme bias” in its coverage of the Labour Party compared to the Conservative Party since Jeremy Corbyn was elected leader
- the words “crisis” and “row” were used unfairly on BBC London News in connection with allegations of anti-Semitism in the party and Ken Livingstone’s comments which led to his suspension
- in contrast when reporting the junior doctors’ strike in January 2016 the BBC did not use any negative words or views about the Conservative Party; only reported it as a pay issue when it was about patient safety; and only broadcast interviews with members of the public who were against the strike rather than those supporting it
- the complainant referred to other stories from January 2016 and earlier concerning Jeremy Corbyn and Trident, splits within the Conservatives over tax credit cuts, and the resignation of Iain Duncan Smith which she said highlighted differences in the reporting of issues relating to the Labour and Conservative parties
- in January 2016 the BBC News at Ten showed a reporter shouting offensive comments at Jeremy Corbyn
- also, in 2015 [former Conservative speechwriter] Derek Laud accused the Conservative government of being racist with regards to immigration, and the 2016 Conservative London mayor election campaign “was based on unfounded racist attacks”, yet the BBC did not consider these issues newsworthy
- in July 2016 a journalist on BBC Breakfast reporting on the Labour leadership situation said,

  “we frequently use the word crisis, as political correspondents, often to enliven stories that frankly are nothing near worthy of that description…”

The complainant found this to be shocking to hear “without any awareness of how inappropriate, wrong and damaging this is”.

BBC Audience Services made the following points:

- stories about the Labour Party were treated in exactly the same way as stories relating to other political parties
- regarding BBC London News prior to Ken Livingstone’s suspension, a number of allegations of anti-Semitism had been made against party members
such allegations against the main opposition party at Westminster were obviously newsworthy and Jeremy Corbyn had received criticism from senior Labour figures that he had been slow to deal with them
at no point in the coverage did the BBC suggest that either Mr Corbyn, or the party as a whole, was anti-Semitic
the sight of Mr Livingstone being rebuked by a Labour MP, face to face in front of the media, was clearly an unusual event and indicated divisions within the party over the issue
in general, decisions about which news stories to cover were subjective and not everyone would agree with the choices made. The BBC could not report every possible story but the BBC appreciated feedback from viewers when they felt a story had been overlooked or marginalised
it was not always possible or practical to reflect all the different opinions on a subject within individual programmes or bulletins. 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 BBC aimed to use neutral language and did not seek to denigrate or promote any view but to identify all significant views, and to test them rigorously and fairly on behalf of the audience
among other evidence, audience research indicated widespread confidence in the impartiality of the BBC's reporting
Audience Services could not answer specific complaints from January 2016 or earlier as the BBC's complaints process allowed them only to consider complaints about items aired within 30 working days of the complaint
in general the BBC treated parties equally, looking at the facts, including criticism and a defence and telling both sides of the story to allow viewers to come to their own conclusions
Audience Services included an online example of coverage of the London mayoral election which analysed the tone of the Conservative campaign and an interview with Sadiq Khan on Today
terms like “chaos” or “crisis” were used if they were used by the parties involved themselves or their critics. A right to reply was included
with the junior doctors’ strike the BBC reported facts and claims extensively and impartially from both sides allowing the audience to decide for themselves what was at stake and the factors involved
divisions in the Conservative Party had been reported over the past few months and as the fallout from the EU Referendum continued the BBC would continue to look at how the political landscape was changing for all parties affected
senior editorial staff, the Executive Committee and the BBC Trust kept a close watch on programmes to ensure that standards of impartiality were maintained.

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 14 October 2016 on the substance of her complaint. She said the BBC had not properly addressed her complaint and that:

- the complaint related to the BBC News at Ten and therefore the online articles used by the BBC in its responses were not relevant
- the BBC had not responded to the specific points raised, apart from one of six items mentioned, about the suspension of Ken Livingstone
- the BBC had not explained why it attached negative words to Labour Party news items when it did not attach negative words to Conservative Party news items
- the BBC had not answered the complainant’s point about the journalist who said, “we frequently use the word crisis, as political correspondents, often to enliven stories that frankly are nothing near worthy of that description…”
- in using negative words like “chaos”, “crisis” and “weak” the BBC presented the Labour Party as chaotic, in crisis, and weak. This did not accord with the policy of letting viewers make up their own minds.

Decision of the Trust Adviser

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

The Adviser noted that all BBC output was required to meet the standard of “due 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.

“We seek to provide a broad range of subject matter and perspectives over an appropriate timeframe across our output as a whole.”

The Adviser noted that the original complaint focused on the differences the complainant believed existed in the way BBC News had reported issues relating to the Labour and Conservative parties and that this had been prompted by a report on BBC London News following the suspension of Ken Livingstone. She noted that the complainant had objected to the use of the words “crisis” and “row” in this report. She noted the context of the interview with Jeremy Corbyn. The reporter had suggested this was “something of a crisis” for the Labour Party, as lifelong Jewish supporters of Labour had been saying they would no longer vote for the party and there were worries about donations drying up. In response Mr Corbyn said there was no crisis and went on to explain why.

The Adviser also noted that on this aspect of the complaint Audience Services had explained that given the context of the interview with Mr Corbyn – criticism from senior Labour figures that he had been slow to deal with allegations of anti-Semitism, and the footage used during the report of Ken Livingstone having a heated disagreement with John Mann MP in front of the media – it was appropriate to use the term “row” in this instance. Given the context in which these terms were used, therefore, the Adviser did not believe Trustees would be likely to consider they demonstrated bias against the Labour Party.
The Adviser noted that in her appeal the complainant had stressed that her complaint related to coverage of political issues on the News at Ten and that the BBC had refused to respond to this point. She noted that in her complaint the complainant had referred to one item on the News at Ten which featured a reporter questioning Jeremy Corbyn in the street in January 2016. She noted the relevant section of the complaints process which stated that:

“You should make your complaint within 30 working days of the date on which the content was broadcast or first published in a BBC owned magazine. If you contact the BBC after that time, please explain why your complaint is late. Exceptionally, the BBC Executive may still decide to consider your complaint, but only if it decides there was a good reason for the delay.”

She noted that Audience Services had explained to the complainant that they could not therefore consider this and other items mentioned in the complaint which related to January 2016 and October 2015 as they fell outside the time limit of 30 working days (the complainant having sent her initial complaint on 28 April).

However, the Adviser noted that Audience Services had responded in general to the complainant’s points about allegations of racism in the Conservative Party and to her belief that BBC coverage of the junior doctors’ strike focused only on the issue of pay. They included in their responses examples of BBC coverage of both the nature and tone of the Conservative London mayoral campaign and the reasons behind the junior doctors’ strike – including interviews with people in support of, and against the strike and doctors themselves who had explained that patient safety was one of the issues of concern to them.

The Adviser noted that the BBC had also outlined to the complainant its commitment in general to reporting political issues with impartiality and the requirement to make sure that a range of views were explored over a period of time. It had explained that the BBC aimed to treat stories about the Labour Party in exactly the same way as stories relating to any other political party by reporting the facts and allowing a range of opinions to be heard so that viewers could make up their own minds about the issues.

Finally she noted the complainant’s concern about a comment on BBC Breakfast in July in which political correspondent Chris Mason had said:

“We frequently use the word crisis, as political correspondents, often to enliven stories that frankly are nothing near worthy of that description. Labour are definitely in a crisis at the moment...”

The Adviser noted that this comment had formed part of a two-way which was designed to be informative but informal and which was followed by a joke about political correspondents needing “a lie-in” because of the number and nature of the political stories being covered at that time. She did not believe Trustees would be likely to consider that in this context the audience would have been led to conclude that this phrase was a serious comment on the BBC’s coverage of political issues.

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 her appeal. It was disturbing that none of her points were considered a matter of substance. She said that:

- the points made in the complaint had been misunderstood, misrepresented and repeatedly not addressed
- the BBC had never provided any evidence or facts to prove that her complaints were unfounded. If the BBC had no evidence, the BBC had to acknowledge that it was in the wrong
- Re racism - could the Trust respond in relation to the News at Ten not online?
- the BBC did not cover allegations of racism against the Conservative Party or members of the Conservative Party in the way they had against the Labour Party
- however, the online article portrayed Zac Goldsmith and Sadiq Khan as being both as bad as each other yet the News at Ten did not “hound” Zac Goldsmith or David Cameron during the London Mayoral campaign with accusations of islamophobia or racism or for not dealing with islamophobia or racism in the party
- at no point had any evidence been provided that proved that the BBC News at Ten covered allegations of racism made towards the Conservative Party or its MPs. The BBC could not call itself impartial on this point. If the BBC had no evidence, the BBC had to acknowledge that it was not impartial or balanced
- no facts or evidence were provided to show that the News at Ten reported that junior doctors were striking due to concerns about safety
- she had not received anything that covered the junior doctors saying they were striking about safety. Please could it be provided without the junior doctors’ reason for why they were striking on the News at Ten it was impossible for the BBC to claim the “...BBC reported facts and claims extensively and impartially from both sides allowing the audience to decide for themselves what was at stake and the factors involved”. How could the audience decide for themselves without this key fact?
- when reporting problems in the Conservative Party the BBC did not use negative and derogatory terms such as “chaos”, “disarray”, “division” and “weakness”, all of which suggested weakness
- occasionally the BBC did attach words to negative stories about the Conservative Party, but they were words that suggested power and decision, for example “blue on blue shelling”, “U-turn”, “split”, “internecine warfare”
- often, negative stories about the Conservative Party were begun with a more negative view about Labour. The BBC did not begin a negative story about the Labour Party with a more negative view of the Conservative Party
- did the BBC cover the Conservative story that the EU referendum was only taking place due to chaos and division in the Conservative Party?
- the BBC News at Ten used the terms “chaos” and “crisis” without reference to who said them. The BBC’s response is that the terms “were used by the parties involved themselves or their critics”. The BBC had provided no evidence of this.
The BBC had to acknowledge that without referencing these terms they could only be taken as the BBC's point of view. There were many “critics” of the Conservative Party; however, the BBC did not attach their negative descriptions to stories about the Conservative Party

- as a serious reporter, Chris Mason would not “make it up” when he said that “we frequently use the word crisis as political correspondents often to enliven stories”.

**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.

The Trustees noted that the complainant had raised a number of points in the course of her correspondence. They noted that the editorial complaints and appeals procedure which can be found at this link: [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2017/complaints_fr_work_ed_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2017/complaints_fr_work_ed_complaints.pdf)

says that:

”You should make your complaint within 30 working days of the date on which the content was broadcast or first published in a BBC owned magazine

...

”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.”

...

”Your complaint should include all of the points about the item that you wish to be considered as the BBC may not consider new or different points after Stage 1a of the Procedure has concluded.”

The Panel noted the original complaint at Stage 1a. Trustees agreed that in the interests of proportionality they would focus on the points raised on appeal which had been raised at Stage 1a (that were made within 30 working days of publication or broadcast) and not on other points raised later on. This meant that they would not consider points about
news reports from 21 January 2016 or 25 January 2016 or about the January coverage of the junior doctors’ strike or the overturning of tax credits in the House of Lords in 2015.

Trustees noted that the complainant had asked why stories about racism in the Conservative Party had not been covered during the London mayoral election. Trustees noted that the complainant wanted examples of coverage from the BBC News at Ten coverage. They noted that the BBC had provided the complainant with a link to an online article which contained the following:

"Conservative candidate Zac Goldsmith has been accused of running a ‘desperate’ and ‘racist’ smear campaign against his Labour opponent Sadiq Khan.

“Clearly incensed at the accusation - which he rejects - Mr Goldsmith has pushed full steam ahead with his claims that the Labour candidate has given ‘oxygen to extremists’.

“Mr Khan, in turn, fiercely denies this.”

Trustees agreed that it was not necessary for Audience Services to search for on-air coverage when they had been able to provide examples of online coverage.

Trustees noted that Audience Services replied to over a million audience contacts a year. The Panel agreed that in fairness to all licence fee payers it was not necessary for the BBC to provide evidence to disprove a generalised assertion where specific content had not been cited. In such circumstances it was appropriate for Audience Services to reply in general terms.

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:

- Audience Services had outlined the BBC’s commitment in general to reporting political issues with impartiality and to treating stories about the Labour Party in exactly the same way as stories relating to any other political party
- Audience Services had explained that in general the BBC preferred to use neutral language and words like "chaos” or “crisis” would be used when used by the parties involved in a particular story
- the BBC’s political correspondents were expected to exercise their professional judgement about the underlying importance of political events, based on their daily familiarity with politicians across the political spectrum
- Audience Services had explained why BBC London News had used the terms “crisis” and “row” in its report given the context of events at the time
- the comment by Chris Mason was within a two-way on BBC Breakfast and given the relaxed nature of the programme and the context of the remark the audience would not have understood the phrase as a serious comment on how the BBC approached coverage of political issues.

Trustees agreed that the complainant had received a reasonable and reasoned reply from Audience Services and that the complaint had been appropriately addressed.
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 Audience Services not to respond further to a complaint about BBC News at Six, 31 August 2016

The complaint concerned an item on the News at Six which reported the arrest of six teenagers following the death of a Polish man in what the BBC referred to as an unprovoked attack. The Polish Ambassador and the local MP had that day visited the site of the incident at Harlow in Essex and were featured in the news report laying a wreath.

The complainant considered the report was sensationalist and gave unjustifiable weight to the possibility that the attack was racially motivated and linked to the referendum vote to leave the EU at the expense of other possible explanations for the attack. Below are some of the relevant extracts from the item on the News at Six:

NEWSREADER:
...Arkadiusz Jóźwik who was 40 was left with fatal head injuries after an unprovoked attack on Friday night. Police suspect it might have been racially motivated. The Polish ambassador to the UK has visited the scene. Our Home Affairs Correspondent, Daniel Sandiford’s report contains some distressing details.

CORRESPONDENT:
On his first day in the job, Poland’s new ambassador to Britain, found himself laying flowers, mourning one of his countrymen, - a man murdered while eating a pizza in what may have been a racist attack.

ARKADY RZEGOCKI, POLISH AMBASSADOR:
I’m really shocked and deeply concerned on this, on this tragedy. It’s a great tragedy, not only for Polish community but also for, for British community.

... 

CORRESPONDENT:
The fear is that this was a frenzied racist attack triggered by the Brexit referendum. But while detectives aren’t ruling that out, it may be that Arkadiusz Jóźwik wasn’t targeted because of his race, but simply because he was there when a group of youths was looking for trouble. People in The Stow shopping precinct said that teenagers had been causing havoc here all summer, and not just harassing Polish people. But worrying it could be a hate crime, the local MP made this appeal

ROBERT HALFON MP, CONSERVATIVE HARLOW
We need to be a kind and decent nation and we shouldn't allow . . . people who come from the sewers to exploit divisions.

The complainant made a number of detailed points including that:

- the BBC has a special responsibility as a public service broadcaster to ensure that extreme claims are not made irresponsibly and when they are, properly put into context
by including the “carefully-edited claims” of the police and the local MP the report suggested cumulatively that this was a frenzied race hate murder connected to the Brexit vote by people who had “come from the sewers to exploit divisions”

this was sensationalist and “deliberately and irresponsibly” over-emphasised the possibility of a link between the man’s death and the Brexit vote

the alternative motive, that it was not connected to Brexit and was not a race hate attack, was “deliberately under-emphasised” because it was not explored to the same level as the “race hate” angle

he objected to the use of the word ‘frenzied’ and ‘fear’

it was not clear where the “fear that this was a frenzied attack triggered by Brexit” came from. Frenzy implied that the Brexit vote had been motivated by racism and unreasoned bigotry.

recent statistics on the trend in the nature and volume of race hate crime in the UK reflected that there was no hard data that violent crimes were being triggered by Brexit

in the immediate aftermath of the murder, before allegations of links with race hate and Brexit, effort should have been taken to assess how likely this was. A key ingredient of that process should have been an examination of the race hate data to see how common such crimes are

much greater caution should have been exercised in bracketing race hate with extreme violence and linking that alleged violence with Brexit

Further information was provided on the data

Violence in hate crimes was rare most was verbal

an item in October on the Today programme was careful not to link the killing with race hate.

Police figures showed a rise in hate crime but press releases warned that the seeming ‘spike’ after 23 June should not be taken as evidence of a national trends. The increase in reporting subsided by the second week of September.

But BBC reports projected the spike and ignored the caution about a national trend. For example a BBC story on 26 August on a report by the UN Committee on the Elimination of Racial Discrimination

a BBC magazine report had suggested there had been a spike in crime after the Referendum. Evidence that there had been a spike in crimes against Eastern Europeans was hard to come by.

Audience Services made the following points:

• the coverage did not report that Mr Jozwik had been killed in a racially motivated attack as a consequence of the Brexit vote; the BBC’s coverage simply reflected that this was one possible reason

• the BBC reported what the police had said, that this was one line of inquiry

• the BBC reported statements made by both the Polish Ambassador and the local MP

• the reference to “frenzied” reflected the concern (fear) in Harlow and among the community that this was the nature of the attack; this was fair given what was known at the time: that Mr Jozwik had been killed following an unprovoked attack
• the BBC also reported the belief among some people in Harlow that the murder could have had more to do with anti-social behaviour than racism
• there has been a rise in reported hate crime and incidents of racism since the EU Referendum; given that, the BBC said they believed they were right to explore whether this could have been the motivation behind the attack
• the BBC was committed to bringing the user comprehensive, impartial, factual and fair reporting

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 raised the following guidelines:

8.2.4
Investigations into crime or anti-social behaviour, involving deception and/or intrusion, must be clearly editorially justified and proportionate to the wrongdoing they seek to expose

8.4.2
In cases where potential law-breaking or civil disobedience form part of a current news story or public policy debate, editors must consider both their responsibility to reflect the debate or events fully and accurately and their duty not to broadcast material likely to encourage or incite crime. Context and explanation will be critical. The mere recording and broadcasting of criminal activity will not normally amount to encouragement or incitement, unless it reveals imitable detail. However, we should take care that criminal acts are not glorified or glamorised.

Direct calls or provocation to audiences to commit criminal acts should be robustly challenged.

Illegal activities such as drug use or joy riding should not be portrayed as problem free or glamorous. It may be appropriate to reflect the negative consequences of such activities, over and above the fact they are illegal.

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.

The decision of what to include and not to include in a story is a matter of editorial judgement for the journalists involved as long as the material does not breach editorial standards. As the Royal Charter (2006) sets out, editorial and creative decisions are a matter for the Executive Board (Article 38 (1 (a)) and not the Trust. In this case the journalists concerned reported through BBC News to the Executive Board. So the point at issue was whether there was a reasonable prospect of success for an allegation that the
Editorial Guidelines had been breached in this item in which case it would have been incorrect for Audience Services to have ended correspondence on the matter.

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 noted that the complainant had cited the Editorial Guidelines on Reporting Crime and Social Behaviour in respect of the issues he had raised. She did not consider either guideline raised by the complaint to be appropriate. The first guideline was relevant when the BBC was involved in intrusion or deception which was not the case with this story. The second concerned incitement to crime which again was not the case.

The Head of Editorial Standards noted the introduction to the section as the most relevant to the issues raised by the complainant:

“Our coverage of crime and anti-social behaviour is part of the BBC’s public purpose and is aimed at giving audiences the facts in their context.

…

“Our reporting must not add to people’s fear of becoming victims of crime if statistics suggest it is very unlikely.”

The Head of Editorial Standards noted the complainant’s assertion that the report lacked context and gave too much weight to the possibility that the attack had been racially motivated, when the known facts did not warrant it. She considered the content of the item and the nature of the response the complainant had received from Audience Services in reaching her decision.

The BBC’s role is to report the world as it is, but to do so responsibly. The Head of Editorial Standards considered that the requirement to do so was likely to have been fulfilled on this occasion. The decision to reflect concerns that this was a racially motivated attack, and how to report those concerns, was one for journalists to make, and appeared to have had adequate editorial justification at the time: the police had said it was one line of inquiry and in his statement to the media, the MP had chosen also to highlight his concerns in that respect. He was reported elsewhere as saying “…if it is also true, as is being investigated, that this could be a hate crime, then it is all the more disturbing and shocking”.

Just as importantly in the view of the Head of Editorial Standards, the reporter set out clearly that this was one line of inquiry and then set out an alternative explanation for the attack: that the murder could have had more to do with anti-social behaviour and that Mr Jozwik could have been killed “simply because he was there”.

The choice of interview clips was appropriate to this story. The choice of the words ‘fear’ and ‘frenzied’ had both been explained by the BBC and the explanations were reasonable:
this was the ‘fear’ locally and the attack was unprovoked and self-evidently resulted in a very serious injury and therefore could be described as ‘frenzied’.

Finally, the BBC story had not addressed whether or not there had been a ‘spike’ in reported hate crime after the vote and whether that amounted to a national trend. The Head of Editorial Standards acknowledged that additional information on the prevalence of race hate crime in the context of the EU Referendum would undoubtedly have added to the audience’s understanding. But she considered that it was neither required nor expected in the context of a short news item reflecting the key events of that day in what was still an unfolding story.

**Taking all 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.**

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**Decision of Audience Services not to respond further to a complaint about Chris Packham’s personal use of Twitter on 5 & 8 January and 12 February 2017**

The complaint concerned tweets posted on Chris Packham’s personal Twitter account on 5, & 8 January and 12 February 2017. The tweets posted in January highlighted recent declines in the numbers of Lapwings in the UK, a familiar farmland bird that is now on the Red List of Conservation Concern. On 5 January 2017 a tweet linked to an online article by Graham Appleton called Can habitat management rescue Lapwing populations? In a second related tweet, posted on 8 January 2017, Chris Packham suggested that Lapwings were being shot despite a 53% decline in their population and directed users to his own online petition calling for an introduction of a moratorium on the hunting of critically declining wading birds, namely Woodcock, Snipe and Golden Plover. It included a graphic showing a picture of a Lapwing. This tweet was widely condemned because it was wrong - Lapwings are fully protected under the Wildlife and Countryside Act. In the third tweet, also on 8 January 2017, Chris Packham apologised for his inaccurate comment about Lapwings being shot, tweeting: “As the graphic says Lapwings are a conservation icon – protected even though declining less than Woodcock. I apologise for this mistake.”

On 12 February 2017 Chris Packham posted tweets about the safety of glyphosate, a key ingredient in the weed killer Roundup. The first tweet incorporated a National Farmer’s Union graphic explaining that the withdrawal of approval for glyphosate would be detrimental for famers and the environment and included a link to an article about the NFU on the ethical consumer website and the second tweet linked to a study published online by the public health journal, Environmental Health, exploring the potential dangers

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7 https://wadertales.wordpress.com/2017/01/05/can-habitat-management-rescue-lapwing-populations/
8 https://twitter.com/ChrisGPackham/status/830912524161802242
of glyphosate\textsuperscript{10}. There was a mixed reaction on Twitter about Chris Packham's tweets, although farmers tended to tweet in support of keeping glyphosate.

The complainant said that, as a high profile BBC presenter on many different kinds of programmes, Chris Packham's use of his personal Twitter account was incompatible with the BBC's Social Media Policy. He said that the following was unacceptable:

- promoting his online petition (which was political) to ban the shooting of bird quarry species
- incorrectly claiming that Lapwings are shot in the UK and then failing to remove the claim from his social media accounts after he admitted he was wrong.
- encouraging support for a ban on the essential agricultural herbicide glyphosate.

Audience Services made the following points:

- Chris Packham's association with the BBC is primarily for the Watches’ programmes, where he helps to explain the science of nature. This is separate from his work outside of and independent to the BBC.
- Chris Packham is an independent broadcaster and a respected naturalist in his own right outside of his BBC commitments.
- Chris Packham's personal Twitter account has no connection to the BBC or any of the Watches’ social media accounts. The audience is able to distinguish between Chris Packham as a presenter on a BBC series and his personally expressed views as a naturalist.

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 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.

The Head of Editorial Standards noted that Mr Packham, as BBC talent, was required to comply with the BBC’s Guidance on the Personal Use of Social Networking and Other Third Party Websites, which says that BBC talent “should not engage in activities on the internet which might bring the BBC into disrepute”.

The Head of Editorial Standards noted that BBC Trust’s Editorial Standards Committee finding of 23 September 2016\textsuperscript{11} stated there was a standard clause in every presenter’s contract about not bringing the BBC into disrepute and that, in the case of Mr Packham, the BBC wished to apply the “no disrepute” principle in the best way appropriate to the

\textsuperscript{10} https://ehjournal.biomedcentral.com/articles/10.1186/s12940-016-0117-0
\textsuperscript{11} http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2016/bbc_wildlife_magazine.pdf
huge variety of editorial situations that the presenter encountered in his different roles for the BBC.

The Head of Editorial Standards noted that Chris Packham was a freelance presenter and that he had recently appeared on the three-part series Britain’s Ancient Capital: Secrets of Orkney which was shown on BBC Two and BBC Four between 2 January and 17 February 2017 and on four Winterwatch programmes which went out on BBC Two from 23 to 26 January 2017. She noted that Britain’s Ancient Capital: Secrets of Orkney was a programme that revealed how the remote Scottish island of Orkney is now considered to be one of the treasure troves of archaeology in Britain after recent discoveries there have turned the Stone Age map of Britain upside down. And that Winterwatch was broadcast live from RSPB Arne in Dorset and looked back at the news since Autumnwatch and explored how the cold months affected the animals of the UK.

The Head of Editorial Standards noted the nature, context and audience expectation of these programmes. She concluded that Mr Packham’s presenting role on Britain’s Ancient Capital: Secrets of Orkney was very different to that of Winterwatch and that the latter programme required the BBC to implement more robust protocols with Mr Packham as a naturalist to avoid any potential for viewers’ perception of the impartiality of the Watches to be compromised.

The Head of Editorial Standards noted the BBC had a verbal agreement with Mr Packham to ensure that his widely known personal views on subjects do not affect the output or impartiality of the Watches. This involved Mr Packham desisting from any public comments on potentially controversial subjects while the Watches were on air, for two weeks prior to the airing and a week after they have gone off air. The Head of Editorial Standards noted that Mr Packham had not made public comments on his personal Twitter account on potentially controversial subjects between 9 and 31 January 2017 and had therefore complied with the agreement he had with the BBC about the Watches.

The Head of Editorial Standards noted the reply from Audience Services, which said that Mr Packham is an independent broadcaster and a respected naturalist in his own right outside of his BBC commitments and that the audience is able to distinguish between Mr Packham as a presenter on a BBC series and his personally expressed views as a naturalist. She considered that as Mr Packham was a freelance presenter and not a BBC employee it was open to him to associate with campaigns on a wide range of wildlife issues and support charities in the field as long as there was no implication that the causes or campaigns he supported were endorsed by the BBC and that he did not bring the BBC into disrepute.

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 Audience Services not to respond further to a complaint about News at Ten, BBC One, 15 February 2017

The complaint concerned an item on the News at Ten following the White House meeting between President Trump and the Israeli Prime Minister, Benjamin Netanyahu. The complainant said this statement in the commentary was inaccurate and lacked impartiality:

"Mr Netanyahu authorised thousands more homes for Jews in the occupied territories in defiance of international law."

The complainant made the following points:

- Mr Netanyahu did not say who specifically should live in those homes
- There is no law that forbids building of homes for people born in settlements so his authorisation was not in defiance of international law
- the only international law ever quoted to say the settlements are illegal is Article 49 (6) of the 4th Geneva Convention: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”
- the settlements do not infringe that convention for many reasons: Palestine is not and was not a 1967 signatory state; all those living in settlements went there from choice or were born there; the convention does not forbid building houses or shops
- the words of Article 49(6) cannot be twisted to mean a state may not build homes for people born in settlements
- a similar complaint which the BBC Trust adjudicated a few years ago was not upheld because the item in question reflected that whilst it is the position of the UN Security Council that settlements are illegal, Israel rejects this assertion; there was no such qualification on this occasion

Audience Services noted the relevant extract from the BBC’s guide to terminology:12

"Settlements… are illegal under international law – that is the position of the UN Security Council. Israel rejects this assertion.

Audience Services said (their emphasis):

“When writing a story about settlements, BBC journalists can aim, where relevant, to include context to the effect that ‘all settlements in the West Bank, including East Jerusalem, are considered illegal under international law, though Israel disputes this’. This means we would not seek to use the phrase on each and every occasion.”

“The legal status of the settlements was fairly and accurately reflected here.”

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.

12 http://www.bbc.co.uk/academy/journalism/subject-guides/israel-and-the-palestinians/article/art201307021112133696
**Appeal**

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

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

The Head of Editorial Standards decided that the 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.

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

“"The term 'due' means that the impartiality [or 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 there are a range of ways in which due accuracy and due impartiality can be achieved; it is not a scientific application of a principle but an editorial judgement. It was helpful to consider whether the audience had been provided with a reasonable understanding of what the story was about having been informed of the relevant material facts.

The Head of Editorial Standards noted that the complainant had cited from a previous Trust decision in 2016. She noted that in the pre-amble to its decision on that occasion the Editorial Standards Committee said:

“"Due” accuracy does not require the totality of every conceivable position or interpretation of every issue to be reflected or included on every occasion. The Trustees agreed that, as with all appeals, their role was to test the content against the Editorial Guidelines and to form a view as to whether these had been complied with.”

In circumstances relating to Israeli settlement building in the Occupied Territories, sometimes Israel’s position can be explained by literally spelling it out, in others it is implicit from the content itself. The Head of Editorial Standards considered it was the latter on this occasion; in her opinion the audience would not be likely to have come away from the item with the impression that Israel accepted that its settlement building programme was illegal. It was clear from the context that this was not the case and there was therefore no requirement, on this occasion, to include further information on Israel’s position.

With regard to the complainant’s assertion that a different status be accorded to Israelis born in a settlement, such that homes built for them cannot be illegal under international law. Israel has for a long time held the position that it is not building new settlements but rather expanding existing settlements to allow for natural growth. This has not altered the international community’s view that the settlements are illegal under international law.

**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 Audience Services not to respond further to a complaint about bias against the unionist community on BBC Northern Ireland

The complainant made the following points:

- BBC NI demonstrated a “palpable bias” against the unionist community, the Democratic Unionist Party (DUP) and the First Minister for Northern Ireland Arlene Foster
- the Stephen Nolan Show conducted “a witch hunt” against unionist areas whilst ignoring “widespread racketeering and criminality” in republican areas. The complainant gave detailed examples of issues he felt should have been covered
- particular examples of bias were BBC NI’s “saturation coverage” of the Renewable Heat Incentive scheme (RHI) including a Spotlight investigation, and coverage of the Social Investment Fund (SIF)
- stories about the RHI scheme had been “spun” until Arlene Foster’s “removal” from office. In doing this BBC NI “actively collaborated with Sinn Fein”
- BBC NI used the Licence Fee to “relentlessly attack” the First Minister and by doing so “brought down the NI Assembly”
- A “BBC source” had spoken of the presenter’s animosity towards Arlene Foster and the “atmosphere” in BBC NI at the prospect of “crippling the DUP.
- the complainant included details from the “source” about staff relationships at BBC NI which included resentment against the presenter.

Head of Corporate and Community Affairs, NI made the following points:

- the issues which the complainant felt should be explored on BBC NI output had been noted by relevant colleagues
- BBC NI was not biased against unionists. Its role was to reflect community life and diversity in all of its different aspects and in ways that were consistent with the BBC’s Editorial Guidelines
- fairness, impartiality and editorial independence were fundamental to everything that the BBC did and it was the job of BBC journalists to pursue stories that were in the public interest without fear or favour
- the BBC’s journalism was not motivated by personal animus or political agendas
- issues around the SIF and the RHI scheme (which had previously been the subject of a highly-critical Northern Ireland Audit Office report) were clearly matters that affected BBC audiences in Northern Ireland. They had prompted significant audience and political reaction and the BBC was satisfied that coverage had been evidence-based and inclusive of different viewpoints and perspectives
- the complainant’s email referred to a “BBC source” and included a highly speculative (and in places almost novelistic) account of people’s alleged
motivations, psychology and behaviours. The BBC did not recognise this characterisation of BBC staff or the “atmosphere” in relation to the DUP

- the references to BBC decision-making and events had no apparent basis in fact
- there were arrangements in place to allow individuals to share any workplace-related issues or concerns.

Head of Corporate and Community Affairs, NI said he did not believe the complaint raised an issue that might constitute a breach of the BBC’s Editorial Guidelines.

**Appeal**

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

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

The Head of Editorial Standards decided that the point she should consider was whether the complainant’s appeal against the decision of the BBC not to correspond further had a reasonable prospect of success. She decided that it did not.

The Head of Editorial Standards noted that the content of radio and television programmes which included how and when particular news stories might be covered was the responsibility of individual news editors and such issues were editorial decisions which were the responsibility of the BBC’s Executive Board (Royal Charter 2006 article 38(1)9b)). They were matters where the BBC should be free to exercise editorial judgment and not a matter for the BBC Trust unless they involved a breach of editorial standards.

She noted the replies from BBC NI which had outlined the criteria used by BBC journalists when making decisions about which stories to cover and they had reassured the complainant in particular that the SIF and the RHI scheme were issues of enormous interest to the audience in Northern Ireland and the BBC was clear their coverage had included the broad range of perspectives required by the BBC’s Editorial Guidelines. In the absence of any specific examples of where the complainant felt the BBC’s coverage of these issues had amounted to bias it was not possible to answer this aspect of the complaint in any more detail. She also understood that the BBC had acknowledged the range of stories that the complainant felt should have been covered and these had been noted.

The Head of Editorial Standards noted that the complainant had included information which he claimed had come from a “BBC source” which referred to staff attitudes, motivation and behaviour at BBC NI. She noted that the Head of Corporate and Community Affairs, NI had assured the complainant that he did not recognise this description of staff at BBC NI and that policies were in place at the BBC to ensure that anyone wishing to raise workplace concerns was free to do so.

**Taking this into account, the Head of Editorial Standards, BBC Trust, considered Trustees would be likely to conclude that the appeal did not raise a possible breach of standards and 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 Audience Services not to respond further to a complaint about Today, Radio 4, 8 December 2016

The complaint concerned an item on Today about calls for changes to the Highway Code so motorists should always have to give way to cyclists when turning at a junction. The programme interviewed Chris Boardman, retired Olympic champion and British Cycling’s policy adviser and Duncan Buchanan, deputy director of policy for the Road Haulage Association. At the end of the programme two emails from listeners were read out—one relating how a similar scheme operating in Berlin worked successfully; the second suggested cyclists “should be banned from the roads”.

The complainant made the following points:

- the programme encouraged “bigotry” by reading out an offensive, abusive email
- the email said that cyclists “should be banned from the roads. They cause more hold ups than just about anything else. Inconsiderate people who don’t care that they hold up all the traffic.”
- this was poor journalism which did not help listeners come to an informed decision
- why not include an email that was able to put an opinion based on some evidence or reasoning that would provide a point of view against the proposed change rather than this “deplorable generalisation”
- the email was also clearly inaccurate in saying cyclists cause more hold-ups
- cyclists had to suffer this sort of abuse and associated aggressive behaviour on a daily basis and at a risk to their lives.

Audience Services made the following points:

- during the item there was a range of viewpoints on the subject from members of the public then from British Cycling and the Road Haulage Association
- it was not always possible or practical to reflect all the different opinions on a subject within individual programmes. 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 of an issue
- the BBC did not seek to denigrate any view, nor to promote any view. It sought rather to identify all significant views, and to test them rigorously and fairly on behalf of the audience
- the aim was simply to provide enough information for viewers to make up their own minds. This might include hearing opinions which some people might personally disagree with but which individuals were fully entitled to hold in the context of legitimate debate
- the item in question was also covered on the BBC News website: http://www.bbc.co.uk/news/uk-38248488.

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 he believed that the item breached the BBC guidelines which stated that output should avoid “unjustifiable offence”.

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 complainant felt the email read out on Today was “unjustifiably offensive”. She noted that all BBC output had to meet the standards set out in the Editorial Guidelines, which included a section on Harm and Offence. She noted there was not a requirement not to cause offence (which would be impossible to achieve) but that decisions about potentially offensive output were made bearing in mind the nature and context of the output, audience expectations, editorial justification and an awareness of generally accepted standards.

She noted what had been said:

"We have lot of your emails just before we go about the discussion we had on cycling and changing the way we deal with road junctions. [NAME A] has emailed us to say he lived in Berlin recently and the priority given to pedestrians on side roads and left turns does work, it’s the motorists that need to be educated. Whereas [NAME B] has emailed us to say ‘Cyclists should be banned from the roads. They cause more traffic hold ups than just about anything else. Inconsiderate people who don’t care that they hold up all the traffic’.

She noted the response from Audience Services which had pointed out the BBC’s commitment to airing a range of different opinions and that in doing so it was inevitable that some viewers and listeners would encounter views that they disagreed with. She noted the BBC had stressed that it did not promote or denigrate any particular view but sought to include a broad range of opinions so that the audience could make up its own mind. She noted it had included a link to a report on the BBC News website about the call for changes to the Highway Code which had outlined the views of the London Cycling Campaign.

Whilst she understood the complainant had been offended by the remark, given the context of a debate about whether motorists should give way to cyclists at junctions, she did not consider the majority of the audience would have considered the remark to be offensive or that it “encouraged bigotry”. She considered that Trustees would be likely to conclude that including this email was editorially justified and would not be a breach of 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.
Victoria Derbyshire, BBC News Channel and Today, BBC Radio 4, 1 November 2016; BBC News website ‘Landmark chronic fatigue trial could treat two-thirds’

The complaint concerned BBC coverage of an NHS trial (the FITNET-NHS study) which set out to compare two treatments for children with Chronic Fatigue Syndrome/Myalgic Encephalomyelitis (CFS/ME). The study will investigate whether online Cognitive Behavioural Therapy (CBT) is effective in the NHS, and whether it offers value for money compared to Activity Management delivered via video call.

The complaint concerns the following reports about the trial:

- a BBC News online article ‘Landmark chronic fatigue trial could treat two-thirds’
- a discussion broadcast on the BBC News Channel’s Victoria Derbyshire programme on 1 November 2016
- a report broadcast on BBC Radio 4’s Today on 1 November 2016.

The complainant made the following points:

**Impartiality**

- the BBC promoted the FITNET trial but failed to represent the views of “the vast majority of ME/CFS sufferers and organisations in the UK and worldwide” who opposed the research
- instead the coverage gave a misleading impression that “a small number of activists” were against the research because they objected to the illness being labelled as 'psychological' rather than biological
- those who opposed the research did so because they believed that the psychological treatments involved used flawed science which made them ineffective and, in many cases, harmful
- the complainant believed that the FITNET trial shared many of the same flaws as a previous trial (known as PACE). He said that the PACE trial and the 'psychological' model of ME/CFS have been "widely discredited"
- the complainant also wished to understand whether this subject would be considered “controversial” under the BBC’s impartiality guidelines.

**Accuracy**

- the headline of the online article (repeated in the interviews) was that two-thirds of children “recovered” after 6 months. However, the researchers’ definition of “recovery” was so low that it did not mean “back to normal” or “without symptoms” but an “arbitrary level of improvement”; when patients rated themselves “recovered” the rate dropped to 36%
- the online article included the following sentence:
"Trials of the scheme in the Netherlands showed 63% of the patients given therapy had no symptoms after six months, whereas just 8% recovered without it."

this sentence was inaccurate: to claim patients had "no symptoms” the BBC should have used 36% figure. Also, in the longer term, the control group and the treatment groups had the same "recovery" rates i.e. the children who recovered after the therapy would have recovered anyway.

Conflict of Interest

the press was briefed on this story by the Science Media Centre which claimed to be an independent press office. The author of the online article was on the Advisory Committee of the Science Media Centre. This was a conflict of interest.

Audience Services made the following points:

this was the largest clinical trial relating to CFS/ME and was being directly funded by the National Institute for Health Research (the research wing of the National Health Service). This made it a significant story

the BBC had reported a broad range of CFS/ME research - including striving to find a biological cause in www.bbc.co.uk/news/health-31644618; the difficulties along the way in www.bbc.co.uk/news/health-15017660 the threats sent to people researching the field in www.bbc.co.uk/news/science-environment-14326514 and why discussing the disease has become so toxic in www.bbc.co.uk/news/health-14883651.

The Editorial Complaints Unit [ECU] made the following points:

Controversial subjects

it was generally accepted that the causes of CFS/ME are biological as opposed to psychological, although the precise cause remains unknown

there appeared to be a diversity of opinion over how an intervention such as CBT could or should be used to help those suffering with CFS/ME. It was generally accepted that CBT could not cure the physical symptoms of CFS/ME but organisations and scientists working in this field appeared to believe it could help people cope better with those symptoms if used appropriately. The ME Association, for example, recognised appropriate use of CBT could help patients to manage “the emotional consequences of a debilitating illness like ME/CFS” and can offer “sensible, pragmatic advice and information on activity, pain and sleep management”14. However, it also stated that “CBT courses based on the model that abnormal beliefs and behaviours are responsible for maintaining the illness, have no role to play in the management of ME/CFS”15

the area of controversy appeared to be over how effective CBT could be and over the use of any approach which implied that if patients believed their condition was physical or biological this would hinder their recovery.

Online article

- the article achieved due impartiality by quoting Professor Esther Crawley, who was leading the trial and also reflecting the views of those who do not believe CBT or similar treatments are safe, effective or appropriate ways to manage CFS/ME
- it did not give the impression that only “a small number of activists” opposed the research
- the article was about the launch of a new trial funded by the National Institute for Health Research so there was no requirement to examine criticism levelled at previous trials, nor to provide more than a duly accurate summary of the details of the Dutch FITNET study
- the ECU accepted that the reference to those in the Dutch study having “no symptoms” somewhat overstated the findings of the study, since the three primary outcomes were school attendance, fatigue and physical conditioning, and these were assessed in relative rather than absolute terms. However, bearing in mind this article was aimed at a general audience the ECU was not persuaded the wording significantly misrepresented the findings of the trial or would have given readers a materially misleading impression of the conclusions which might reasonably be drawn from it
- the BBC had, however, amended the wording of the article as follows: “Trials of the scheme in the Netherlands showed 63% of the patients given therapy had recovered after six months, whereas just 8% recovered without it”.

Victoria Derbyshire

- the programme featured a range of guests including Professor Crawley, a representative of a charity which supports young ME sufferers, a woman who has received CBT treatment for ME, and Jane Colby, the executive director of Tymes Trust, a charity which helps young people with ME
- Ms Colby was given the opportunity to explain her reservations at length about the use of CBT to treat young people with CFS/ME
- the ECU therefore decided that the discussion met the requirements for due impartiality
- there was no discussion about the Dutch trial and the only reference to it was a brief mention in the presenter’s introduction:
  - “a therapy that successfully treats two thirds of children with chronic fatigue syndrome is being trialled for NHS use”
- in the ECU’s view this somewhat overstated the conclusions which could be drawn from the Dutch trial; it would be more accurate to say nearly two thirds of children who took part in a trial were judged to have recovered after six months based on the criteria set by the study’s authors
- the ECU did not, however, consider the brief and implicit reference to the Dutch study could be regarded as seriously or materially misleading when judged in the context of the discussion and the various points made by contributors about the efficacy or otherwise of CBT when used to treat young people with CFS/ME.
Today

- the programme featured an interview with Professor Crawley and a pre-recorded clip of Jane Colby who expressed her reservations about the use and potential impact of psychological treatments to treat CFS/ME in young people
- in the view of the ECU this was sufficient to achieve due impartiality
- the presenter, Sarah Montague, referred to the Dutch trial on a number of occasions and suggested the treatment had a “63% success rate”. Professor Crawley set out the criteria used to assess “recovery” in detail and the ECU found her summary duly accurate.

Conflict of Interest

- BBC News said that, while the Science Media Centre was a valuable resource for journalists, BBC reporters were responsible for the accuracy and impartiality of their reporting
- James Gallagher’s role as an adviser to the Science Media Centre was to brief members of the scientific community on subjects which merited the attention and insight of their experts.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He accepted the ECU’s decisions relating to the accuracy of the Victoria Derbyshire and Today discussions. He did not appeal on the point relating to conflict of interest.

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 the causes of CFS are not yet fully understood and that, while the World Health Organisation has classified CFS as a chronic long-term neurological disease, this was a controversial classification which was not supported by all of the health professionals who drew up the National Institute of Health and Care Excellence (NICE) guidelines for CFS.

She noted that NICE guidance\textsuperscript{16} recommends that CBT and/or graded exercise therapy should be offered to people with mild or moderate CFS/ME “because currently these are the interventions for which there is the clearest research evidence of benefit”. NHS guidance\textsuperscript{17} explains that “the use of CBT doesn't mean CFS is considered to be a psychological condition”. Instead it helped sufferers accept the diagnosis, challenge feelings that could prevent symptoms improving and try to increase a sense of control over the symptoms.

She therefore considered that Trustees would be likely to decide that when achieving due impartiality, the nature of the controversy (in terms of the guidelines regarding Controversial Subjects) related to the causes of CFS/ME. She also noted that there was a debate about the effectiveness of CBT and over the use of any approach which implied

\textsuperscript{16} \url{https://www.nice.org.uk/guidance/cg53/chapter/Key-priorities-for-implementation}
\textsuperscript{17} \url{http://www.nhs.uk/Conditions/Chronic-fatigue-syndrome/Pages/Treatment.aspx}
that if patients believed their condition was physical or biological this would hinder their recovery. However, given the advice of the NHS and NICE regarding CBT, she considered that Trustees would decide that significant weight should be given to their position, though the requirements for “due impartiality” would vary according to the subject and nature of the content, as defined in the Editorial 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.”

**BBC News Online article**

The Head of Editorial Standards noted that the complainant considered the BBC News online article to have breached the BBC’s guidelines for due impartiality because it did not give due weight to the views of those critical of the trial.

The Head of Editorial Standards noted that the article stated the therapy was “being trialled for NHS use”. It would use:

“intensive therapy sessions to adjust sleeping habits and activity levels. It also uses a form of behavioural therapy to help children with the disease adapt the way the live.”

The article went on to set out the impact of CFS/ME and it included two case studies of young people, one of whom described her initial reticence to be treated with CBT:

"I was initially really reluctant to take up the offer of cognitive behavioural therapy, as I assumed it was for something psychological, but actually it really helped me understand what was happening to my body.”

She noted that the article contained comments from:

- Professor Crawley on the “devastating” impact of the disease and her view as to the positive benefit of CBT in, for example, changing children’s sleep patterns
- Mary-Jane Willows, from the Association of Young People with ME who said the trial was “hugely important… every day we are phoned by parents who are desperate to get treatment for their children”
- Professor Stephen Holgate from the Medical Research Council who said “patients deserve high-quality research like this”
- the MEAction Network who said:

"Time and again, research has shown that graded exercise and cognitive behavioural therapy are not effective treatments for those suffering from ME.

The concept that ME can be improved with solely behavioural techniques is decades old, and frankly, an embarrassment to the nation's scientific and patient community."

The Head of Editorial Standards noted the complainant’s view that the quote from the MEAction Network appeared to have been added at a later date, yet the article did not indicate that it had been updated (although there was a date and reason given for the
changes made on 14 December 2016). She noted that BBC online articles are regularly updated as stories develop and as additional comments emerge (for instance in BBC broadcast interviews). She noted that a formal postscript was added to the article on 14 December 2016 to make it clear that the reason for the final amendment was a correction. However, there had been five previous versions of the article over time, with updates made to improve grammar and spelling, to more clearly reflect the situation in the devolved administrations, and to add the comments of the MEAction Network.

Though it was correct that the article, as first published on 1 November 2016, did not contain the quote from the MEAction Network, she noted that it did include the following statement:

“The approach regularly receives criticism from some activists who argue it treats chronic fatigue syndrome as a disease of the mind.”

The Head of Editorial Standards noted the complainant’s view that this misrepresented the views of opponents of CBT in failing to represent the “very many valid arguments against the methodology used in the trial or the weight of opposition”.

The Head of Editorial Standards considered however, that Trustees would be likely to decide that the article was duly impartial given that:

- readers would be likely to understand from the article that CBT aims to “change the way children think of the disease” rather than taking away an impression that the condition was psychological
- the article clearly stated that this was a trial which would test whether online consultations “work and are cost-effective” and it acknowledged that the approach was the subject of criticism.

Moreover the Trustees would take into consideration changes made at the point the matter came to the Trustees on appeal which was in January 2017 and so would take into account the quote from the MEAction Network.

The Head of Editorial Standards noted the complainant had complained about the amended reference to the results of the Dutch trial:

“Trials of the scheme in the Netherlands showed 63% of the patients given therapy had recovered after six months, whereas just 8% recovered without it”.

She noted that the complainant believed it was inaccurate to refer to the 63% “recovered” without explaining that “recovery” was the researcher’s definition of recovery rather than the complete absence of any symptoms.

She considered, however, that Trustees would be likely to decide that this was a relatively brief summary of the outcomes of the Dutch trial, and there was no requirement to set out in detail the criteria used by the researchers in defining “recovery”. She also considered that Trustees would be likely to agree with the ECU that the Dutch trial was published in The Lancet which meant the trial was “peer-reviewed to ensure the scientific merit and clinical relevance”. She noted the complainant’s view that the PACE trial (about which he has strong reservations) was also published in The Lancet, but the subject of this article was not the PACE trial.
She therefore considered that Trustees would be likely to decide that readers would be unlikely to be misled by the reference to recovery rates.

**Today and Victoria Derbyshire**

The Head of Editorial Standards noted that the complainant said that the comments made by Jane Colby in both programmes were “very general comments about CBT” and that they therefore were inadequate in achieving due impartiality.

She noted that in the Today clip presenter Sarah Montague said:

“There’s been such controversy over the cause of the condition, whether it’s psychological or biological, not everyone is happy with the idea. Jane Colby is director of the Tymes Trust, it’s a group which supports families of children with chronic fatigue syndrome.”

Jane Colby: “I think if you use a psychological treatment to try to help people reduce anxiety and worry that is one thing. If you try to use it to persuade people that they have a wrong belief when they think they are physically ill, you end up encouraging them to do enough to make themselves much worse. And there is plenty of evidence for that. And people are sick of experts who think they know better than they know their own children. They know what makes their children worse.”

She considered that Trustees would be likely to decide that the introduction acknowledged the controversy over the causes of CFS and that Ms Colby’s comments reflected the view of those who believe that the use of a psychological treatment is potentially harmful.

She noted that in the Victoria Derbyshire discussion Professor Crawley said that CFS/ME was a “biological illness”, and that Ms Colby said:

“I think the fact somebody has got a serious physical illness, we deal with children, and I’ve been there myself too as a result of a virus related to Polio, who are completely bedridden and may be unable hardly to eat or move or have to be even tube-fed, seriously ill people, and if you give people like that some kind of CBT which encourages them to feel their illness belief is wrong, which tends to happen with a number of people who deliver CBT, you encourage them to do too much.

As a result of this they will actually crash and they will actually get a lot worse. We deal with children who are basically suffering from Myalgic Encephalomyelitis and ME was original defined as an illness where making a lot of effort or even a little bit of effort would make you a lot worse. It also was defined as being very variable during the day with an alarming tendency to become chronic and all that has been backed up by the American Institute of Medicine recently. And I think people who’ve got these classic cases of very severe ME are different from people who have other types of fatiguing illness and the chronic fatigue umbrella is pulling in people with these classic ME illnesses, illness, which is not a mixture of illnesses. But chronic fatigue syndrome is a mixture of illnesses, the term is heterogeneous, and we know it is heterogeneous. So you have to be very careful what you are doing with your patient selection otherwise you are going to give the wrong sort of treatment.”
She also noted that Ms Colby was given the opportunity to respond to comments made later in the discussion by Professor Crawley:

Professor Esther Crawley: “I think it’s likely if we can offer treatment earlier we’ll stop children getting really, really sick. And just to come back on something Jane Colby said, she implied that doing CBT made children do more. In fact, children with chronic fatigue syndrome, most of the children that come to clinic, it is exactly as Lizzie says, we are trying to stop them from doing loads one day and not very much the next and that varies depending on how severe they are. So you know, kids with chronic fatigue syndrome want to get back to school, they want to get back to their social life, they want to stop this illness and I just think we should be offering treatment throughout the UK.”

Joanna Gosling [who was deputising for Victoria Derbyshire as presenter on this occasion]: “Respond to that Jane, does that persuade you?”

Jane Colby: “Yes, I can see the point she’s making. That’s not the point I’m making. The point I’m making is if these children and their parents are pretty much told that this is probably going to help and so on, and then it doesn’t help, they are very often not believed. Now what is happening, what we see happening a lot, unfortunately, is that when this doesn’t improve the child’s condition, then the parent gets accused of making the child ill, or the child is made to feel it is their own fault and they’ve got some kind of psychiatric condition.”

Joanna Gosling: “Is this something you feel very passionately about, the sort of not being believed about what’s causing it?”

Jane Colby: “I’ll tell you. Well the reason is, is that it leads to these erroneous, false allegations of child abuse against the parents. We’ve seen 151 cases of this and had to help them and not one of them has been proved to be child abuse. Now this happens when some kind of psychological treatment is given and it does not work. If it doesn’t work, then the parents and the child must be believed.”

The Head of Editorial Standards considered that Trustees would be likely to decide that:

Ms Colby was given time to put her views in significant detail to Victoria Derbyshire they would disagree with the complainant that “the controversy surrounding the effectiveness of CBT” had gone “unreported” the programme had achieved due impartiality.

She also noted that the complainant had reported that Ms Colby said she was not sufficiently informed of the nature of the coverage in which she was participating. The Head of Editorial Standards noted that this point potentially engaged the Fairness guidelines relating to ‘informed consent’, but the editorial complaints and appeals procedure makes it clear that the Trust can only entertain ‘first party’ Fairness complaints, so she was unable to consider this part of the appeal.

**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 Audience Services not to respond further to a complaint about Today, BBC Radio 4, 10 January 2017

The complaint concerned an interview on Today with Jeremy Corbyn about his speech later that day in which he would outline Labour’s approach to Brexit.

The complainant made the following points:

- the programme contained an inaccuracy
- John Humphrys failed to challenge Jeremy Corbyn when he said that “60% of British trade is with the European Union”
- the correct figures were 44% for exports and 53% for imports. Given the importance of this issue following the referendum, BBC interviewers ought to have these facts at their fingertips
- the error should now be corrected
- the fact that the interview was live made no difference: a significant error was made but not corrected. There should not be a lower standard of accuracy in live broadcasts
- there would be different opinions, but not different facts: trade figures are among the most important and should not be misrepresented in the BBC’s output.

Audience Services made the following points:

- during the programme John Humphrys interviewed the Labour leader over the latest negotiations surrounding Brexit. A number of themes were discussed, including the single market, free movement and employment measures. John pressed Mr Corbyn on the central subjects and asked for clarification on a number of occasions
- the BBC tried to present accurate and relevant information throughout its news output. It was not always possible or practical to refine every element of a subject within individual news programmes
- 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 Today editorial team explained that: “We acknowledge the figure was not accurate and, ideally, John Humphrys could have picked him up on it at the time. This was a live interview and John was eager to pursue an argument about freedom of movement and immigration levels and let the moment pass”.

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 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 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.

She noted that the complainant had correctly identified a factual error by Jeremy Corbyn which he considered should be corrected. She noted the part of the Today interview in question. Mr Corbyn’s comment came at the end of an eight minute section of the interview which had discussed the UK’s economic relationship with the EU, the single market and the freedom of movement. John Humphrys was pressing Jeremy Corbyn on his views on the movement of workers in Europe:

John Humphrys: I’m still slightly confused as to whether when we have done whatever deal we may do with the single market, you will be happy with a system that allows an unlimited number of workers from European Union countries to come here so long as they’re not being exploited in the way you described a moment ago.

Jeremy Corbyn: Well I think the numbers will change if the exploitation ended because the incentive on employers......

JH: You don’t want a ceiling; you don’t want any kind of.....

JC: That depends on what the offer is on free market access and I think we have to recognise that 60% of British trade is with the European Union. There has to be an economic relationship with Europe and that will be the point of negotiation.

JH: Let’s talk about another of the “freedoms”....

At this point John Humphrys moved the interview on to a discussion about domestic issues including the financial services sector and Jeremy Corbyn’s views on the possible restriction of earnings of top executives in the City, strike action and Mr Corbyn’s leadership of the Labour party.

The Head of Editorial Standards noted that in its responses the BBC had acknowledged the inaccuracy and had also explained their view that it would have been preferable if the inaccuracy had been corrected by John Humphrys at the time. However she noted that the interview had been live, the comment had been made at the end of a long section about trade and the free movement of workers from the EU and that the focus of the discussion had changed immediately afterwards to other issues.

There was a difference between an inaccuracy by the BBC and one by an interviewee. The BBC should strive not to be inaccurate in what its own presenters and reporters say. If an interviewee is inaccurate on a material issue in a pre-recorded segment then, if the BBC has time, producers can review the material and edit it accordingly if possible.
However the situation is different in a live broadcast where a presenter may not spot an interviewee error in the heat of the interview. This was the case here. As the BBC had explained it would have been preferable to have corrected it at the time but that moment passed.

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 Audience Services not to respond further to a complaint about “Fake news inquiry by MPs examines threat to democracy”, BBC News website

The complaint concerned an article on the BBC News website which said that the Culture, Media and Sport Committee was launching a parliamentary inquiry into the "growing phenomenon of fake news". The complaint also concerned a debate on Radio 4’s Today programme between the chair of the Committee Damian Collins MP and Sean Adl-Tabataba, Editor-in-chief, YourNewsWire.com.

The complainant made the following points:

- the website article was misleading and therefore biased
- the article reported as fact that there would be an enquiry into the "growing phenomenon of fake news" but it did not reference any research which showed that this "growing phenomenon” actually existed
- it said a Parliamentary committee would be investigating “concerns” yet there was no mention of who actually raised those concerns
- the report also stated that there were claims that fake news influenced the US election but no sources were provided
- Damian Collins MP was quoted stating that the rise of propaganda and fabrication was a "threat to democracy" yet no research was quoted to support or disprove his assertions
- the article stated how fake news undermined people’s trust in mainstream media yet it did not consider whether a loss of faith might in fact be justified
- the BBC story referred to research carried out in the US which found that fake news might have a limited impact on elections, yet did not say who did this research so it could be checked
- it also said that research by two US economists proved that four times as much fake news favouring Donald Trump had been shared before the US election. But the economists were not identified and it was not explained how audiences could access their research to fact check it
- the BBC report did not provide any definition of what fake news actually was
- having undertaken his own research the complainant studied the research of two American economists H Allcott and M Gentzkow and it appeared that their conclusions were that fake news stories were not new and that “even the most
widely circulated fake news stories were seen by only a small fraction of Americans”

- other reports argued against the assertion that ‘fake news’ was a threat to democracy, with some even arguing the opposite, that attempts to silence free speech would be an even greater long term threat to democracy
- the BBC report failed to state that the Parliamentary enquiry would define what fake news was and what impact fake news had on public understanding of the world. The BBC also failed to challenge the impartiality of the Parliamentary committee's chair [Damian Collins MP] who offered his opinion and conclusions before the enquiry had even begun
- the article did not include Sean Adl-Tabataba’s comments and opinions whereas Mr Collins’ opinions were included. On Today John Humphrys was noticeably far more confrontational and partial when challenging Mr Adl-Tabataba than with Mr Collins.

Audience Services made the following points at stage 1a:

- the initial response was relevant only to the discussion about fake news on Radio 4’s Today programme between Damian Collins MP and Sean Adl-Tabataba, Editor-in-chief, YourNewsWire.com
- Damian Collins revealed on Today that he believed the volume of traffic that fake news stories generated was greater than that of legitimate news stories and that “just before the US presidential election the top 20 fake news stories were shared more frequently that the top 20 legitimate news stories"
- Sean Adl-Tabataba said he believed" this was a war on alternative media and independent media outlets"
- programmes did not have time to include all details or viewpoints in every report and interview but News editors ensured that over a reasonable period of time the range of significant views, opinions and trends on particular issues were reflected.

BBC News made the following points at stage 1b:

- regarding the website article, it was based largely on information from the Culture, Media and Sport Committee, which set out its intentions: The Culture, Media and Sport Committee launches an inquiry into 'fake news': the growing phenomenon of widespread dissemination, through social media and the internet, and acceptance as fact of stories of uncertain provenance or accuracy
- it was the committee's view - not the BBC's - that this was a growing phenomenon, and that was indicated by the use of quotation marks
- considering this was a topic that was largely unheard of six months ago it was fair to say "growing phenomenon" was an apt description
- the committee - not the BBC - also talked about "rising concerns" so it was best placed to say who had raised those particular concerns
- such concerns however were well documented. AS provided links to articles in the Guardian and FT newspapers and the Independent online
- "claims that voters in the US election were influenced by fake news" was attributed to the committee, so it was not for the BBC to second-guess the source
of those particular claims, although based on the BBC’s information this was a fair summary of the situation
- the BBC did not fact check people’s opinions and Damian Collins was entitled to express his own view
- when the article mentioned research carried out into fake news there was a link to more information. This included the names of the economists involved
- while dubious claims should be challenged the BBC could not research every reasonable piece of information or comment provided by third parties, or stories and bulletins would be far too long
- on the point about what constituted fake news a link had been added for those not familiar with the term
- the Today programme chose to hold a debate while the website piece was a straightforward account of the inquiry's aims
- there was no requirement to include comment from every person the BBC interviewed on a subject however an audio version of Mr Adl-Tabataba’s Today interview was subsequently added to the website article to provide an alternative viewpoint
- Mr Adl-Tabataba ran a website accused of peddling fake news so it was reasonable that John Humphrys would wish to push him to get clear answers.

BBC News said they had nothing further to add and felt they had responded as fully as they could.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He said that this should be deemed “a controversial subject” and therefore the BBC should have ensured that “a wide range” of views were given due weight and prominence and “opinion” should have been more “clearly distinguished from fact”.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards understood that the BBC 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 this decision not to correspond further had a reasonable prospect of success. She decided that it did not.

The Head of Editorial Standards noted the BBC’s guidelines concerning “due impartiality” which was defined as follows:

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

She noted the complainant’s view that the omission of background information relevant to the issue of fake news had meant the article was misleading and therefore biased.

The complainant also believed that the article did not give due weight to the range of views on the subject as required for a controversial subject and that opinion had not been adequately distinguished from fact.
The Head of Editorial Standards did not consider the existence of ‘fake news’ or of ‘fake news’ on social media was itself a controversial subject. Nor did she think the launching of an inquiry was controversial. The impact of fake news on the democratic process was, in her view, controversial. However she felt that it would be helpful to explain that the impartiality requirement which says that

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

means that a wide range of significant views etc should be given over time and not necessarily in any one article or broadcast item.

The Head of Editorial Standards noted that the complainant was concerned that the BBC website article had not included enough research to support the information it had included about the phenomenon of fake news. She noted the first paragraph of the article:

MPs are launching a parliamentary inquiry into the "growing phenomenon of fake news". The Culture, Media and Sport Committee said it would investigate concerns about the public being swayed by propaganda and untruths. The inquiry will examine the sources of fake news, how it is spread and its impact on democracy. Claims that voters in the US election were influenced by fake news spurred the inquiry, the committee said.

She noted that the “growing phenomenon of fake news”, the “concerns” that had been raised and the link to voting in the US election were all clearly attributed to the Committee and that in addition, the article included a link to the Committee's webpage which outlined the scope of the inquiry, its terms and conditions and background information on why the inquiry was taking place. It was clear then that this was the opinion of the Committee.

The Head of Editorial Standards also noted that the complainant felt that the article did not contain any information about the economists who had carried out the study referred to in the article about the influence of fake news during the US election. She noted however that the article included a link to a report on the study which named the economists as Matthew Gentzkow from the Stanford Institute for Economic Policy Research and Hunt Allcott from New York University and which included more details about their research.

She also noted that in response to the complaint a link to a BBC Trending article which featured an analysis of fake news had been added which stated in its opening paragraph:

“The deliberate making up of news stories to fool or entertain is nothing new. But the arrival of social media has meant real and fictional stories are now presented in such a similar way that it can sometimes be difficult to tell the two apart.”

The Head of Editorial Standards noted that the complainant had also raised concerns about the treatment of the two interviewees on the Today programme and felt that in the website article the views of Damian Collins MP had been more prominent than those of Sean Adl-Tabataba. She noted that given the article was about the Committee’s enquiry it was appropriate to lead with the views of the Chairman of the Committee. She noted too
that a three minute interview with Mr Adl-Tabataba taken from Today had been included in the website report in which he had answered criticisms about his site YourNewsWire.com and during which he had been given plenty of opportunity to put forward his views. She noted also that in the article the views of Damian Collins MP that fake news was “a threat to democracy” were clearly signposted as his personal opinion.

The Head of Editorial Standards decided that Trustees would therefore be likely to conclude that the article in question did not raise any issues which would suggest a breach of editorial standards and that the BBC had provided an appropriate response.

**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 Audience Services not to respond further to a complaint about BBC News coverage referring to “think tanks”**

The complainant made the following points:

- BBC News constantly used privately funded think tanks that were "little more than PR companies for big business and the rich elites" to support their television and radio news and political output and this led to bias
- the BBC failed to make clear that these organisations lacked full transparency and were often funded by organisations with very specific commercial, political and economic agendas
- these organisations were often presented as independent "experts"
- this was "lazy journalism and editorial complacency" at best or "deliberate and calculated bias to promote a specific political and economic liberalism at worst”
- many of these groups had links to the Mont Pelerin Society, an organisation with links to politicians, academics, corporates, wealthy elites and the media “to promote neo liberal economic ideology”.

Audience Services made the following points:

- without specific examples from output the BBC could only respond to the complaint in general terms
- all BBC correspondents, reporters, presenters and editors were aware of a key commitment to impartial reporting at all times and staff were expected to put any political views to one side when carrying out their work for the BBC
- the aim was to provide the information and context on the story using their professional insight to allow the audience to make up their own minds
- BBC News aimed to show the political reality and provide a forum for discussion giving full opportunity for all sides of the debate to be heard
• senior editorial staff within BBC News, the BBC’s Executive Board, and the BBC Trust kept a close watch on programmes to ensure that standards of impartiality were maintained
• news editors ensured that over a reasonable period of time the 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
• the BBC had no view or position itself - the aim was to identify all significant views and to test them rigorously and fairly on behalf of the audience
• in dealing with controversial issues the BBC was required to give a fair and balanced report, but balance could not be judged simply on the basis of the amount of time allocated to the representatives of either side of an argument. One spokesperson might be concise while another might need longer to explain a point of view or a complex issue
• perfect balance was difficult to achieve on every single individual occasion, while overall it was a more achievable goal taking into account coverage as a whole over a period of time.

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 Royal Charter and accompanying Agreement between the Secretary of State for Culture, Media and Sport and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board in terms of decisions about the BBC’s editorial and creative output. Decisions about which news stories to cover and the content of those stories on any given day were editorial issues which were the responsibility of individual news editors and were not a matter for the BBC Trust unless they involved a breach of editorial standards.

The Head of Editorial Standards noted that the complainant objected to the use in BBC News output of information produced by “think tanks”. She noted the replies from the BBC which had explained to the complainant that in order to consider the complaint, which was general in nature, the BBC required specific examples from its output which the complainant believed illustrated the complaint. As these had not been provided she concluded that it was reasonable for the BBC to respond to the complaint in general terms.

In the absence of any specific details the BBC had outlined to the complainant the BBC’s commitment to impartial reporting and the measures put in place by the BBC Executive
and the BBC Trust to ensure that standards of impartiality were maintained. In addition she noted that the BBC had referred the complainant to the Editorial Guidelines which stated that programme editors and journalists were charged with reflecting a range of views over a period of time and that not every issue or viewpoint had to be included in each individual report. The aim was to test those views rigorously and fairly on behalf of audiences so that they could make up their own minds.

Given no content had been identified The Head of Editorial Standards concluded that the appeal did not engage the BBC’s Editorial Guidelines. However she thought it would be helpful to explain that the BBC circulated a list of think tanks within BBC News daily with proposed descriptions in order to assist journalists describe them to audiences. The BBC was alert to the fact that think tanks had various allegiances and funding mechanisms and sought to alert audiences when it was appropriate to do so.

Taking this into account, the Head of Editorial Standards, BBC Trust, considered Trustees would be likely to conclude that Audience Services had acted appropriately in replying in general terms to the complaint and the appeal therefore 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 Audience Services not to respond further to a complaint about Newsnight, BBC Two, 30 January 2017

The complaint concerned Newsnight’s coverage of the fallout following President Trump’s executive order banning entry into America to citizens of a range of mainly Muslim countries.

The complainant contended that the programme failed to correct statements made by contributors that the President had imposed a “Muslim ban”. The complainant said:

“BBC Newsnight kept pushing and failing to counter an inflammatory and inaccurate idea that President Trump has imposed a Muslim ban, including the assertion made by the MP Stella Creasy that America were banning Muslims. There is no such ban. Most 'Muslim majority' countries are not affected. Trump's executive order does not specify a ban on 'Muslims'.”

Audience Services made the following points:

- during the Presidential campaign Donald Trump proposed a ban on Muslims travelling to the US
- on December 7 2015 the Trump campaign published a statement which said: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on”.
- the seven countries where the order applies are overwhelmingly Muslim:
  - Iran 99.4% Muslim (population 80 million – source: UN)
  - Iraq 99% Muslim (population 37 million– source: UN)
  - Syria 87% Muslim (population 18 million– source: UN)
Audience Services concluded:

“...given that the President has a stated policy of a “complete shutdown” of Muslim immigration and the fact that the Executive Order applies to overwhelmingly Muslim countries with populations ranging from 6 to 80 million, we believe our characterisation of the matter as a ban was accurate and will have been clear to, and thus fully understood by, our audiences.”

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:

- it was a temporary travel restriction on all people from 7 nations, irrespective of religion.
- 'Muslim ban' was factually inaccurate.
- many 'Muslim majority countries' were not on the list, further signifying this was not a 'Muslim ban'.
- inflammatory & inaccurate statements and labels made about the executive order from President Trump, could incite unnecessary fears and anger between peoples, religions and nations.

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 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 noted the content of the 23-minutes of the programme that evening which discussed the travel ban, which consisted of a series of interviews and a live interview and filmed report with a Newsnight reporter in New York.

The Head of Editorial Standards noted that the detail of the ban was spelt out clearly in a graphicised section in the first few minutes of the programme. She noted that the word
Muslim did not feature in the explanation, nor was there any reference to the ban as having a religious dimension.

The Head of Editorial Standards noted that the first reference to Muslims was six minutes into the programme, during the reporter’s package, when, over pictures of Mr Trump she said, paraphrasing a statement he had made that day:

“He also reminded protesters that a crackdown on Muslims was a big part of his campaign.”

The Head of Editorial Standards noted that President Trump’s comments were picked up by an interviewee, Farah Pandith, the former US Special Representative of Muslim Communities. She said:

“You’re seeing people talking about this idea. Not just on the refugee side, which is extremely serious, but also on the idea that we’re giving preference to one religion over another.”

The Head of Editorial Standards noted the interview with Zalmay Khalilzad, an American Muslim who was born in Afghanistan and served as the US Ambassador to Iraq between 2005 and 2007. Ambassador Khalilzad was asked what he thought about the restrictions. He chose to highlight what he saw as the legitimate intentions behind the ban and said he hoped that, once the emotional period was over, the debate it had initiated would allow America to balance security concerns with American values and the effect of the ban. He did not describe it as a Muslim ban.

The Head of Editorial Standards then noted the following exchange at the end of the interview:

**EVAN DAVIES**

It does discriminate against Muslims doesn’t it? Because basically they’re all Muslim-majority countries and it does allow for exceptions of people who are minority religions in the countries specified. He might as well just have said Muslims in those countries mightn’t he?

**ZALMAY KHALILZAD**

Well unfortunately much of the terrorism that we experience in the world today comes out of Islamic majority countries, because they’re going through a terrible crisis. Part of the response to that crisis has been this extremism and terror. But there are more than 40 Muslim countries that are not on the list... What I hope that at the end it will come to a judicious point about what needs to be done to protect us. But also to be attentive to other concerns that we have, including what we stand for. There cannot be a religious test for visitors and for immigrants to the United States.

The Head of Editorial Standards noted that there was in fact only one reference to a ban on Muslims, the one highlighted by the complainant. It was during a live discussion on the programme between the Labour MP Stella Creasy and the Conservative MP and former Cabinet Minister, Oliver Letwin:

**STELLA CREASY MP**

Do you actually think that banning Muslims from America is going to make the world more safe...?
OLIVER LETWIN MP
We just heard a Muslim, who is an ambassador, explaining that he hoped that at the end of this temporary ban there would be a better policy… I don’t know whether there will or not.

STELLA CREASY MP
What is a better ban? On the basis of nationality or religion?

OLIVER LETWIN
I don’t know Stella. It’s not my business and it’s not your business either.

The Head of Editorial Standards noted the complainant’s contention that the executive order did not constitute a ban on all Muslims but did not consider viewers would have been misled for the following reasons:

- Stella Creasy’s comment was made 22 minutes into the travel ban coverage; the audience had already had the benefit of the graphic explanation of the terms of the executive order, and had heard Ambassador Khalilzad state that 40 Muslim countries were not affected by the ban
- the audience had not been led to believe that all Muslims were being banned from America
- President Trump himself had highlighted the Muslim character of the ban
- Audience Services had provided detailed statistics to support the programme’s references to the Muslim character of the ban, as it applied to those countries and people affected

In relation to the alleged failure of the presenter to challenge Ms Creasy, the Head of Editorial Standards noted that Ms Creasy’s comments were made during a heated live debate between her and Mr Letwin. Given that viewers were not likely to take from her comment the literal interpretation that all Muslims had been banned, there was no necessity for the presenter to intervene.

And finally, the Head of Editorial Standards noted that the coverage overall reflected a wide range of views about the order, including mentioning a number of times the Administration’s stated purpose of introducing the ban: to make American safer. She considered that the interview with Mr Khalilzad spoke coherently and with authority to the validity of that argument. She therefore considered the programme to have achieved the necessary balance and could not agree with the complainant’s contention that the content was likely to inflame the situation or to feed peoples’ fears.

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 Audience Services not to respond further to a complaint about 1900 news bulletin, BBC Radio 4, 4 February 2017

The complainant made the following points:

- the news at 19.00 on Radio 4 displayed “disgraceful bias” by reporting the result of the rugby international between England and France and totally ignoring the Scotland vs Ireland match
- both matches were played earlier that day and both were over so both should have been mentioned. What happened in general during a series of broadcasts was not relevant to a complaint about one specific bulletin
- the BBC should be the “British” Broadcasting Corporation, not the English Broadcasting Corporation
- there was also nothing on the Scotland vs Ireland match on the BBC website.

Audience Services made the following points:

- throughout the duration of the Six Nations the coverage of certain games might receive higher prominence in certain parts of the BBC depending on how recent the game was and the importance of other sport stories
- on 4 February there was also a Premier League football match between Chelsea and Arsenal. Whilst the Scotland vs Ireland game received most of the BBC’s coverage that day, it was not mentioned in a couple of news bulletins later on in the day as it was important to reflect the coverage of the football match as well
- the BBC did not hold the rights to English home games so were unable to broadcast it unlike the Scotland vs Ireland game. It was therefore felt that it was important give the match sufficient coverage during the 1900 news bulletin
- the Scotland vs Ireland game also received a lot of coverage on radio channels, with news bulletins of the game being broadcast on Radio 2 from 5pm and throughout the evening until 11pm
- the game was on the front page of the news website and was only replaced by the England vs France game to update the website with the most recent coverage of the latest match. However coverage of the Scotland vs Ireland game was still accessible by clicking the link in the sports section of the news website.

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. In addition he felt that the responses from the BBC had failed to address his complaint and that it had been treated in a “dismissive” and “superficial” way.
Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards understood that BBC Audience Services 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 Royal Charter and accompanying Agreement between the Secretary of State for Culture, Media and Sport and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board in terms of decisions about the BBC’s editorial and creative output. Decisions about which stories to include in news bulletins were editorial issues which were the responsibility of individual news and sports editors and were not a matter for the BBC Trust unless they involved a breach of editorial standards.

She noted the replies from the BBC which had outlined the reasons why the result of the Scotland vs Ireland match had not been included in the 1900 bulletin on Radio 4. The BBC explained that this match had received extensive coverage earlier in the day on a variety of networks including live coverage. As the BBC did not have the rights to broadcast England’s home matches and this had therefore received less coverage, they chose to give the result of this match precedence during the 1900 news bulletin.

The Head of Editorial Standards recognised that the complainant did not agree with this decision however she also noted that such decisions were editorial and that news and sports editors were entitled to exercise their editorial judgement so long as what was broadcast met the BBC’s editorial standards. She therefore believed that Trustees would conclude that the broadcast did not represent a breach of these standards.

She noted the complainant’s view that the BBC’s responses had not addressed the substance of his complaint and that it had been dismissed in a glib and superficial fashion. She considered however that the replies sent to the complainant had clearly outlined the reasons why the Scotland vs Ireland match had not been mentioned in the 1900 bulletin, had outlined the criteria by which such decisions were taken and had included links to coverage on the BBC website. She understood that it was disappointing to have correspondence closed down and be referred to the Trust but even so she considered that the replies had been informative and polite in tone.

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 Audience Services not to respond further to a complaint about Sunday Morning Live, BBC One, 6 November 2016

The complaint concerned an item on the Sunday Morning Live programme, which posed the question “Are Sharia councils compatible with UK law?” The discussion included Khola Hasan, a scholar at the Islamic Sharia Council, Baroness Caroline Cox a cross-bench peer
and campaigner, Faeeza Vaid, Executive Director of the Muslim Women’s Network UK. Also in the studio was Tom Slater, Deputy Editor of Spiked Online.

The complainant made the following points:

- The programme should have included details of the views of the Head of the Islamic Sharia Council in the UK, Dr Suhaib Hasan and the similar views expressed by Shaykh Haitham al-Haddad, who serves as a judge for the Islamic Sharia Council.
- The programme should have mentioned that:
  - Women have no unilateral right to divorce under sharia law and are obliged to either seek the permission of a husband or a group of clerics.
  - A woman’s testimony is worth less than a man’s.
  - Fathers have exclusive rights over children.
  - It was wrong that a campaigner seeking the abolition of the Sharia councils was not involved in the discussion as the BBC has a duty to include the voices of all communities and perspectives in the UK.
  - A guest was not challenged when she said that Sharia law is “absolutely” compatible with UK laws.
  - The programme should have referred to a 2003 ruling of the European Court of Human Rights (ECHR) and a 2008 ruling of the House of Lords relating to Sharia law.
  - A petition called ‘BBC – Tell the truth about Sharia law’ was started by the complainant on behalf of license fee payers concerned about the lack of relevant facts provided by the BBC about the issue.

Audience Services made the following points:

- Baroness Caroline Cox explained her concerns about discrimination against women by Sharia councils and cited as an example the asymmetrical divorce where women often have to pay a lot of money or even seek permission, compared to the man who doesn’t have to pay and can simply say ‘I divorce you’ three times.
- Baroness Cox also said that Sharia councils operate in a kind of quasi legal system and that they are potentially a threat to the fundamental principle of one law for all. Tom Slater also supported this point when he said a two-tier system seemed to be emerging that impacts on one law for all.
- the ten minute discussion at the end of the programme could not cover all viewpoints concerning Sharia law in the UK and it was never intended to be a full-scale, forensic investigation of every single conceivable facet of the issue.
- The programme’s presenter, Naga Munchetty clearly framed the context of the discussion at its start when she said that Sharia councils “have no status in the UK legal system” and that two inquiries are underway because of concerns over the activities of Sharia councils.
- The programme posed a specific question to facilitate the discussion amongst the studio guests and to invite viewer submissions. It was: "Are Sharia councils compatible with UK law?"
- The live discussion found a natural path with each contributor expressing their views and commenting on the views of the others.
As a viewer, the complainant was entitled to contact the programme via Twitter, Facebook, telephone, text message or email to express an opinion about Sharia councils or challenge those expressed by any of the four guests.

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 that the BBC had not responded to two substantive points of the complaint. The first being the exclusion of the ECHR and House of Lords rulings from the discussion about Sharia law on the programme and the second that people who want Sharia councils in the UK to be closed/abolished were not represented in the debate.

**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. She 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 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. Due impartiality is often more than a simple matter of 'balance' between opposing viewpoints.

The Head of Editorial Standards noted that the complainant’s appeal letter said that:

"there are only two viewpoints on this specific question: should councils be closed or not?...but only one side was given a voice by the BBC”.

The Head of Editorial Standards noted that the discussion panel was made up of individuals with different and nuanced perspectives on the issue of whether Sharia councils are compatible with UK law. They included two Muslim women, Khola Hasan who represented the Islamic Sharia Council and Faeeza Vaid who represented the Muslim Women’s Network UK. The website of the Islamic Sharia Council states that it was formed to solve the matrimonial problems of Muslims living in the United Kingdom in the light of Islamic family law. And that of the Muslim Women’s Network UK states that it works to improve the social justice and quality for Muslim women and girls and is the only national Muslim women’s organisation in Britain.

The Head of Editorial Standards also noted the other two members of the panel. The first was Baroness Cox, a member of the House of Lords who has introduced an Arbitration and Mediation Services (Equality) Bill to address two interrelated issues: the suffering of women oppressed by religiously sanctioned gender discrimination and a rapidly developing alternative quasi-legal system which undermines the fundamental principle of
one law for all. The second was Tom Slater, an advocate of freedom of expression, who believes in freedom of religion but is concerned that the UK Sharia councils are undermining the idea of one law for all.

The Head of Editorial Standards noted that this edition of Sunday Morning Live included ethical debates on three topical issues, posed in the form of questions, which were trailed at the start of the programme. They were:

- Are we a less compassionate society?
- Do we need more education about transgender issues?
- Are Sharia Councils compatible with UK law?

The Head of Editorial Standards noted that Naga Munchetty, the programme’s presenter, had made it clear, both in the trail at the start of the programme and in the introduction to the debate on Sharia councils, that the issue was being discussed in the light of two on-going government inquiries into the purpose, operation, activities and possible regulation of the councils in the UK as well as an open letter from the Muslim Women’s Network UK which claimed that the two government inquiries had marginalised the voices of the Muslim women they should be listening to most closely.

The Head of Editorial Standards noted that the presenter had emphasised that UK Sharia councils “have no status in the UK legal system” in her introduction to the discussion saying:

Sharia Courts, or more correctly, Councils, deal primarily with financial and family issues such as divorce in the Muslim community. Now although they have no status in the UK legal system the Council’s carry moral and cultural weight. There are two inquiries into the Sharia Councils’ activities after concerns about women’s rights. The Muslim Women’s’ Network says the inquiries are simply devices to abolish Sharia Law so we’re asking are Sharia Councils compatible with UK law? Let’s see what our guests think. I’m joined now by Khola Hasan who’s a scholar at the Islamic Sharia Council. Baroness Caroline Cox is a cross-bench peer and campaigner and Faeeza Vaid, Executive Director of The Muslim Women’s Network UK. ...

The Head of Editorial Standards noted the debate about Sharia Councils was complex and that the programme makers had made an editorial decision to tackle the subject by focusing on the question ”Are Sharia Councils compatible with UK law?” In approaching the subject in this way the programme had clearly signposted the nature and context of the debate.

The Head of Editorial Standards noted the reply from Audience Services, which said that the ten-minute discussion was never intended to be a forensic investigation of every aspect of Sharia Councils and Sharia law.

The Head of Editorial Standards noted that the BBC used a range of contributors to discuss whether the Sharia Councils are compatible with UK law. She noted that although none of them had called for an outright abolition of Sharia Councils they had voiced a variety of different perspectives and opinions about the Councils and whether they are compatible with UK law.

The Head of Editorial Standards also noted the reply from Audience Services which pointed out that the complainant was entitled to contact the programme directly to...
contribute to the programme’s live debate. She noted the transcript of this section of the programme when reporter Tommy Sandhu read out the audience interactions:

Naga Munchetty: Let’s see what our viewers are saying. Tommy.

Tommy Sandhu: Yes. Lots of people saying that, the majority of people actually are saying that the only law that should operate in the UK is British law. However some people are saying well if Sharia Law, Sharia Councils, operate within British law then it doesn’t really pose much of a problem. Tom for example says: “There is no place for Sharia law in the UK. You can’t have one law for one group of people and another for everyone else. We should abide by UK laws only.” Dorene has been in touch she says: “Women in the UK fought for equal rights. Sharia law discriminates against women and is putting the clock back. It should be totally banned in this country.” Robert says: “No sensible person wants to abolish Sharia Councils. Within the bounds of British law, they allow communities to settle disputes in a way that is right for them.” And Keith is saying: “Sharia Councils are fine so long as they operate and adjudicate within the laws of the land.” And finally Khola says “Sharia Councils help Muslim women get religious divorces. Stop demonising us please. We have no desire for parallel legal system.”

In the view of the Head of Editorial Standards it was not necessary to include all possible views in one item. The thrust of the discussion was whether the Council were compatible with UK law. It was not necessary to include an interviewee who took the position that the Councils should be abolished in order to achieve due impartiality on this subject. Even so contributions from two members of the public had said that Sharia law should be banned/had no place in the UK.

The Head of Editorial Standards noted the complainant’s allegation that a guest was not challenged when she said that Sharia law is “absolutely” compatible with UK laws but she also noted the context in which the answer was given and the transcript of this section of the programme:

Naga Munchetty (presenter): Khola, the discussion we’re having here is really about whether or not they are compatible with UK law, the law of the land, are they?

Khola Hasan: Absolutely because we are not in any fact going against English law, as you know, as was mentioned, ADR [alternative dispute resolution] allows dispute resolution through mediation… and we’re dealing with issues, religious issues, that English law cannot deal with and we believe absolutely that there is only one law for all. Muslim women can access the English legal system in any form whenever they like, wherever they like, like everybody else. Nobody’s stopping them. We’re just talking about religious law. English law’s not interested in religious law. English law does not accept religious marriages as valid marriages.

The Head of Editorial Standards took the view that the alternative view, that the Councils were not compatible with UK law and that a two tier system was emerging had been clearly expressed and that was the point of a discussion.

The Head of Editorial Standards noted the complainant’s view that the programme should have referred to two separate appeal judgements relating to Sharia law. The first was a
2003\(^{18}\) ruling of the European Court of Human Rights (ECHR)\(^{19}\). The ECHR ruling concerned an application from Refah Partisi (The Welfare Party) following its dissolution by the Turkish Constitutional Court in 1998. The political party lost its appeal and it was in relation Refah’s alleged intention of introducing sharia law to Turkey that the Court had ruled that “sharia is incompatible with the fundamental principles of democracy”. The second was a 2008 House of Lords judgement\(^{20}\). The House of Lords allowed an appeal from a mother, on behalf of herself and her 12-year old son, against a decision to refuse them asylum in the UK. She had argued that if they were deported to Lebanon she would be obliged under Sharia law to hand over custody of her son to his father, her ex-husband. In allowing the appeal, the Lords of Appeal concluded that it was a very exceptional case and that there was a real risk of a flagrant denial of their right to respect for their family life guaranteed by article 8 of the European Convention on Human Rights, read in conjunction with article 14, if they were returned to Lebanon.

In the view of the Head of Editorial Standards both cases involved highly specific facts and whilst the conclusions were interesting and could have been referred to by the programme or those debating the issues it was not necessary to include a reference to either or both decisions in order to achieve either due accuracy or due impartiality.

The Head of Editorial Standards concluded that it was a matter of editorial judgement as to whether to include the additional views and facts about Sharia Councils and Sharia law, as highlighted by the complainant, in the ten minute debate on Sunday Morning Live. The Head of Editorial Standards also concluded that there would always be a range of views on what background information should and should not be included but it was inevitable that an editorial selection would be made. The Head of Editorial Standards noted that the Editorial Guidelines on due impartiality made an allowance for this by explaining that impartiality can be achieved in different ways as long as the end result is adequate and appropriate.

**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.**

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**Decision of Audience Services not to respond further to a complaint about The Andrew Marr Show, BBC One, 22 January 2017**

The complaint concerned an interview with the former Liberal Democrat leader Nick Clegg on The Andrew Marr Show. Mr Clegg is now the party’s spokesman for Exiting the EU; the interview with Mr Clegg was conducted in that context.

The complainant considered that Andrew Marr failed to challenge Mr Clegg appropriately throughout the interview and that as a result the interview was biased.

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\(^{19}\) [http://www.icnl.org/research/journal/vol6iss1/special_5.htm](http://www.icnl.org/research/journal/vol6iss1/special_5.htm)

\(^{20}\) [https://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/leban-1.htm](https://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/leban-1.htm)
The complainant made the following points:

- Mr Marr hardly interrupted Mr Clegg in contrast to his later interview with Theresa May
- comments by Mr Clegg that Britain would have to at least double its trade with the rest of the world to match our trade with the EU were not challenged
- the statement suggested that if Britain left the single market we would have 0% trade with Europe

Audience Services made the following points:

- the aim of this interview was to discuss Nick Clegg’s opinion on Brexit and the Liberal Democrats position in parliament in regards to ongoing discussions.
- throughout the interview Andrew Marr asked a range of questions and pushed for answers when necessary.
- Nick Clegg did not state that we would have to double our trade with the rest of the world. He provided his political opinion which was “No trade agreement with America, however ambitious, can replace or match what we are potentially going to lose on our own doorstep in Europe. If you double the trade with America, Canada, New Zealand, Australia and India, you still would not trade as much as you do with our nearest neighbours in the EU.”

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.

**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 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 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 eight minute interview covered a range of issues related to Brexit including trade deals, the triggering of Article 50 and immigration. However, Andrew Marr’s particular focus was in probing Mr Clegg about his party’s strategy; she noted Mr Marr came back to the issue time and again, and that it was the context for the majority of his challenges.
Andrew Marr’s conduct of the interview, and in this context the number and nature of challenges, came within the scope of editorial judgement and would not generally be a matter which falls within the remit of the Trust unless it gave rise to a breach of the Editorial Guidelines. The Head of Editorial Standards considered that it was entirely appropriate that an interview about Brexit with the Liberal Democrat MP, who had responsibility to lead for his party on the issue in the UK Parliament, would choose to focus on the party’s political strategy on the matter as opposed to wider Brexit issues; it was not evidence of bias.

In relation to the Mr Clegg’s comments about trade volumes which the complainant had highlighted as "a blatant biased lie", the Head of Editorial Standards noted the relevant extract from the interview:

NICK CLEGG MP
You can’t for instance on the one hand espouse free trade and then yank yourselves out of the world’s most successful free trading area, the single market...

ANDREW MARR
(indistinct)... other free trade deals could you do with America and China and elsewhere...

NICK CLEGG MP
Just on that. It’s very important, because lots of people say "oh isn’t it great that we’re going to have this great new trade agreement with America". No trade agreement with America, however ambitious, can replace or match what we are potentially going to lose on our own doorstep in Europe. Just dwell on this one statistic. If you double the trade with America, with Canada, with New Zealand, with Australia, with India – double trade with all those huge countries, with all of the Anglosphere, you still would not trade as much as we do with our nearest neighbours in the European Union.

The Head of Editorial Standards considered the following in reaching her decision:

Andrew Marr challenged Mr Clegg’s statement about the economic dangers of leaving the single market by interrupting him and putting to him the notion that Britain has other trading partners whilst in some contexts Mr Clegg’s answer could assume the meaning attributed to it by the complainant, i.e. that trade with Europe could “potentially” reduce to nothing post Brexit, the natural and ordinary meaning the audience would likely have taken from Mr Clegg’s answer was not that trade with the EU would disappear altogether, but that it was going to be a significant challenge to match the volumes of current EU single market trade given the Liberal Democrats well-established position on Brexit and Mr Clegg’s responses elsewhere in the interview, the relatively sophisticated audience for a specialist political programme such as The Andrew Marr Show would have been able to assess what weight to put on Mr Clegg’s view.

Later in the interview the Head of Editorial Standards noted that Andrew Marr again interrupted Mr Clegg, on this occasion when the latter was expressing pessimism about the prospect of a speedy negotiation with the EU. Andrew Marr put it to Mr Clegg that the German Finance Minister had indicated it might not take very long:
NICK CLEGG MP
Of course if the government’s plans turn out to be effortlessly agreed with the rest of the European Union and something happens which has never happened before, which is a highly complex free trade agreement is negotiated and signed and sealed and done and dusted within 18 months, then of course people like me should have the humility to say you were wrong...

ANDREW MARR
And Wolfgang Schaeuble says this could be done quite quickly, a free trade deal...

The Head of Editorial Standards concluded that Trustees would be likely to conclude that the interview with Mr Marr met the requirement for 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 Audience Services not to respond further to a complaint about Today, BBC Radio 4, 5 December 2016

The complaint concerned a report during the 8.00am news bulletin about the government’s appeal to the Supreme Court over whether it needed the approval of Parliament to trigger Britain’s departure from the European Union.

The complainant made the following points:

- the report contained an inaccuracy
- in a reference to the Supreme Court case the reporter said that it was not to determine whether the UK was to leave the EU as “that was decided in June’s referendum”
- this was not the case as the referendum was an advisory vote and not binding either on Parliament or the government
- Parliament could have chosen to produce legislation that resulted in a requirement that the result was acted upon but it decided not to
- the government told the public it would accept the result but it did not have the authority to do so
- If the BBC had made it clear through the Referendum period that the process was advisory and that Parliament would ultimately decide how to proceed the outcome might have been different.

Audience Services made the following points:

- the reporter highlighted that this case was about determining the lawful process under the British constitution for leaving the EU
• the BBC had widely covered across its output the process of what happened now that the UK had voted to leave the EU. An example could be found at: http://www.bbc.co.uk/news/uk-politics-32810887
• while the referendum might technically have been "consultative" - merely an opinion to be taken into account and ignored if a government so wished - none of the participants in the referendum conducted the campaign in that way nor have any of the politicians involved responded to the result as such
• having lost the referendum, the Prime Minister resigned because he accepted that if he stayed he would have to enact the result
• the political effect of the vote was clear as was agreed across the political spectrum: we would be leaving the EU as a consequence of the result of the referendum in June 2016
• it was possible that the political consensus on this point might change over time and, if so, the BBC would reflect this shift in attitudes but until then the BBC would report the political reality of the situation.

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 it did not.

The Head of Editorial Standards noted that all BBC output was required to meet the standard of "due accuracy" which, under the Editorial Guidelines, was defined as follows:

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

The Head of Editorial Standards noted what had been said during the report:

"This case isn’t about whether the UK should leave the EU – that was decided in June’s referendum. It’s about determining the lawful process under the British constitution for leaving."

The Head of Editorial Standards noted that the complainant said that it was inaccurate to say that the move to leave the EU had been decided by voters in the referendum as it was an advisory vote and not binding. She noted the responses from the BBC which had agreed that the referendum was “technically consultative” but that in practice the political consensus during the campaign and after the vote had been that the result of the EU Referendum would be enacted and it was therefore in that context that the BBC would
report events. She also noted the BBC had included a link to a longer background report on “Brexit: All you need to know about the UK leaving the EU” which had explained:

- The referendum result is not legally binding - Parliament still has to pass the laws that will get Britain out of the 28 nation bloc, starting with the repeal of the 1972 European Communities Act.

- The withdrawal agreement also has to be ratified by Parliament - the House of Lords and/or the Commons could vote against ratification, according to a House of Commons library report. In practice, Conservative MPs who voted to remain in the EU would be whipped to vote with the government. Any who defied the whip would have to face the wrath of voters at the next general election.

- One scenario that could see the referendum result overturned, is if MPs forced a general election and a party campaigned on a promise to keep Britain in the EU, got elected and then claimed that the election mandate topped the referendum one.

The Head of Editorial Standards therefore considered that in the context of a short news piece which was about the Supreme Court hearing and the process by which the UK would leave the EU, the phrase "This case isn’t about whether the UK should leave the EU – that was decided in June’s referendum" was duly accurate.

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 Audience Services not to respond further to a complaint about Daily Politics, BBC Two, 7 February 2017**

The complaint concerned a discussion on the Daily Politics programme about the statement made in the House of Commons by the Speaker, John Bercow, following the announcement that the new American President, Donald Trump, had been invited to make a state visit to the UK. The discussion included the Caroline Lucas MP, the co-leader of the Green Party and Alec Shelbrook, a Conservative MP. Also in the studio was Camilla Cavendish, a writer and broadcaster.

The complainant summarised his complaint thus:

“The BBC showed bias and indeed caused me offence when the remark by Caroline Lucas that the President of the United States was a "racist bigot" went unchallenged and was therefore tacitly accepted as fact. I accept that she was there to state her own views. However, when such views are offensive and untrue, they must be challenged.”

The complaint made these points:
President Trump had merely implemented an Executive Order previously drawn up and acted upon by the previous President, who used it against Iran
President Obama’s administration had identified the nation states as dangerous
in what way is President Trump racist?
had a guest insulted the previous president would the presenter have carried on regardless?

Audience Services made the following points:

- Ms Lucas was on the programme to discuss John Bercow’s comments the previous day as to why he did not want President Trump to address Parliament
- her comments about President Trump were her own viewpoints
- the BBC has no view or position itself on anything we report upon: our aim is to identify all significant views, and to test them rigorously and fairly on behalf of our audiences

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 Adviser 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 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 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 also noted that the complainant considered that the comment had been offensive and that in allowing it to go unchallenged the BBC legitimised such language. The Head of Editorial Standards therefore considered also the Harm and Offence guidelines, the Introduction to which states that:

"The BBC aims to reflect the world as it is... In doing so, we balance our right to broadcast innovative and challenging content... with our responsibility to protect the vulnerable and avoid unjustifiable offence..."

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

The Head of Editorial Standards noted the context for the discussion was not the travel ban itself, but the domestic row which had erupted following comments in the House of Commons the previous day by the Speaker, John Bercow. The programme played a clip of Mr Bercow’s speech, in which he gave reasons as to why he opposed President Trump being invited to speak to Parliament:

JOHN BERCOW, SPEAKER
As far as this place is concerned I feel very strongly that our opposition to racism and to sexism and our support for equality before the law and an independent judiciary are hugely important considerations in the House of Commons.

The Head of Editorial Standards noted the relevant part of the exchange in the programme between Ms Lucas and her “opposing” panellist, the Conservative MP, Alec Shelbrooke:

ALEC SHELBROOK
What peoples’ opinions of Trump are, are almost a side issue. I will say this. I think at a time when Donald Trump’s discussing building walls etc, it’s better to build bridges. And we’re putting walls up around Westminster. But he (John Bercow) has not acted impartially... The Speaker should not have got involved in this ...

CAROLINE LUCAS
He was asked a question by a Labour MP. He replied. He stood up in a way that many of us would wish our own Prime Minister had done to someone who is essentially a racist bigot. He (Bercow) said those words and that was marvellous...

ALEC SHELBROOK
...The very issues you’ve mentioned; I don’t disagree with you and your comments about Donald Trump. There are real problems....

It was clear to the Head of Editorial Standards that Ms Lucas was picking up on the theme of Mr Bercow’s speech, in formulating her counter-argument to respond to Mr Shelbrook. She was pressing the point that President Trump’s – by his words and deeds - had in her view crossed a line that transcended the normal diplomatic behaviour and courtesies one would extend to an ally. The Head of Editorial Standards noted information in the programme that more than 180 MPs had signed the motion calling on the Speaker not to extend an invitation to President Trump to speak to Parliament for those reasons.

Viewers of a programme such as the Daily Politics anticipate lively and robust debate such as took place here. The audience would have been aware of where Ms Lucas’ stood on the issue and would not be likely to be offended by her words, albeit they may strongly disagree with the sentiment, as had the complainant.

The Head of Editorial Standards noted the complainant had suggested the comment was “untrue”. She noted again that this was an opinion by a politician on a political programme. Audiences would expect strong political views to be expressed on this programme and would not expect the presenter to interrupt a debate to probe the accuracy of this statement. The BBC had separately explored the impact of the executive order and whether or not it targeted Muslims.
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 Audience Services not to respond further to a complaint about Jo Good, BBC Radio London, 26 January 2017

The complaint concerned a phone-in on BBC Radio London which asked for listener’s personal experiences of self-improvement courses. It began with an interview with David Cunningham, seminar leader for the Landmark Forum.

The complainant made the following points:

- Landmark should not have been given air time on the BBC
- Jo Good was “out of her depth” holding a live conversation on "personal improvement" and did not challenge David Cunningham sufficiently
- callers who supported the Landmark programme exhibited “the exact problem with the group”
- "bringing a friend" was a core part of the programme, but this was denied by David Cunningham
- He referred to criticisms of Landmark by callers.
- a listener tuning in for only part of the programme could have heard only the positives and not the negatives. Without those negative statements, a listener would have heard Landmark being sold over BBC Radio London as a positive and risk free programme of self-development
- the BBC did not challenge claims like those made in a newspaper article

Audience Services made the following points:

- Jo Good questioned David on a range of criticisms that had been raised against Landmark
- she was robust in questioning him on the efficacy of the Landmark programme and acknowledged criticism
- the BBC invited a wide range of contributors on to its programming. The decision to invite these contributors was based on a variety of factors, including their knowledge of a certain chosen field
- the range of tastes and opinions held by the audience is so diverse however that it was inevitable some viewers would disagree with certain guests or the opinions they expressed
- the aim was simply to provide enough information for viewers to make up their own minds. This might include hearing opinions which some people might personally disagree with, but which individuals were fully entitled to hold in the context of legitimate debate
• whilst the complainant believed Landmark to be dangerous that in itself did not mean it could not be appropriately interviewed by the BBC
• although it was possible that a listener could "have listened to just a few minutes and then go away" that was not within the control of any broadcaster or publisher
• in this case this was a full interview in which the presenter rightly and appropriately questioned David Cunningham on a range of criticisms

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 also said he was not happy with the tone of the responses from the BBC.

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 the replies from the BBC which had outlined the criteria used by programme editors when making decisions about who to interview on their programmes and they had acknowledged that not all listeners would agree with every decision on every occasion. The Head of Editorial Standards noted that the Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board in terms of decisions about the BBC's editorial and creative output. Decisions about which items and interviewees to include on a radio phone-in programme were editorial issues which were the responsibility of individual programme editors and were not a matter for the BBC Trust unless they involved a breach of editorial standards (Royal Charter (2007) article 38(1)(b)). In this case therefore it was a matter for the Executive to decide to interview Mr Cunningham and discuss the Landmark Forum.

The Head of Editorial Standards noted that the complainant felt that David Cunningham had not been challenged sufficiently about claims made by, and about, the Landmark Forum. The Head of Editorial Standards noted that Jo Good had said in her introduction that Landmark had been criticised by many. She went on to challenge the interviewee David Cunningham on several issues eg: that the Landmark programme was designed to encourage people to keep “going back” and therefore spending more and more money, that it was “fairly ruthless” and that participants were encouraged to “recruit” others onto the programme. Mr Cunningham in turn was given time to answer these criticisms.

Jo Good had then spoken to several callers and read out several emails, some of which reflected positive experiences not just of Landmark but also other self-improvement courses or methods. Other calls and emails were critical. Taking these examples into account she did not believe that the phone-in involved a breach of editorial standards.

The Head of Editorial Standards noted that the complainant had been unhappy at the tone of the replies from the BBC. She noted however that the responses had addressed the complainant’s points in turn and had been helpful and polite in tone.
Taking this into account, the Head of Editorial Standards, BBC Trust, considered Trustees would be likely to conclude that Audience Services had given a reasoned and reasonable response and 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 Audience Services not to respond further to a complaint about Newsnight, BBC Two, 16 December 2016**

The complaint concerned the last edition of Newsnight in 2016 which featured a panel of four guests reviewing the biggest news stories of the year. The interviewees were historian David Olusoga, UKIP Deputy Chair Suzanne Evans, Peter Hitchens from the Mail on Sunday and writer Paris Lees.

The complainant made the following points:

- it was biased and offensive to show an anti-Brexit poster which said “Brexit is Racist” behind David Olusoga
- the poster sent a clear message that those who voted to leave the EU were racist
- many of those who voted for Brexit had carried out research and taken a considered decision and not one based on racist motives.

Audience Services made the following points:

- a range of images and text was shown during the course of the programme
- these placards and original posters served as a backdrop in the studio when Brexit was being discussed
- the same is true for a range of news items, such as NHS rallies, countryside issues and anti-war protests and the BBC would not consciously choose to combine images with certain guests in such a way as to suggest some kind of connection or comment.

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 it did not.
The Head of Editorial Standards understood that the complainant had been offended by the inclusion in the studio backdrop during the programme of a poster which contained the phrase “Brexit is Racist” and that he considered this was offensive and demonstrated bias against those who voted to leave the EU.

She noted that this edition of Newsnight was a special programme at the end of the year which aimed to examine some of the “seismic shifts in power” and say “goodbye to 2016, the year when everything changed”.

She noted that behind the four guests and the presenter Kirsty Wark was a wide montage of images which was clearly intended to be a representation of some of the most memorable moments of 2016. It included pictures of people from the worlds of sport, politics and music – for example Andy Murray, Muhammad Ali, Donald Trump, Jeremy Corbyn, Prince and David Bowie, who for one reason or another had featured in the news last year. It also included photographs of some news events which had made an impact in 2016 – the Pulse nightclub in Orlando where 49 people were killed; the #LoveLikeJo movement which celebrated the life of the murdered MP Jo Cox and the image of Boris Johnson standing in front of the controversial Vote Leave bus which carried the slogan “We send the EU £350 million a week – let’s fund our NHS instead”.

The Head of Editorial Standards noted also that the montage featured images of three posters directly related to the Brexit vote which, together with the election of Donald Trump as US President, was one of the main points of discussion during the Newsnight review. One said “Stop Brexit, END the scapegoating of immigrants” and another said “Brexit Now!” The third, which was visible behind David Olusoga, said “Brexit is Racist, stop the scapegoating of immigrants”. It had been explained that the posters, like other images used in the backdrop, were designed to represent one of the key moments of the year; in this case the vote to leave the EU and the ensuing anti-Brexit protests which took place in several parts of the country.

The Head of Editorial Standards was very sorry that the complainant had found the poster offensive. However given the context and given that there were a range of images representing different views she did not believe that Trustees would consider that the use of the poster represented a breach of editorial standards regarding offence or 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 Audience Services not to respond further to a complaint about News at Six, BBC One, 18 January 2017**

The complaint concerned a report on the News at Six ahead of the inauguration later that week of Donald Trump as US President. The introduction explained that having run an election campaign that “was one of the most divisive of recent times”, it was expected that “thousands are planning to protest against his presidency”. The report focused on
the reaction to his election in California and the likely effect of his plans to deport illegal immigrants on the large immigrant population there.

The complainant made the following points:

- the item was biased in trying to denounce Donald Trump's election victory and demonise him
- the BBC did not point out that Mr Trump was elected because the majority of US voters found the Clinton(s) unpalatable and had as many questions to answer as Mr Trump about past activities
- the BBC did not point out the failures of Barack Obama which also led to many voting for Mr Trump
- the report was set in California, a staunch Democrat region and any Republican president would be unpopular there. The people’s views went unchallenged
- the report featured part of the metal border between Mexico and the US and talked about Mr Trump's intention of reinforcing the border with “almost apocalyptic descriptions”. This was the BBC imposing its views (which were not the views of the majority of people of the world), about the border between the US and any country
- the report was inaccurate and misleading in its description of an illegal immigrant as an “undocumented immigrant”. This sounded as if she was just missing a little piece of unnecessary paperwork. Although the reporter had said she was “illegal” the listener would have had to concentrate to hear this statement of fact. The strapline misled the viewer watching casually because it tried to change her status from "illegal".

Audience Services made the following points:

- Donald Trump’s election as president was an extraordinary political event and had generated much reaction, both positive and negative, not just in America but across the world and it was right to reflect this in coverage
- prior to his inauguration, the claim that Russia had compromising material about Mr Trump and that it had tried to influence the election was, the BBC believed, an important topic to explore. His denials were included and coverage made clear that the allegation had not been proven
- Mr Trump had expressed controversial views, including support for torture, and had taken measures that had also caused controversy. His executive order which put into place a temporary travel ban on people from seven predominantly Muslim countries caused widespread protests and received criticism from several world leaders, including the German chancellor, Angela Merkel
- when reporting on Mr Trump’s actions, the BBC tried to explain his position in detail and to incorporate a range of views about his policies, as well as his own response to criticism
- BBC News did not have a view on whether or not Mr Trump would be a successful president – the aim was to report and analyse events so that audiences could make up their own minds
- the definition of the term “undocumented immigrant” was “A foreign-born person who lacks a right to be in the United States, having either entered without
inspection (and not subsequently obtained any right to remain) or stayed beyond the expiration date of a visa or other status.” This was a term in law used for someone who was popularly referred to as an “illegal immigrant”.

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 also said that the response to his initial complaint had been “a bland, generic statement” and that subsequent responses had been “extremely condescending”, “arrogant” and “offhand”.

**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 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 that the complainant considered the report had been biased against Donald Trump because it had been set in California, a region with strong Democratic support, and that it had failed to include relevant pieces of background information relating to Hillary Clinton’s election campaign and the presidency of Barack Obama. He considered this information should have been included to explain why American people had voted to elect Mr Trump.

The Head of Editorial Standards noted that BBC output was required to represent in its output a range of opinions on a particular issue, but the BBC’s Editorial Guidelines also made it clear that not every viewpoint necessarily had to be included in each individual report. The replies from the BBC had explained that coverage of Donald Trump over a period of time across the BBC had reported his views and policies in detail incorporating a range of positive and negative opinions as well as his own response to criticism. She then went on to consider what the report was described as being about

She noted the introduction to the report which had explained the setting of California and had referred to expected protests against Donald Trump’s presidency and his “divisive” campaign:

> “Opposition is particularly strong in California where his plans to deport illegal immigrants and build a wall along the Mexico border have come in for fierce criticism.”
The Head of Editorial Standards noted that this introduction had explained the context of the report which had focused on one particular issue, reinforced later when the reporter had also referred to the resistance to the Trump presidency “heating up” among the state’s ten million immigrants. In the context of this report she concluded that it was not necessary to include background information about President Obama or Hilary Clinton’s campaign to achieve due impartiality. Turning to the decision to set the report in California she noted that (whilst she appreciated that the complaint would have preferred to see a different angle) it was editorially justifiable to look at a state with known opposition which would be directly affected by the policies of the incoming President to gauge reactions in that state. This was part of the BBC’s mission to inform and the BBC had been transparent about why California had been chosen. The Royal Charter (2007) Article 38(1)(b) gave the BBC Executive responsibility for the creative and editorial direction of the BBC. This choice of story and where to set it therefore was a matter for the BBC Executive and not the Trust.

She then noted that the complainant felt the report had included an inaccuracy when an interviewee had been described on a strapline as an “undocumented immigrant” and that this had misled the audience into believing that the interviewee was not an “illegal” immigrant. She noted that the reporter had introduced the interviewee:

“[NAME] has lived in the US illegally for 20 years. For her and millions like her Mr Trump’s election could mean deportation to Mexico.”

She considered that this reference, together with the reference to “illegal immigrants” in the introduction had made her status clear. She noted that the BBC had referred the complainant to the definition of an “undocumented immigrant” which was a term used in law for an illegal immigrant and, she noted, a phrase often used in the US. She did not therefore consider that the use of the phrase on a strapline was misleading, even to, as the complainant believed, someone who had been listening “casually”. Overall she believed that Trustees would consider that the report had been duly impartial.

The Head of Editorial Standards noted that in his appeal, the complainant had also taken issue with the fact that he had initially received a generic reply to his complaint. She noted that the complainant had at first been sent a response which was designed to address several different aspects of the coverage of Donald Trump’s campaign and subsequent election which had been raised by a number of complainants. She noted that the BBC had referred to this in their initial reply explaining that this was “to allow us to reply promptly and to ensure we use our licence fee resources as efficiently as possible”. She further noted that the following reply sent by the BBC had responded to the complaint about the use of the strapline ‘undocumented immigrant’.

The Head of Editorial Standards was sorry that the complainant was concerned about the replies he had received and that he thought the complaints system was not fit for purpose. However she noted that the Trust had agreed, following public consultation, that generic replies could be sent at Stage 1A of the complaints procedure both to conserve the licence fee and to enable Audience Services to reply to complainants quickly. Given email communication many complainants who were dissatisfied were now able to escalate their complaint quickly and ask for a further more specific reply. She noted that he was dissatisfied with the tone of the replies but felt that in the circumstances they were reasoned and reasonable.
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 Audience Services not to respond further to a complaint about an allegation that the BBC is ignoring the effects of mass migration on the NHS

The complaint referenced the BBC’s Health Check week of coverage in February which examined the state of the NHS across the UK as it came under intense pressure during its busiest time of the year. The complainant said coverage on radio, TV and online, completely ignored the impact on the NHS of population growth through net immigration.

He highlighted an item from the BBC website at http://www.bbc.co.uk/news/health-38887694 as an example. He said that it listed the top ten causes of the NHS crisis and that net migration “did not even make the top ten”.

The complainant made the following points:

- net immigration has been estimated at 2.8 million over the last ten years
- it accounts for more than half of the 5.1m overall growth during the same period
- it reflects twice the growth of the over 65 population, which was a major factor cited in almost all of the BBC’s output
- the problem is compounded by the fact that some immigrants – through no fault of their own – are bringing diseases such as TB with them, which are both difficult and expensive to treat

The complainant concluded:

“Why did the BBC choose to ignore this? ...this has nothing at all to do with whether or not immigrants contribute to the economy, this is just about the increasing workload on the NHS.”

Audience Services made the following points:

- in the past the BBC has investigated the issue of health tourism, for example on Panorama
- there was more coverage across BBC platforms
- the response provided weblinks to four stories which reported on a range of issues related to the use of the NHS by people from overseas and attempts to recover the cost of their treatment
- the coverage included a story which looked at “the cost to the NHS of treating everyone who isn’t a British national. So it includes students, workers on visas, tourists, immigrants, expats popping back to see their old GP and yes ‘health tourists’”
• the Editorial Guidelines explain that not every issue or viewpoint necessarily has to be included in each individual report

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 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 noted, as had Audience Services, that the Editorial Guidelines do not prescribe how the BBC should go about achieving due accuracy and due impartiality. As a rule therefore, the choice of what aspect of an issue to cover and how to cover it is a matter of editorial judgement and would not be something that the Trust could consider. There would however be a concern if the effect of exercising that judgement had led to a breach of the Editorial Guidelines.

The Head of Editorial Standards noted that the web article in question was not about the top ten causes of the NHS’s problems but was called “ten charts that why the NHS is in trouble”. The choice of which charts to feature was a matter for the BBC (Royal Charter (2007) article 38(1)(b)). In her view Trustees would not conclude that omitting a mention of migration would amount to a breach of due accuracy or impartiality in this context.

The Head of Editorial Standards noted the following in reaching her decision that Trustees were unlikely to reach the conclusion more generally that there had been a breach of due accuracy or due impartiality in the BBC’s coverage:

• Audience Services had supplied links to a number of stories on the BBC website which whilst they did not focus on the issue of net migration which the complainant had raised, nor reflect the impact of it in the terms he wished, the articles collectively did acknowledge the impact on NHS funds of people who were not UK citizens using the NHS
• she noted, for example, that an article from the BBC website which discussed foreign patients noted that the government had raised an additional £164m from a new £200-a-year surcharge on visa applications paid by temporary migrants
from outside the EEA; she considered this class of people would be amongst those counted in the “net migration” figure cited by the complainant

- the BBC had sent a link to a reality check item which had explained that there are no figures to show the exact cost to the NHS of the approx. 3 million EU citizens in the UK.

- whilst the complainant asked that the Trust did not consider the economic argument, it appeared to the Head of Editorial Standard to be relevant to considering the cost of net migration. This was because health economists have noted that the majority of inward migration has been of young people who are not traditionally the heaviest burden on the NHS; in other words the impact could not be assessed by headcount alone

- finally, whilst the impact of net migration on the NHS may not have featured in the output during Health Check week in the way the complainant would have wished, for the reasons outlined, that did not suggest that it was never reflected

- a survey of the BBC website alone over recent years demonstrates that BBC reporting from areas which have experienced particularly high population growth from inward migration has reflected the impact of that influx on local resources and services, i.e. housing, education and health provision

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 Audience Services not to respond further to a complaint about “Trump’s most extraordinary news conference”, BBC Online, 16 February 2017

The complaint said that an article on the BBC website at http://www.bbc.com/news/world-us-canada-38999993 by the BBC’s North America Editor Jon Sopel was biased and deliberately sensationalist. Mr Sopel had attended an unscheduled media conference at the White House given by President Trump. The article reflected his analysis of the occasion and included a transcript of an exchange between Mr Sopel and the President.

It included the following:

Today totally typified the unexpected and unpredictable nature of covering the 45th president of the United States.

...

For half an hour the president berated us.

...
He is angry at times, proud of what he's achieving, furious that he's not getting the recognition he feels he deserves, obsessed by the polls, obsessed by the size of his crowd. And here’s my one curious takeaway. The media that he professes to hate and despise he seems to spend an awful lot of time watching. You wonder, when does he find time to govern?

The complainant made the following points:

- the headline did more to misinform than inform and was provocative
- the use of words like “unpredictable”, “berated”, “obsessed” were expressions of opinion and demeaned the President. For example: “calling Trump "obsessed" with his inauguration crowd size is an opinion that creates a negative portrayal of him. To say something like "Trump mentioned his crowd size for the (x)th time this week" would be a fact. It portrays the same message, however one show's the writer's bias, one does not”.
- signing off with “You wonder, when does he find time to govern?” clearly questions the competency of Trump; it is derogatory and is an opinion
- coverage like this is polarising and derogatory to those who voted for him

The complainant summarised his concerns thus:

“The BBC is almost unique in that it has an obligation to be impartial - it's why so many use the website as a trusted news source. I'm sure Jon Sopel is a fantastic journalist, but his dislike of Trump is clear and presenting articles in an opinionated way threatens to compromise the trust placed in the BBC. It allows those who have a differing opinion to dismiss the whole article (not just the opinion) and, more worryingly, vindicates Trump's mistrust of the media which may lead to more dangerous conclusions.”

Audience Services made the following points:

- as the BBC’s North America Editor, a fundamental part of Jon Sopel’s role is to give our audience an informed analysis of key events taking place in the USA. We believe that his reporting of this press conference was consistent with this.
- senior editors such as Jon Sopel are highly valued by our readers for the professional insights they offer into the motives and machinations behind major political events – judgements and insights that go beyond the factual news also presented in our daily news coverage.
- this professional judgement, as shown by Jon Sopel in his coverage of the Trump media conference, was rooted in the evidence of what he witnessed inside the media room that day. As such it is consistent with the BBC’s editorial guidelines on impartiality, which do not necessarily require absolute neutrality on every issue, or detachment from fundamental democratic principles.
- It is true, as your point out, that our 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. This is always a matter of judgement, and it was felt that in his coverage of the issues you raise, Jon Sopel has upheld the appropriate editorial standards.
We do not share your view that the article presented Jon’s views in an ‘opinionated way’ that threatened to compromise the public’s trust placed in the BBC, or vindicated President Trump’s mistrust of the media. In fact, we believe that Jon’s insights into the operation of the new President’s media office, tempered by his knowledge and understanding of North American politics would be valued by our readers.

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 his overarching point was that:

“should the BBC be (or be perceived to be) [not] impartial in their coverage of Trump the information presented in the BBC’s coverage could be dismissed as bias, ‘fake news’ etc. This could damage the trust in the BBC and take away from the important issues presented, having much broader implications - especially in regards to Trump coverage.”

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 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 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 cited also the section of the Impartiality guidelines which states 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 acknowledge the importance of reporting on the work of President Trump in a duly impartial fashion so that the UK public and those who read the BBC’s work aboard had a full understanding of his presidency. However in her view Trustees would not uphold a complainant about a breach of Editorial Standards in relation
to this report. She noted the reasons for her decision that the complaint should not proceed to appeal:

- the complainant had received a comprehensive response from Audience Services which had explained the distinction between personal opinion and professional judgement rooted in evidence
- that response had noted that it was a fundamental part of the role of senior editors such as the BBC’s North America Editor to provide just the kind of analysis he did on this occasion
- the article did not constitute the BBC’s primary online coverage of President Trump’s news conference; it was akin to a dispatch and in the style BBC audiences have come to expect from its foreign correspondents
- the Head of Editorial Standards noted the nature of the content was signposted in the article’s opening paragraphs:

  Today totally typified the unexpected and unpredictable nature of covering the 45th president of the United States.

  I was at home, working on a book I am trying to finish when there was a flash on the TV: Donald Trump to hold unscheduled news conference in an hour's time.

  I legged it down to the White House, and on a cold Washington morning waited outside the East Wing for 45 minutes until the Secret Service let us in.”

- This was a very unusual press conference in which the BBC correspondent became part of the story. Mr Sopel was in the unexpected situation of reporting on the way the President had spoken to him directly.
- President Trump set the tone by his choice of language and his explicit and sustained attack on the media, of which his exchange with Mr Sopel was a representative example: Mr Sopel introduced himself as representing the BBC, to which the President replied, “Here’s another beauty”
- the complainant’s concern that the content and style of the article jeopardised the BBC’s impartiality did not appear to be supportable by the evidence which demonstrated the article to have been an accurate account of what took place
- the final thought of the report was very much in the style of such a dispatch
- And here's my one curious takeaway. The media that he professes to hate and despise he seems to spend an awful lot of time watching. You wonder, when does he find time to govern?
- It was more personal in style than a usual report and threw out a thought from the correspondent derived from the experience of participating it the press conference.
- the correspondent’s choice of words is always a matter of editorial judgement but in the Head of Editorial Standards view they did not lead her to the conclusion that he was expressing a personal opinion unsustained by the evidence
- this was clearly an unusual event, unprecedented in presidential news conferences in terms of its style and content, and for which the description “extraordinary” would appear justified
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 Audience Services not to respond further to a complaint about newspaper reviews, BBC Radio 4 and BBC News Channel**

The complainant made the following points:

- newspaper reviews demonstrated a right-wing bias
- for example the Morning Star had yet to be included in a review
- most newspapers had a right-wing bias and were owned by very wealthy people, compared with the Morning Star which was paid for mainly by its readers
- sometimes only one paper from the left, i.e. the Guardian or the Mirror was included with up to three from the right
- this demonstrated bias against Jeremy Corbyn as the only paper that would generally support him and the Shadow Cabinet was the Morning Star
- this bias was also reflected in the political analysis and comments on Jeremy Corbyn and others by various presenters.

Audience Services made the following points:

- the BBC was committed to impartiality and BBC journalists, presenters and programme makers were aware of the need to put their own political views to one side when carrying out their work for the BBC
- they sought to provide the information which would enable viewers and listeners to make up their own minds; to show the political reality and provide the forum for debate, giving full opportunity for all viewpoints to be heard
- senior editorial staff, the Executive Board and the BBC Trust kept a close watch on programmes to ensure that standards of impartiality were maintained
- the aim of the paper reviews across programmes was to look at the main news stories of the day, looking at the most popular newspapers in the UK
- it was not possible to include every newspaper in the reviews however the aim was to include a wide range of newspapers across the spectrum
- Ben Chacko, the editor of the Morning Star had previously appeared as a contributor on current affairs programmes such as The Andrew Marr Show, Sunday Politics and Daily Politics
- the key thing was that different viewpoints were heard from across the spectrum from left to right – both opposition and government
- due balance was not about a set formula where the numbers were always 50/50. Instead, a number of perspectives were included over time
• on hearing the opposing sides of a story (whoever they happened to come from)
  the audience could then judge for themselves, or have their curiosity engaged to
  look for further coverage and information.

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 complainant felt that the Morning Star
should be included from time to time in newspaper reviews as not to do so was indicative
of right-wing bias. She noted the Royal Charter and accompanying Agreement between
the Secretary of State for Culture, Media and Sport and the BBC drew a distinction
between the role of the BBC Trust and that of the BBC Executive Board in terms of
decisions about the BBC’s editorial and creative output (Royal Charter (2007) article
38(1)(b)). Decisions about which stories would be covered in the paper review on Today
or on the News Channel were examples of editorial issues which were the responsibility of
individual news editors and were not a matter for the BBC Trust unless they involved a
breach of editorial standards.

The Head of Editorial Standards noted that BBC output was required to meet the standard
of “due impartiality” meaning that the impartiality “must be adequate and appropriate to
the output taking account of the subject and nature of the content, the likely audience
expectation and any signposting that may influence that expectation”. She noted that to
achieve “due impartiality” the BBC’s Editorial Guidelines required that the BBC provided “a
broad range of subject matter and perspectives over an appropriate timeframe across our
output as a whole”.

The Head of Editorial Standards noted that the BBC responses had outlined the criteria
used by programme editors when deciding which stories to include in the newspaper
review and had stressed that the aim was to include a variety of the most popular
newspapers from across the political spectrum over a period of time. She noted that such
reviews looked at a small sample of stories and were designed to give a flavour of the
sort of stories being covered that day. She considered that the key issue was that over a
period of time these stories contained a variety of perspectives and a range of different
political viewpoints and it was not necessary to include a particular newspaper to achieve
that balance. She did not therefore consider that Trustees would conclude that it was
necessary to include the Morning Star in the newspaper review to achieve “due
impartiality” or that it omission resulted in bias against Mr Corbyn. She noted however
that the BBC had explained that the editor of the Morning Star had appeared on other
news and current affairs programmes.
The Head of Editorial Standards also noted that in response to the complainant’s view that political journalists demonstrated a right-wing bias, the BBC had stated its commitment to impartial reporting and had outlined the measures in place to ensure that standards of impartiality were maintained. General statements of bias were difficult to test. If the complainant had specific examples of bias he should raise them through the BBC’s complaints procedure.

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 Audience Services not to respond further to a complaint about News at Ten, BBC One, 18 January 2017

The complaint concerned an item on the News at Ten which began by saying that Foreign Secretary Boris Johnson had been criticised for his choice of language “after appearing to compare the French government to the Nazis”. Mr Johnson had said that President Hollande should not try to “administer punishment beatings to anybody who chooses to escape rather in the manner of some World War Two movie”. This followed comments by President Hollande’s diplomatic advisor Jacques Audibert who said that Britain should not expect a better trading relationship outside the EU.

The complainant made the following points:

- the programme was biased against “Brexit” and those who wanted to leave the EU
- Boris Johnson’s remark was light hearted and funny but the BBC chose to lead with coverage of “confected outrage”
- the lead story should have been that one of our NATO allies, a close neighbour and fellow member of the EU had threatened to punish the UK for carrying out the wishes of the majority in a recent referendum
- instead the BBC chose to use this opportunity to denigrate the UK government and its ministers
- Jacques Audibert was the diplomatic adviser to President Hollande therefore his threats to the UK carried weight especially as M Hollande did not disassociate himself from the threats
- the BBC was pro EU so every story was given a certain angle and the BBC was therefore guilty of bias.

Audience Services made the following points:

- Jacques Audibert’s remarks were seen as a veiled threat to punish the UK for leaving the EU but reflected the already-reported position of President Hollande himself who spoke last year of there being “a price” involved in Brexit
whilst the aide's reported comments stirred up the debate again and they were reported fully, as the day went on concern and criticism emerged at the choice of words by Boris Johnson when talking about these comments

very senior figures within the EU and British politics expressed very strongly-worded condemnation of Mr Johnson's language, and Number 10 also became involved

less than 24 hours beforehand the Prime Minister had very publicly reminded her ministers to show restraint by warning "any stray word" could make securing a Brexit deal more difficult

this made Mr Johnson's words and the resulting criticisms highly newsworthy

these words had caused concern, criticism, outrage and offence for many people and the BBC accurately and legitimately reported that Guy Verhofstadt, the EU's lead Brexit negotiator, branded the comments "abhorrent and deeply unhelpful", Lib Dem leader Tim Farron called it "an utterly crass and clueless remark" and a "distasteful comment", a spokesman for Labour leader Jeremy Corbyn described them as "wild and inappropriate comments" and "threats or wild comparisons or analogies" and many diplomats and others expressed concern. This was not therefore a "confected outrage"

M Audibert's comments were newsworthy too and were reported but they were not from the French President himself, nor in reality were they anything particularly new in terms of France's already-known position on Brexit

it was therefore appropriate that they were not the headline report here

the BBC reported all sides and reported the position of Boris Johnson's camp and Number 10, and also people like Michael Gove who posted on social media that anyone offended by Mr Johnson's "witty metaphor" was in his view "humourless, deliberately obtuse, snowflakes"

the BBC had no view on Mr Johnson's comments but reported the news story which emerged due to the international and domestic criticism surrounding those comments, providing the audiences with the full context and a range of reaction

the BBC had no view on any matter including Brexit and the EU. The BBC was not part of government, politics or the State, and was an impartial and independent broadcaster and news organisation

the aim was to report upon matters and allow audiences to come to their own conclusions on what they saw, heard and read

not everyone would agree with the BBC's choices on which stories to cover, and the prominence given to them. Those decisions were made by news editors, taking into consideration the editorial merit of the stories at hand, and not everyone would think that the BBC was correct on each occasion

several factors were taken into consideration when deciding how to put together news bulletins; for example, whether the story was new and required immediate coverage, how unusual the story was, and how much national and international interest there was in the story. However, those decisions were always judgement calls rather than an exact science

the BBC tried to serve the whole of the diverse United Kingdom and by definition the approach had to be general and broad with a degree of compromise. With that in mind, there was no way it could realistically match every single individual
viewer’s own personal and subjective expectations, demands, preferences or tastes. Research suggested that audiences generally were comfortable and happy with this general approach

- audience feedback did not suggest the complainant’s views were widely shared.

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 it did not.

The Head of Editorial Standards noted that the Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board in terms of decisions about the BBC’s editorial and creative output. Decisions about which news stories to cover on any given day and how they were covered were editorial issues which were the responsibility of individual news editors and were not a matter for the BBC Trust unless they involved a breach of editorial standards (Royal Charter, (2007) article 38(1)(b)).

The Head of Editorial Standards noted that the complaint felt by beginning the News at Ten with the comments made by Boris Johnson and the reaction to them the programme had demonstrated a pro-EU bias. She 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 Head of Editorial Standards noted that in its responses the BBC had explained the context of the story and outlined the reasons it believed the comments made by Mr Johnson were worthy of coverage. It had also pointed out why the programme had chosen to lead on this aspect of the story rather than the comments by Jacques Audibert. The BBC had explained to the complainant that Mr Johnson’s choice of words had led to widespread criticism but that coverage across the BBC’s output had also included those who were supportive of him. She also noted that in her report on the News at Ten Political Editor Laura Kuenssberg had explained the context of his remarks and why they were important:

> “It’s his job to win friends and influence around the world....but as the delicate process of leaving the EU begins, rather indelicate words about our old friends and foes – the French.”

> “Boris Johnson’s team says he was just making the point that it makes no sense for the rest of the EU to treat Britain harshly but only yesterday Teresa May was
publicly reminding ministers here at home of the need for discipline, and with a
difficult deal ahead Britain needs all the friends it has. Language matters but it’s
the words and attitudes of European leaders that will prove vital…”

She noted that the item had then moved on to report the reaction of European leaders to
Teresa May’s speech the day before, which had outlined the government’s plans for
Brexit.

The Head of Editorial Standards also noted that the replies from the BBC had outlined the
criteria used by news editors when making decisions about which stories to cover and
they had acknowledged that not all viewers and listeners would agree with every decision
on every occasion. She also noted that such decisions were an exercise of the BBC’s
editorial judgment and news editors were entitled to decide what stories to include and
the angle to take so long as what was broadcast met the BBC’s editorial standards.
Although she understood that the complainant felt strongly that the remarks were not
worthy of a lead story, it was the role of BBC journalists to report events and the reaction
to those events fully over a period of time so listeners and viewers could make up their
own minds. This was part of the BBC’s mission to inform. Given this context she did not
consider that Trustees would conclude that to lead the News at Ten on this story
amounted to a breach of editorial standards.

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

Decision of Audience Services not to respond further
to a complaint about the use by BBC News of the term
“far-right”

The complainant made the following points:

- the BBC used the term “far-right” in its output without properly defining the term
  for the audience
- words like “far” or “centre” or “right of centre” were comparisons but how did “far”
  relate to other degrees of “right”
- as far as politics was concerned it was very important that “ready-made
  expressions” were used carefully and not used as “blanket” terms
- the use of the expression “far-right” could have the effect of sowing certain ideas
  in the minds of the audience.

Audience Services made the following points:

- the term “right-wing” could be useful when defining a political party or group in
  terms of where it stood in relation to others on the political spectrum
- the BBC would only use “far-right” (or “far-left”) to clarify that an individual or
  group were further along the spectrum than more mainstream counterparts
• descriptions such as "hard-left" or "far-right" were not exact and not everyone would agree with their use
• the BBC accepted that the adjectives used to describe politicians of left of centre and right should always be kept under review
• without a specific example of when this was used the complaint could not be investigated further.

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 expression ‘far-right’ is freely used in an almost indiscriminate manner” by the BBC and might therefore be inaccurate and misleading. It was “over-used and misused” and in the past was reserved for the Nazi party in 1930/1940s Germany. He added that his complaint had not been addressed appropriately by the BBC.

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 Royal Charter and accompanying Agreement between the Secretary of State for Culture, Media and Sport and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board in terms of decisions about the BBC’s editorial and creative output. Decisions about the content of news stories, for example about the language used to describe political parties, were editorial issues which were the responsibility of individual news editors and were not a matter for the BBC Trust unless they involved a breach of editorial standards.

She noted that the complainant felt the term “far-right” was over-used and used incorrectly by the BBC to the extent that it was inaccurate and misled audiences. He wanted a definition.

She noted the responses from the BBC which had stressed that terms such as “far-right” or “far-left” were not exact and that it was the duty of the BBC to keep the use of such phrases under review. However they had been clear in their responses that in general the BBC would use the term as a comparative to indicate “that an individual or group were further along the spectrum than more mainstream counterparts”. She did not consider the BBC was obliged to provide a general definition and felt that the explanation provided was sufficient.

The Head of Editorial Standards also noted that Audience Services had explained that, in the absence of examples from the complainant of where he considered the term had been used inaccurately, they could not investigate the complaint any further. She considered that clarity of language was very important when describing political parties but without specific instances being provided of where the complainant felt the term “far-right” had been misused, she considered that the complaint did not involve a breach of standards. She believed that Trustees would therefore conclude that this was not a matter for the
BBC Trust and that Audience Services had acted appropriately and provided a reasonable and reasoned response.

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 Audience Services not to respond further to a complaint about Today, Radio 4, 6 March 2017

The complaint concerned an interview on Today with Assistant Commissioner Mark Rowley, the National Police Chiefs’ Council lead for counter-terrorism. He was launching a new campaign called Action Counters Terrorism which aimed to encourage more members of the public to come forward with information in a bid to disrupt terrorist attacks.

The complainant made the following points:

- when Assistant Commissioner Mark Rowley mentioned the murder of Jo Cox MP as an example of white supremacist terrorism, John Humphrys tried “to excuse the attack as not the same thing” because the terrorist, who was found fit to stand trial, was “mentally ill”
- this sort of comment had the effect of suggesting that only Muslims “could really be terrorists”, and “gives comfort to white supremacists and violent nationalists”
- murdering a politician while shouting hateful political slogans was not in the grey area of terrorist attacks; if the attacker had been a Muslim Mr Humphrys would not have sought to establish whether the attack should be equated with other recent terrorist acts
- this line of questioning made violent white supremacists feel empowered and encouraged, because if they were to commit an attack they would be “excused and coddled by members of the press who did not believe they were really terrorists”.

Audience Services made the following points:

- BBC Radio 4 listeners expected robust and challenging questioning on Today and in the context of an interview about the overall level of terrorist threat it was useful to probe in more detail what kind of crimes the police included when they made their assessments
- John Humphrys was establishing whether the murder of Jo Cox MP should be equated to other recent terrorist acts. Assistant Commissioner Rowley made it clear that the view of the court and sentencing was that Jo Cox’s murder was an act of terrorism
- Today’s editor regretted if the complainant found the tone of John’s question dismissive or patronising; this was not the intention.
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 added that the responses from the BBC had been inadequate and did not engage with the substance of the 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 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 the purpose of the interview on Today had been to discuss the launch of a new campaign to encourage members of the public to come forward and report suspicious circumstances which could lead to the disruption of terrorist attacks. At one point the presenter John Humphrys asked Assistant Commissioner Rowley why the official terror threat level had stayed at “severe” for so long. Mr Rowley explained that terrorism was often simply seen in relation to large groups like IS but that in fact other groups or individuals could also pose a significant risk:

Mark Rowley: “And of course in the UK we do have to worry about - it’s not of the same order of magnitude – but extreme right-wing groups are very provocative and can cause significant risk to our communities and indeed we know it was extreme right-wing related issues which led to the tragic murder of Jo Cox not that long ago.

John Humphrys: "But in that case wasn’t that just a very deeply disturbed man – mentally ill wasn’t he – that slightly muddies the water doesn’t it when we talk about that as terrorism?"

Mark Rowley: "It’s not my classification that was the view of the court and the sentencing – that’s the conclusion clearly they came to."

The Head of Editorial Standards considered that in this exchange John Humphrys was seeking clarification on the sort of acts that might be referred to when assessing the terror threat level. He posed a question about whether one particular individual attack – by Jo Cox’s murderer, Thomas Mair – would be part of that assessment. This was then clearly answered by Mr Rowley who reminded John Humphrys that it was the judge in the court case on sentencing him who had reflected on Thomas Mair’s links with violent white supremacism. Assistant Commissioner Rowley then added that the point he was making...
was that terror attacks could range from the simple to the complicated; from acts by radicalised individuals to more attacks by groups.

The Head of Editorial Standards noted that the complainant felt that the question by John Humphrys had the effect of suggesting “that, if you’re a terrorist who’s a Muslim, then you are a terrorist, but if you’re a terrorist who’s a white nationalist, an excuse will be found to portray you as a sick person who’s not really evil, thus giving comfort to violent white nationalists who are assured that, if and when they commit attacks, they won’t face the full disapproval of the public”. She noted that the exchange related to one particular case only and she could not agree with this interpretation of John Humphrys’ comment. Nor did she consider, given the context of the interview, that audiences would have taken the comment to mean in general that only Muslims could “really be terrorists”.

She considered therefore that Trustees would be likely to conclude that the comment did not represent a breach of standards and that Audience Services had given a reasonable and reasoned response to the complaint.

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 Audience Services not to respond further to a complaint about BBC News coverage of the inauguration and presidency of Donald Trump

The complainant made the following points:

- the BBC’s ongoing reporting of the aftermath of the US presidential election had shown a “sneering bias”
- the BBC News headline declaring “thousands join anti-Trump marches” was biased
- coverage of the differences between the inauguration crowds for Trump and those for Obama was misleading
- the BBC reported Donald Trump’s wish to tighten border controls without putting the other side which would show why he wanted to do this
- the BBC brought itself further into disrepute on the world stage when it was “outed” by Donald Trump during his live press conference
- the Twitter accounts of US correspondents Anthony Zurcher and Jon Sopel demonstrated “one-sidedness, disrespect and unprofessionalism” which was “staggering” and fell short of any reasonable benchmark journalistic standards
- Jon Sopel made a joke out of his BBC bosses making a new “beauty” business card as the BBCs reputation was “dragged through the mud”.

Audience Services made the following points:
• BBC journalists were well aware of the commitment to impartial reporting. They were expected to put their own political views to one side when carrying out their work for the BBC.
• They sought to provide the information which would enable viewers and listeners to make up their own minds; to show the political reality and provide the forum for debate, giving full opportunity for all viewpoints to be heard.
• The BBC did not seek to denigrate any view, nor to promote any view. It sought rather to identify all significant views, and to test them rigorously and fairly on behalf of the audience.
• Senior editorial staff within BBC News, the BBC’s Executive Board, and the BBC Trust kept a close watch on programmes to ensure that standards of impartiality were maintained.
• Donald Trump winning the US election generated a lot of reaction, both positive and negative, in America and across the world; this had been reflected in BBC coverage.
• BBC News did not have a view on whether or not Mr Trump would be a good president, nor had there been anything in coverage which would suggest that it did. This was a huge news story, and as audiences would expect, the BBC would continue to present the facts.
• In terms of the inauguration, the BBC had devoted a great deal of airtime to it by carrying the ceremony live - including the new President’s uninterrupted speech - and it heard supportive voices in the crowd and from his political backers.
• The BBC provided an interactive comparison showing how the National Mall looked from above and from President Trump's perspective on the day at: http://www.bbc.co.uk/news/world-us-canada-38682574
• This helped to explain to some extent why the reports of smaller crowds had been surprising to him. It also confirmed that those reports were accurate and relevant.
• It was also undeniable that there had been sizeable demonstrations within America and elsewhere – not universal, as we had also made clear – against the new President that had warranted coverage.
• It was also the case that - regardless of any views in favour or against him personally - the nature of the Trump presidency, as witnessed from news conferences to sweeping executive orders already enacted, had marked a noticeable break with how such things had traditionally been conducted by the White House.
• Since becoming President Mr Trump had expressed controversial views, including support for torture, and had taken measures that also caused controversy. His executive order which put into place a temporary travel ban on people from seven predominantly Muslim countries caused widespread protests and received criticism from several world leaders, including the German chancellor, Angela Merkel.
• It was right for BBC News to point this out and to reflect widespread concerns which had emerged. But it was equally right to keep reminding even the President’s fiercest opponents around the world that he was democratically elected and that polls in America appeared to support many of his policies and aims.
• Simply hearing from supporters and opponents or reflecting their points of view did not mean the BBC agreed with or was sympathetic to either side – it was...
simply reflecting the fact that two sides – which on this matter were pretty vehemently divided – did exist and that both had very strong and opposing views

- when reporting Mr Trump’s actions, the BBC tried to explain his position in detail and to incorporate a range of views about his policies, as well as his own response to criticism
- in Donald Trump’s highly unusual news conference he had wanted to respond directly to criticism his administration had received. He spoke about his relationship with Russia and the resignation of his national security adviser, Michael Flynn and spoke at length about, as he labelled it, the “dishonest” media. He interrupted or cut short several reporters, and did berate some, including the BBC’s Jon Sopel
- during this press conference, Mr Trump stated that his administration was running like a “fine-tuned machine”. With this in mind, it was perfectly legitimate for Jon to ask the President if his executive order, his temporary travel ban, was an example of his administration running smoothly
- this question was not indicative of bias, but given the controversy this had caused, with widespread protests and the order being subsequently blocked by the courts, this was clearly an important topic, and one which audiences would expect to be raised. Coverage featured Mr Trump’s response to this
- in response to a comment about the BBC by President Trump, Jon said that it was “impartial, free and fair”. He was simply explaining the BBC’s values
- as the BBC’s North America Editor, a fundamental part of Jon Sopel’s role was to give the audience an informed analysis of key events taking place in the USA. His reporting of this press conference was consistent with this.

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 BBC had failed to provide any facts, arguments or evidence to support its assertion that the BBC’s coverage of Donald Trump was impartial. He added that the tone of the replies from Audience Services had been “condescending and unhelpful”.

**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.

Firstly she noted that the complaint had written directly to the BBC’s Director-General but this had been ignored. The editorial complaints and appeals procedure which was set by the Trust following public consultation explains that complaints should be sent to BBC Audience Services. This enables the BBC to track complaints and ensure they are answered.

[http://www.bbc.co.uk/bbctrust/governance/complaints_framework/editorial.html](http://www.bbc.co.uk/bbctrust/governance/complaints_framework/editorial.html)
It 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.

...

Your complaint should be limited to a single item broadcast or published by the BBC unless it is about more than one item but your points relate to the same issue. This is because if a complaint is about two unconnected items they will need to be treated as separate complaints.

Your complaint should include all of the points about the item that you wish to be considered as the BBC may not consider new or different points after Stage 1a of the Procedure has concluded.

The Head of Editorial Standards noted that the complainant had continued to add to his complaint with fresh issues.

The Head of Editorial Standards noted 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.

We seek to provide a broad range of subject matter and perspectives over an appropriate timeframe across our output as a whole.

The Head of Editorial Standards noted the complainant’s continued assertion that BBC coverage of Donald Trump was biased. She noted the replies from Audience Services which had explained in some detail the approach taken by BBC News to coverage of Donald Trump’s inauguration and subsequent first months as US President. She noted that Audience Services had explained that the BBC’s aim, as required by the BBC’s Editorial Guidelines, was to include a range of views and perspectives across the output over a reasonable period of time. As far as coverage of Donald Trump was concerned this included featuring a range of opinions about his policies and his aims – both positive and negative - including the views of both his supporters and his critics and ensuring that these opinions were appropriately challenged.
The Head of Editorial Standards noted that the BBC was entitled to report coverage of the demonstrations which had taken place against President Trump. This was in line with the BBC’s mission to inform.

The Head of Editorial Standards noted that Audience Services had answered individual points of complaint about coverage of Donald Trump’s inauguration by referring the complainant to interactive photographs on the BBC News website. It had also pointed to the fact that the ceremony had been covered live, including the President’s speech, and a range of supporters had been interviewed. It had also responded to the complainant’s criticism of the conduct of BBC reporters who were present at Donald Trump’s highly unusual live press conference. She noted the BBC has explained its commitment to reflect the support President Trump enjoyed in the US as a democratically elected President. She noted that the complainant in his appeal had said that he expected the BBC to provide evidence of balanced news items on the success/progress of the Trump administration but in her view the BBC required by the complaints procedure to respond when specific complaints were made at stage 1A but otherwise, where the complaint had been general, the BBC was also entitled to be general in its reply.

Overall the Head of Editorial Standards did not consider that the complaint had pointed to any evidence of bias or specific examples of where the BBC had breached the BBC’s editorial standards. She considered that Audience Services had provided responses which were reasoned and reasonable and 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 Audience Services not to respond further to a complaint about “Berlin lorry attack: What we know”, BBC News website, 24 December 2016

The complainant made the following points:

- the article was “fiction” and “described a faked attack staged for political reasons”
- the complainant included a link to a series of videos which he said provided evidence to support his view
- the report showed a truck route that was impossible
- the “alleged witnesses” were as far as could be ascertained all members of the media and not ordinary citizens
- fake blood was spread by at least one person
- the alleged perpetrator had been involved in internet media activities and he was not killed in Italy but a mannequin had been used to stage a “fake incident”.

Audience Services made the following points:
• this story had been widely reported across many media outlets and the BBC always made sure the sources referred to were reliable
• the complaint had been circulated to senior management and online news editors in the BBC’s overnight report.

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.

She noted that the direction of the BBC’s editorial and creative output was defined in the Royal Charter and accompanying Agreement between the Secretary of State for Culture, Media and Sport and the BBC as a duty that was the responsibility of the BBC Executive Board. Editorial decisions about the content of news stories were the responsibility of BBC News editors therefore rather than the Trust unless they involved a breach of editorial standards.

The Head of Editorial Standards noted that the complainant believed the article “Berlin lorry attack: What we know” was inaccurate as it reported certain aspects of what happened in the Berlin market attack as true, when in fact he believed they had been “faked”. She noted his concern about the occupations of the witnesses quoted in the article and the sources used for the account of what had happened. She noted the witnesses quoted were several British tourists (one of whom happened to be a journalist) and residents of Berlin. Another was editor Jan Hollitzer who filmed the aftermath of the attack for his newspaper the Berliner Morgenpost. She noted the article included several photographs of the scene and that the sources quoted included the Italian authorities and Tunisia’s Interior Ministry.

The Head of Editorial Standards noted that in its reply to the complainant the BBC had assured him that the story had been widely reported by many national and international media outlets. Audience Services added that it was always the aim of BBC journalists to ensure that sources used and quoted in BBC News output were reliable. She therefore considered that the complaint had been answered appropriately and there was no evidence that the article represented a breach of standards.

The Head of Editorial Standards considered that this complaint was trivial and it was disproportionate to consider it further.

**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 Audience Services not to respond further to a complaint about Newsnight, BBC Two, 28 and 29 November 2016 and The Andrew Marr Show, BBC One, 27 November 2016

The complaint concerned three programmes which featured items about the death of Fidel Castro. Newsnight on 28 November presented by Evan Davis included a discussion with the writer Tariq Ali and Peter Hitchens from the Mail on Sunday. On 29 November Newsnight included reports from Emily Maitlis live in Revolution Square in Havana. The Andrew Marr Show included questions about Castro during an interview with Shadow Foreign Secretary Emily Thornberry and a discussion during the review of the morning’s newspapers. The panel for the review was journalist Paul Mason, Miranda Green from the Financial Times and Fraser Nelson, editor of The Spectator.

The complainant made the following points:

- the programmes had breached the BBC’s guidelines on impartiality
- coverage of the death of Fidel Castro was “disproportionate and one-sided”
- both programmes made one-sided accusations about executions, torture and human rights abuses without referring to evidence
- guests with a critical perspective went unchallenged
- Evan Davis did not challenge Peter Hitchens on Newsnight on 28 November when he made allegations about torture
- Andrew Marr did not challenge Miranda Green when she claimed that political opponents had been executed in Cuba
- Andrew Marr did not challenge Fraser Nelson when he was “unhappy” with the way Justin Trudeau commented on Castro’s death
- the mention on Newsnight of executions was not put into the proper historical context
- both presenters intervened only to support and promote the critical perspective therefore “undermining any pretence at balance”
- neither programme properly discussed democracy “in the context of Cuba’s long struggle for self-determination” or explained the Cuban political system
- the Newsnight report from Havana on 29 November focused on the large crowds in Revolution Square “as briefly as possible” because the response of the Cuban people to Castro’s death did not fit in with the critical narrative
- both programmes unfairly compared Fidel Castro to Pinochet
- Andrew Marr made a serious allegation in his interview with Emily Thornberry that people, including children, were “machine-gunned in boats” when attempting to leave Cuba. No evidence was provided for this statement.

Audience Services made the following points:

- Fidel Castro’s life and legacy were controversial subjects and therefore the BBC featured a wide range of views
• across the output the BBC included a range of opinions on Castro, his politics and his leadership of Cuba from a variety of people and commentators – both supporters and critics - and those views were appropriately challenged
• reports about Castro’s death were conducted in a fair and impartial manner allowing audiences to make up their own minds and the coverage did not exhibit bias
• the range of tastes and opinions held by the audience was so diverse that it was inevitable some viewers would disagree with certain guests or the opinions they expressed. However they were entitled to hold those opinions in the context of legitimate debate
• Newsnight included a look at Castro’s charisma and influence including contributions from the Latin America Centre at the LSE
• it looked at his national success with the healthcare and education systems in Cuba and his international impact fighting apartheid in South Africa
• a Cuban in London spoke favourably of Castro’s legacy and success in improving the quality of life
• it included original footage from Erik Durschmied’s interview with Castro in the mountains and weighed up the pros and cons of the debate concerning how history would remember him
• in a fast-flowing, live interview it was not always possible to challenge every statement and claim made by guests. Knowing when to interrupt was more an art than a science and there was no intention to take one approach with some guests and not with others
• on The Andrew Marr Show Castro was discussed within the newspaper review. The discussion was generally led by how the newspapers had covered different stories and panellists were asked very briefly about a range of articles. It was not the intention here to conduct a more detailed investigation of the various and complicated elements of Cuba’s history
• on the allegation that people, including children, were “machine-gunned in boats” when attempting to leave Cuba, this element of the complaint was not introduced in the original correspondence. According to the BBC’s published complaints framework the timeframe for making complaints about programmes was within 30 working days of the transmission which was not the case here. It was not possible therefore for Audience Services to address this element of the 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

The complainant appealed to the BBC Trust on the substance of his complaint. He repeated his request for evidence to support Andrew Marr’s claim that Cuba “machine-gunned migrants”. He said his complaint had not been dealt with comprehensively and the specifics of the complaint had not been addressed.
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 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.

We seek to provide a broad range of subject matter and perspectives over an appropriate timeframe across our output as a whole.

The Head of Editorial Standards noted the complainant’s view that the output on Newsnight and on The Andrew Marr Show had been biased by focusing on allegations of Castro’s human rights abuses which went unchallenged by the presenters, by not including sufficient historical context around his leadership and by being, in general, overly negative and critical. She noted in their responses Audience Services had referred to the wide range of opinions represented in the programmes which were the subject of the complaint.

Looking in detail at these programmes the Head of Editorial Standards noted that Newsnight on 28 November had included a report about Castro’s early days in power referring to his “much vaunted achievements” in education and healthcare and his crucial role in the struggle against apartheid. Evan Davis had interviewed the filmmaker Erik Durschmied who had spent several months with Castro as a revolutionary in the mountains and who described him as “sincere” and “charismatic”. The programme included a clip of Castro himself describing his political philosophy as “representative democracy and social justice in a well-planned economy”.

The programme then included a discussion between Peter Hitchens, who was highly critical of Castro’s treatment of his political opponents, referring to the personal account of one of those tortured, and Tariq Ali who referred to “appalling” treatment but sought also to put this into the context of Castro’s achievements in improving education and healthcare. Tariq Ali also very forcefully made the point that Castro could not be compared to Pinochet.

The following day on Newsnight Emily Maitlis presented live from Revolution Square in Havana where she spoke of “up to a million people expected to mark the death of Castro”. Far from failing to reflect the mood of the mourners there, the Head of Editorial Standards noted that she spoke to supporters who referred to his death as a “huge loss” and vowed to carry on “the example he set us”. Emily Maitlis then interviewed a blogger and activist who spoke fondly of Castro’s legacy and said the country needed to continue the process of change started by him. She noted that both Newsnight programmes had set their discussions in the context of Batista’s dictatorship, the involvement of the US and later of the influence of the USSR.
The Head of Editorial Standards then noted that in The Andrew Marr Show, discussion of the death of Fidel Castro took place during the review of that morning’s newspapers, prompted by their headlines. Paul Mason was critical of Castro’s human rights abuses but agreed he was also a “fighter for social justice” who achieved politically and economically. He made the point he could not be compared to Pinochet as the Chilean dictator suppressed his people’s economic rights unlike Castro who raised them. To answer the complainant’s specific point about Fraser Nelson’s comments concerning Justin Trudeau’s reaction to Castro’s death and Ted Cruz’s criticism, Mr Nelson had at this point been quoting from the New York Times.

She noted that, as Audience Services had pointed out, the paper review had been fast moving and it would have been difficult and inappropriate under those circumstances to pick up and challenge every point made by the contributors and she considered that the audience would understand this. However she noted that the panel had reflected a variety of views and, again, had referred to the historical context of Castro’s rise to power and the influence of both the US and USSR.

She also noted that later in the programme Shadow Foreign Secretary Emily Thornberry who had been in Cuba in the early 1990s had said:

“Castro was a hugely divisive figure and I think that it’s quite difficult to get beyond the human rights abuses, but my own experience… I found a country that was egalitarian with a fantastic health service… It came at a price but in my view it was a brave island that stood against a regime that for 50 years would not trade with it and would not let other countries trade with it too, and not only did they stand firm and strong but they also exported their values across South America and into Africa producing doctors, nurses and teachers.”

The Head of Editorial Standards also noted the responses from Audience Services which had outlined how the BBC had included across its output a range of opinions on Fidel Castro from a variety of commentators and contributors – both supportive and critical – which had looked at his life, his leadership, his achievements and his legacy. She noted that the BBC’s Editorial Guidelines did not require the range of perspectives or opinions to be covered in equal proportions within a single programme but that a wide range of opinion was reflected across the BBC’s output as a whole and over an appropriate timeframe. Given this context she considered therefore that Trustees would conclude that the complainant had not provided any evidence of bias and the programmes did not represent a breach of standards.

The Head of Editorial Standards then noted that the complainant had requested a response from Audience Services to his complaint about Andrew Marr referring to Cuba “machine-gunning people in boats – including children – when they were trying to leave the country”. She noted that Audience Services had referred to the BBC’s published complaints framework that stated that:

You should make your complaint within 30 working days of the date on which the content was broadcast or first published in a BBC owned magazine. If you contact the BBC after that time, please explain why your complaint is late. Exceptionally, the BBC Executive may still decide to consider your complaint, but only if it decides there was a good reason for the delay.

She noted that Audience Services had explained that this element of the complaint had been made in later correspondence and was therefore beyond the 30 working day limit.
and she believed it was therefore reasonable for the BBC to explain that they were unable to consider this point.

**Taking this into account, the Head of Editorial Standards, BBC Trust, considered Trustees would be likely to conclude that Audience Services had provided a reasonable and reasoned response and 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 Audience Services not to respond further to a complaint about BBC News Online, “Omega-3 oils in farmed salmon ‘halve in five years’, 6 October 2016

The complaint concerned an article which appeared on the BBC website about how the levels of omega-3 in farmed salmon had halved. This was the result of fewer anchovies being used in the diet fed to farmed salmon, because it was recognised that too many anchovies were being caught for fish food. The report noted that researchers were looking at other ways to get omega-3 into the food chain; a current project was investigating whether it would be possible to grow oil seed rape plants that had been genetically modified to produce fish oils.

The complainant made the following points:

- the article claimed that farmed salmon was one of the leading sources of omega-3 and that smaller amounts are found in plant sources
- this was incorrect because flax and hemp seeds have approximately ten times the amount of omega 3 than the best oily fish
- the article seemed to be trying to persuade us to accept more GM foods
- the article was not impartial

Audience Services made the following points:

- the omega-3 fatty acid founds in flax and linseed are not the same form as those found in fish or algal oil
- omega-3 is a chemical classification of a family of fatty acids, which includes the health beneficial forms found in fish/algae such as EPA and DHA, as well as the shorter-chain forms such as ALA found in vegetable oils
- “the omega-3 from hemp or linseed won’t do the fish any good and so won’t do us any good”
- the article quoted the scientist in charge of the GM trial stating that GM crops could be part of a solution to the issue
- the article also made it clear that “the industry won’t introduce feed produced by GM technology unless consumers accept it” and noted there was a question over whether they would
• the article focused on the GM option because it is the one the industry is considering for markets that accept GM; it was also of interest because it is the only GM field trial in the UK

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 that he had checked on Wikipedia, and found that 1) the health benefits of omega3 are not clear and 2) that the human body converts ALA into EPA and DHA anyway.

He concluded that the BBC was factually wrong about omega3 oils. That being the case, the claim that GM plants are 'needed' is false and he wanted it retracted.

Following the appeal the BBC adjusted the website article to remove the reference to omega3 being present in plants in 'smaller amounts'.

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.

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 noted that there are three types of omega-3 (ALA, EPA and DHA). Humans cannot synthesise omega-3 but can obtain it through diet. The health benefits are gradually being understood. One type (ALA) can be obtained through plants and two types (EPA and DHA) through marine oils such as salmon.

The Head of Editorial Standards noted the complainant’s contention that the human body converts ALA omega-3 (from plants) into the beneficial EPA and DHA forms of omega-3 (already present in fish oils). She noted the complainant sought to rely on information he had read in Wikipedia on the subject. The Head of Editorial Standards noted the following extracts from the relevant section in the Wikipedia entry cited by the complainant:

Conversion efficiency of ALA to EPA and DHA
Humans can convert short-chain omega-3 fatty acids to long-chain forms (EPA, DHA) with an efficiency below 5%. The omega-3 conversion efficiency is greater in women than in men, but less-studied...

The conversion of ALA to EPA and further to DHA in humans has been reported to be limited, but varies with individuals. Women have higher ALA conversion efficiency than men, which is presumed to be due to the lower rate of use of dietary ALA for beta-oxidation. This suggests that biological engineering of ALA conversion efficiency is possible.21

The Head of Editorial Standards noted that the article was about the levels of beneficial omega-3 oils in farmed salmon. She took this to mean the two types of omega-3 found in marine oils (EPA and DHA).

In the body of the article there was a section headed "Where can I get omega-3?" and that the table reflected salmon and other oily fish as a “main source” of omega-3, and noted (following correction) that it could be found in some plants.

The Head of Editorial Standards noted that the article in question was clearly intended for a general audience and was about dietary sources of omega-3 and not about the compound’s chemical structure. She noted that the point of the article was to discuss beneficial omega-3 in farmed salmon and dietary sources of it and so the article was duly accurate in that light.

Regarding the references in the article to GM the Head of Editorial Standards noted that inclusion in the article of information about the GM trial was an editorial decision and not an issue which the Trust could consider. This is because the editorial and creative direction of the BBC is matter for the Executive Board and not the Trust (Royal Charter (2007) article 38 (b)(1)). She noted also the response from Audience Services which explained that the information had been included because GM rapeseed was being actively considered as a solution in markets which accept GM. There was no evidence that the inclusion of the reference to GM rapeseed was motivated by a wish to promote the technology. The Head of Editorial Standards noted that the article had reflected the challenges that would surround any future plan to introduce a GM version of rapeseed oil into the UK; she considered this was an appropriate reflection of the controversial nature of the subject. The Head of Editorial Standards considered there would be neither a requirement nor audience expectation for any further detail regarding the GM debate in an article such as this, where the focus was on falling omega-3 levels in farmed salmon.

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.

21 [https://en.wikipedia.org/wiki/Omega-3_fatty_acid](https://en.wikipedia.org/wiki/Omega-3_fatty_acid)
Decision of Audience Services not to respond further to a complaint about The World at One, BBC Radio 4, 24 January 2017

The complaint concerned comments by the BBC’s Deputy Political Editor John Pienaar on The World at One on 24 January 2017. The programme reported on the decision by the UK Supreme Court that a parliamentary vote was required before the government could start the Brexit process, but that the UK government was not required to consult the devolved legislatures before triggering Article 50.

The World at One reported that the Labour leader Jeremy Corbyn would not block the signing of Article 50 but he wanted the power to scrutinise Brexit legislation. Presenter Martha Kearney asked John Pienaar about Downing Street’s reaction to the judgement, and then where this left the opposition parties. In response, the Deputy Political Editor said:

“Theresa May’s position is strengthened considerably by the fact that the opposition are in such a state. The Labour opposition, judged by what used to be normal standards of coherent opposition politics, look a shambles and if you say, well surely we should be fair and understanding about Labour’s tensions and dilemmas I would say yes we should and yes I am, I am being understanding, if I had wanted to be harsh about the state of the Labour Party I could have used a much stronger word. They were wrong-footed by their own traditional supporters in the Referendum in heartland areas. Now their principal spokespeople not only can’t agree but they routinely contradict each other on major issues such as the free movement of people in the European Union and those problems are magnified by the fact that very few MPs, Labour MPs, seem to have very much if any faith in their own party leadership. It’s left the Scottish National Party seeing themselves as fighting a lonely battle Martha against the odds…”

The complainant made the following points:

- the reporting was not balanced, but was subjective and derogatory
- Mr Pienaar gave no examples of Labour spokespeople contradicting each other but expected uncritical listeners to accept his judgement

Audience Services made the following points:

- as Deputy Political Editor John Pienaar’s role was to provide analysis of topical political news and to reflect political reality
- he was asked for, and gave, his professional opinion on the matter at hand
- he did clarify that he was understanding about Labour’s tensions and dilemmas, and that the party (who were naturally more pro-EU) were wrong-footed in their heartland areas by their own supporters voting for Brexit
- he also talked about the relationship between many Labour MPs and the leadership of their party and how this was affecting the strength of opposition
- he went on to examine the SNP’s position and cautioned that Theresa May was only at the starting line of a ‘long, uphill marathon’ to Brexit and that, given the unpredictability of politics, there was plenty of scope for mistakes and missteps along the way.”
• the BBC was not suggesting that this was the only opinion nor that others would agree with his summary, but the BBC called upon editors to sum up matters as they see them based upon their detailed insider knowledge and experience in the field.

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

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 the complainant’s appeal did not have a reasonable prospect of success.

She noted that the complainant believed that the Deputy Political Editor comments breached the following impartiality guidelines:

4.1 “The BBC Agreement forbids our output from expressing the opinion of the BBC on current affairs or matters of public policy, other than broadcasting or the provision of online services.”

4.4.13 “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.”

She noted that the complainant believed that the Deputy Political Editor reporting did not differentiate between his professional judgement and his personal view.

The Head of Editorial Standards noted that the Deputy Political Editor had explained earlier in the interview that “unhappy Remainers” were “cornered between procedure and politics” and that Labour MPs in particular, who were “overwhelmingly Remainers”, “don’t feel able to defy the will of the people”.

She therefore considered that listeners would be likely to understand that Mr Pienaar was describing the “tensions and dilemmas” of the Labour Party in being caught between their pro-EU stance and the pro-Brexit views of their heartland support. She noted that the Deputy Political Editor said that his judgement was based upon the “normal standards of coherent opposition politics”. She noted that he had gone on to evidence his judgement and considered that this was an expression of a professional judgement, albeit in strong terms, rather than a personal view.

She noted that Mr Pienaar also drew attention to the tensions between Labour MPs and the leadership of party but she did not agree that his comments were not “rooted in evidence”, given the much-publicised differences of opinion in the Parliamentary Labour Party.
She noted that the complainant stated that Mr Pienaar offered no evidence for his view that Labour spokespeople “routinely contradict each other on major issues such as the free movement of people”. However, she noted that his comments came after Mr Corbyn’s keynote speech on EU migration on 10 January 2017 when a shadow cabinet minister said he knew nothing about the proposed “maximum pay cap” policy\(^\text{22}\), and that former shadow cabinet ministers had recently called on Mr Corbyn to back a “managed” migration system\(^\text{23}\), following his earlier comments that he was “relaxed” about EU migration. Given that these “tensions and dilemmas” were well documented the Head of Editorial Standards did not agree that Mr Pienaar needed to refer to specific incidents in order to demonstrate that his judgements were rooted in evidence.

**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.**

### Rail industry news reporting on BBC Radio 2 news and travel bulletins and Midlands Today, BBC One

The complaint concerned the coverage on BBC Radio 2 and on BBC regional television in the Midlands of stories relating to current issues in the rail industry. The five items highlighted by the complainant covered a diverse range of issues including rail fare increases, driver only operation and Bank Holiday rail closures. The complainant contended that collectively the stories demonstrated that the reflection of the rail industry on the BBC was neither accurate nor impartial and that there was “clear evidence” of infiltration of reporters and editors by trade unions and pressure groups, to produce news reports that were “merely speculation”.

**Item One, Rail fare increases, Radio 2, 2 Jan 2017**

The complainant made the following points in relation to an item about rail fare increases on the morning news bulletins on Radio 2 on 2 January 2017:

- there was no justification to lead on the story in every bulletin
- nor to cover the issue of rail fare increases three times over the year: when the annual inflation figure was announced in August; in October when the fares went online and again in January when they actually came into operation
- it indicated bias in favour of rail pressure groups and against rail companies and the rail industry
- the description in one bulletin of passengers having had a “kick in the teeth” could not be said to apply to passengers in the Midlands, where the complainant lives; they would accept that the 1.9% rise in season tickets was necessary to pay the higher wages of railway staff and other expenses

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\(^{22}\) [https://twitter.com/BBCNormanS/status/81876110548504800?ref_src=twsrc%5Etfw](https://twitter.com/BBCNormanS/status/81876110548504800?ref_src=twsrc%5Etfw)  
• the local bus company National Express had seen a rise of 4.3% yet this was not covered on his regional TV programme, Midlands Today
• the disruption experienced by passengers on Southern Railway services as a result of an industrial relations dispute did not apply to the network as a whole: the proportion of overall passengers affected was tiny and they had received compensation with an 8.3% rebate to season ticket holders

Audience Services made the following points:
• the significance of the reporting was due to the major disruption many commuters had experienced in recent months to their train journeys; whilst it may not be relevant to the complainant’s region it was a story of major significance
• a range of issues will come into play in deciding the level of coverage a story received and where it is placed in the bulletin; it is a judgement call rather than an exact science
• the increase in bus fares was reported on BBC Online at http://www.bbc.co.uk/news/uk-england-35244393

Item Two, Travel news, Radio 2, 2 January 2017

The complainant noted that on at least two travel bulletins on Radio 2 on the morning of 2 January 2017 it was stated that "some rail companies were providing no service today": The complainant said:

• this was completely untrue according to the National Rail website
• most operators appear to have been providing a normal Saturday service
• it was an indication of more anti-rail bias
• no operators had no service at all

Audience Services had looked into the complaint. It had found that on 2 January 2017 there was no service between Romford and Upminster; the Gospel Oak to Barking closure continued; and there was also no service between Chadwell Heath and Shenfield

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.

Item Three, Standing on Midland Trains, Midlands Today, 6 September 2016

The complainant said an item on the regional news magazine programme, Midlands Today, had misled the audience about potential changes to the seating arrangements on rolling stock for the new West Midlands rail franchise. The report suggested that rail passengers could expect to stand for longer on their rail journeys in the future as companies bidding to run train services in the West Midlands were being given permission to remove seats. The report included vox pops with passengers and an interview with the new rail authority for the region, West Midlands Rail.

The complainant said:

• the item was sloppy, poorly researched, biased and factually inaccurate
• stakeholders had been specifically requested by the Department for Transport to comment on the layout of the Class 323 trains
• where seats had been reduced before on some other trains most people considered it to have been a great improvement; passengers did not like to sit in the middle of a row of three seats
• it was a blatant distortion to suggest that people are being warned they could expect to stand for longer as the briefing document said the complete opposite
• the Department for Transport has specified as a minimum that the new franchisee was required to provide at least 137 additional vehicles by December 2022
• it is likely that the majority of services on the main CrossCity route will be lengthened from three to six coaches

Audience Services said:

• the Midlands Today reporter had spoken to both West Midlands Rail and London Midland whilst researching the item
• the tender document clearly stated that trains could have more standing density, which meant more people having to stand
• while the complainant was correct about the additional rolling stock, the story was not specifically about rolling stock itself but about a move to reduce standing densities
• it was clear this was a complex issue; to that end the Editor of Midlands Today and the Transport Editor who compiled the report were offering to meet with the complainant to discuss the issues in person

Item Four, RMT strike threat, Midlands Today, 14 December 2016

The item reported that drivers and guards were on strike in the Southern Rail network over plans to bring in driver only operation; the RMT union were handing out leaflets to commuters in the West Midlands warning that strike action could not be ruled out if a similar scheme was introduced in the region. The 40" item featured three vox pops with rail passengers opposed to the idea.

The complainant said:

• the item made no attempt to hide the fact the story had been planted by the RMT union
• there was no rail company representative
• London Midland, who have the franchise until October 2017, would have been able to completely refute the RMT story because it has no trains equipped to go driver only operation, it serves no stations equipped with the necessary fixed equipment and has no plans to equip trains or stations in the remaining ten months of its operations
• Chiltern Railways’ services from Birmingham to London have been Driver-only operated for part of the route since 1993
• the story was undoubtedly another part of the media misinformation by the RMT and others against Govia, the owner of London Midland
• Midlands Today had been negligent in not making the most basic checks in the story it was being fed and failing to balance the trade union position with one from the rail industry
The item was added to the complaint whilst Audience Services were in the process of putting the complainant in touch with Midlands Today to arrange the face to face meeting which had been offered. Subsequent correspondence made clear that it was amongst the stories discussed at the meeting which took place at the Midlands Today studio in Birmingham in January 2017.

Following the hour-long meeting the editor of Midlands Today wrote to the complainant thanking him for his time and for his further written comments. She noted his contention that the stories he had highlighted suggested the programme was biased towards the unions. Her response included the following comment:

“I can guarantee that we take stories from plenty of different sources and regardless of the source we offer a right of reply if needed, give credit to which organisation is making the claims and challenge the claim to offer opposing views. As I said during our meeting it’s always good to listen to viewers and what I’ve taken away from our conversation is that during our shorter bulletins we need to be extra rigorous. This is a conversation I intend to have with our output producers.”

**Appeal**

The complainant appealed to the BBC Trust on the substance of his complaint. The Trust Adviser understood that in relation to the two items from Radio Two, Audience Services had decided not to correspond further with the complainant after stage 1. The Head of Editorial Standards, BBC Trust decided that the point she should consider in respect of those complaints was whether the complainant’s appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

In relation to the two items from Midlands Today, the Head of Editorial Standards noted the complainant’s request that his follow-up letter to his meeting at Midlands Today be considered alongside the rest of his submission.

**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 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 also noted that the complainant believed that the interview in question had breached Section 14 of the Editorial Guidelines, Editorial Integrity and Independence from External Interests. She noted this from the introduction to the guideline:
“Our audiences must be able to trust the BBC and be confident that our editorial decisions are not influenced by outside interests, political or commercial pressures, or any personal interests.”

The Head of Editorial Standards considered each item in turn.

**Item One, Rail Fare Increases**

The Head of Editorial Standards noted the complainant had specified news bulletins broadcast on Radio Two between 8am and lunchtime on 2 January. Two were listened to at random from amongst that morning’s news output on Radio Two, both of which reflected the “kick in the teeth” quote cited by the complainant. She noted the following as relevant to her decision:

- the items were 40” and 43” long respectively
- they both included scripted quotes stating that a rail pressure group had called the rises “a kick in the teeth for long suffering passengers”
- the 7am bulletin said ministers were stressing that there was a major modernisation programme underway which needed funding
- that item concluded with two vox pops, one criticising the increase and the second which said:
  
  “It’s inflationary times that we live in and we don’t have any choice; we’ve got to pay for things. And if that includes paying for higher wages and people are earning a bit more money to get more disposable income that work on the railways, that’s fine.”

- the 9am bulletin included the same preamble, noted that the fares were unchanged in Northern Ireland, and ended with a soundbite of Paul Plummer, the Chief Executive of the Rail Delivery Group representing train operators and Network Rail, who defended the rise:
  
  “This is a story of success in many ways. It’s in many ways a frustrating success. It’s that enormous growth we’ve seen on the railway; people wanting to use it more and more because it’s so important to our nation and that’s why we need to invest more to provide more and better so that people can travel comfortably. But it takes time and we’re in the middle of that upgrade.”

The Head of Editorial Standards noted the complainant’s contention that commuters in the Midlands had been unaffected by the disruption experienced elsewhere and would not have viewed the rise as “a kick in the teeth”. She considered that the fuller context reflected that it was the “long-suffering” passengers who would likely have felt that; the alternative perspective was reflected in the vox pop from the passenger who understood the necessity for the increase and in the response from the rail industry group.

The Head of Editorial Standards noted that the choice of what stories to include and with what prominence was a matter of editorial judgement and did not fall within the remit of the Trust. She noted also that the response from Audience Services had explained the news judgement that drives editorial decisions.
Rail increases, whatever the reason, are stories of national interest, not least because for commuters a small percentage increase may reflect an extra drain on disposable income. There is no indication that anything other than news values drove the content either on this occasion or at other times in the year.

**Item Two, Radio Two New Year’s travel bulletins**

The Head of Editorial Standards noted the rail-related content of three travel bulletins which were broadcast on Radio 2 on 2 January:

0645
For the rails: a reduced southern network service I’m afraid. And it’s a Bank Holiday. So lots of operators not running or running a reduced service.

0720
Now onto the rails. There is reduced service across the southern network. No services on some routes at all today. Gatwick Express affected as well. And it’s a Bank Holiday. So lots of operators either not running or running a reduced service.

0927
And it’s a bank holiday for the rails. A reduced service. So do check before you travel.

The Head of Editorial Standards noted the examples of rail disruption in the south-east cited in the Audience Services response. She noted there were many more notifications published on the websites of train operators across the UK for 2 January. They included:

**Scotrail:**
No trains will run on the following routes:
- Cathcart circle services
- Glasgow Central to Barrhead
- Edinburgh to Milngavie
- Glasgow Queen Street to Falkirk Grahamston

**Arriva:**
Cardiff - Newport services - A rail replacement bus service will run between Cardiff Central and Newport.

Cardiff - Bridgend services - Train services will be diverted around the Vale of Glamorgan line (calling at Barry, Rhoose and Llantwit Major) and connecting to West Wales services at Bridgend (GWR services will run between Swansea and Bridgend).

ATW West Wales train services will call at all stations between Bridgend and Swansea.

Bridgend - Cardiff local services - A rail replacement bus service will run between Cardiff Central - Pontyclun- Llanharan - Pencoed-Bridgend.

Maesteg services - Train services will run between Maesteg and Bridgend.

Cardiff Central - Cardiff Queen Street - No train services will run between Cardiff Queen St and Cardiff Central stations.
Rhymney / Treherbert services - Train services will start and terminate at Cardiff Bay via Cardiff Queen St. These services will not stop at Cardiff Central.

Aberdare / Merthyr services - Train services will start and terminate at Cardiff Central. These services will not call at Llandaf, Cathays and Cardiff Queen Street.

Barry Island services - Train services will start and terminate at Cardiff Central.

Penarth Services - NO train services will run between Cardiff and Penarth. Ticket acceptance has been agreed with Cardiff Bus.

Ebbw Valley services - Train services will run between Ebbw Vale Town and Newport Station to connect with Cardiff to Newport rail replacement bus service.

City Line services - No train services will run. Ticket acceptance has been agreed with Cardiff Bus.

Coryton Line services - A shuttle train service will run between Heath Low level and Coryton. Customers to connect with Rhymney line train services at Heath High Level.

Trans Pennine Express
Manchester to Liverpool services will not run and will be replaced by buses throughout.

Manchester Piccadilly to Edinburgh services will use Manchester Victoria instead of Manchester Piccadilly and the Airport.

Manchester Piccadilly to Glasgow Central services will operate between Preston and Glasgow Central only.

A reduced service will operate between Leeds and Manchester.

Trains to and from Scarborough will run between Scarborough and York only.

The Head of Editorial Standards noted the context in which the information was broadcast: the well-established travel update that has been a feature of radio broadcasting for many years. The audience would expect such a broadcast to include factual information to help journey planning. She noted that 2 January was a Bank Holiday and that this was emphasised in the bulletin; the audience would be likely to assume there would be some changes to the timetable. Whilst she accepted that the majority of changes would be likely to have been due to engineering works of some kind, the absence of any explanation for the disruption, in this particular context, cannot be taken as indicative of anti-rail bias as the complainant contended. She noted the statement in two of the travel bulletins that “lots of operators not running”. She noted the complainant’s contention that “no operators had no service at all”. She accepted that might technically be true, depending on how listeners would be likely to define “operators”. But there were a number of operators with numerous bus replacement services, reflecting the fact that significant services were not running that day. In the event, the Head of Editorial Standards did not consider that listeners would have been materially misled given the nature of the content and the purpose of the bulletin.

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.

**Item Three, Standing on Midland Trains, Midlands Today**

The Head of Editorial Standards noted the complainant’s contention that the story was a “blatant distortion” of the content of the tender document and that it should have reflected the positive aspects, such as an increase in rolling stock.

She noted that the item on Midlands Today included a response from the relevant rail authority to the particular issue highlighted in the report; the interviewee acknowledged that seats would likely be removed to allow for more standing:

**REPORTER**
But West Midlands Rail, part of the new combined authority, maintains that the new rules make perfect sense

**MALCOLM HOLMES, West Midlands Rail**
You have to remember that these are for short journeys. The vast majority of journeys on the CrossCity line are less than 20 minutes. There will of course be seats on the train. And there will be plenty of seats but this is just to allow much better standing capacity on the trains for these short journeys

The Head of Editorial Standards noted that whilst the item did not reflect that new trains and additional carriages were to come on stream within a similar time frame, it did reflect on other positive aspects of the new franchise:

**REPORTER**
But it’s not all bad news. The invitation to tender also contains proposals for

**GRAPHIC**
More Sunday and Evening services
Extra trains from Birmingham to Shrewsbury
Direct services from Walsall to London; and
Free wifi on all trains

The Head of Editorial Standards noted that in choosing to cover the tender at all, the programme was entitled to decide which aspects to highlight. The removal of seating to allow for more standing was a legitimate issue to discuss and did not in itself indicate bias. The item had included the perspective of the rail authority and given a sense that there was more in the tender proposals. The additional rolling stock was not directly related to the issue of the removal of seats and therefore there was no requirement that it be included, nor did she consider that there was any evidence of bias in the programme’s decision to focus on the potential removal of seats.

**Item Four, RMT strike threat over driver-only operation, Midlands Today**

The Head of Editorial Standards noted the complainant’s statement that “the item made no attempt to hide the fact the story had been planted by the RMT union”. She noted the Editor’s response to the complainant, following their meeting in January, that the programme took its stories from many sources. The Head of Editorial Standards did not
consider that to have been an acknowledgement that the story had been “planted” in the way characterised by the complainant.

The Head of Editorial Standards noted that trade unions are a legitimate source of stories and that on this occasion the item was related to a leaflet campaign by the RMT.

The Head of Editorial Standards noted the response to the complainant from the Editor of Midlands Today which implicitly acknowledged the complainant’s concerns about the absence of a rail company representative:

“What I’ve taken away from our conversation is that during our shorter bulletins we need to be extra rigorous. This is a conversation I intend to have with our output producers.”

The Head of Editorial Standards understood the challenge of including a range of perspectives in a short news item such as this, which was just 40” long. Whilst it would have been helpful to have included an industry response and/or some additional context it would not have been required in order for the content to achieve due accuracy and due impartiality.

The Head of Editorial Standards noted the meeting that had taken place between the complainant and the programme had been at the programme’s invitation, and that it had lasted around an hour. She noted from the correspondence that the programme had acknowledged that the complainant might have some useful information which could help better inform the programme’s coverage in the future.

The Head of Editorial Standards concluded that the fact a meeting had taken place and the Editor of the programme had acknowledged that extra care was needed in shorter bulletins, and that lessons had been learnt from the complainant’s points, had been helpful engagement. However the Head of Editorial Standards did not consider that the issues raised on appeal in relation to the Midlands Today items had been demonstrated to raise substantive issues which the Trust should consider on appeal.

Taking this into account the Head of Editorial Standards considered 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. The appeal would be closed.

**Petition to the PETI Committee/Schengen visa fraud**

The complaint concerned the non-coverage of a story about Schengen visa fraud and his related petition to the PETI committee of the European Parliament.

The complainant had emailed the story to the BBC on two occasions but had not received a reply

Audience Services said in reply that:

- they unfortunately could not facilitate summiting a new story on his behalf
- gave him a contact for Have Your Say ([www.bbc.co.uk/news/10725415](http://www.bbc.co.uk/news/10725415))
- advised that as he was outside the UK the link might redirect him to the BBC.com version of the page.
• guided him to BBC World News at the following link: www.bbc.co.uk/news/world-radio-and-tv-12957297

He contacted the ECU how explained this was not a matter they would consider.

Appeal

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

Decision of the Head of Editorial Standards, BBC Trust

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

The Head of Editorial Standards noted that the decision as to which stories to cover was matter for the BBC Executive (Royal Charter (2007) article 38(1)(b)).

She considered the reply from Audience Services was helpful.

Taking this into account the Head of Editorial Standards considered 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. The appeal would be closed.

Decision of Audience Services not to respond further to a complaint about Thought for the Day

The complaint concerned the exclusion of humanist speakers from the Thought for the Day segment of the Today programme, which the complainant regarded as biased. He asked the BBC to invite the British Humanist Association to provide speakers.

The complainant made the following points:

• Thought for the Day never included humanists, even though they were a substantial minority and were more numerous than churchgoing Christians, who it appeared Thought for the Day mostly catered for.
• A recent YouGov poll showed that only 8% of the population were regular churchgoers, whereas 49% had no religion. Of the latter, 12% were atheists or humanists. The rest were other religions or did not practise religion. Thus, the majority of speakers on Thought for the Day represented only a small fraction of the population – hence this complaint of bias.
• Audience Services’ responses failed to address the following points:
• Circumstances had changed since the Trust last considered this matter24: in December 2015, the High Court ordered that humanism be included in the state-school RE curriculum.25 (This was the complainant’s primary concern.)

• The BBC had violated their own argument that humanists did not believe in God and therefore could not be included, given that Buddhists (who also did not believe in God) were included.
• A network of humanist speakers (of whom the complainant was one) now existed. They visited schools and spoke about humanism.
• Since the most recent complaint on this matter, a network of humanist chaplains had been set up. Many hospitals, hospices and prisons now had a humanist chaplain.
• Many of the Department for Education’s arguments in the High Court were the same as the BBC’s in the previous complaint. However, the High Court had favoured the complaint, whereas the BBC had not.
• As a partial response to the previous complaint, Professor Richard Dawkins was given a slot of the same duration elsewhere in the Today programme, but this one-off solution was never repeated. This was not a compromise, and was highly unsatisfactory.

Audience Services made the following points:

• Thought for the Day was a unique slot. Its remit was to comment on a current news issue from a religious perspective.
• It followed that it was supposed to say something of substance, and that its contributors – speaking from a variety of distinctive faith positions – could stimulate, challenge, provoke, irritate, and sometimes comfort.
• There were 360 editions of Thought for the Day per year, and 30 or more contributors from many faiths and many denominations – and a balance of views was maintained over a period of time rather than within every script.
• This issue had previously been considered by the BBC Trust.

• During the three-hour Today programme, which was overwhelmingly devoted to secular concerns, the BBC judged it appropriate to offer a brief, uninterrupted interlude of spiritual reflection at a time when most listeners were starting 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. At times of national event or crisis, it could catch the nation’s mood and speak to it.
• Although the number of UK churchgoers had dwindled, the policy remained because around 70% of the UK population (including increasing numbers from non-Christian faiths) claimed a belief in God or described themselves as “spiritual”. Also, attendance in religious activities was higher among Radio 4 listeners than the national average.
• Thought for the Day had been a regular feature for nearly 40 years, and the programme’s remit and approach was very well known by listeners. Broadening the brief would detract from the slot’s distinctiveness. The BBC also, therefore, felt the programme’s title was appropriate and should remain.
• The BBC believed that all licence fee payers had the right to hear their reasonable views and beliefs reflected on its output. Within Thought for the Day, a careful

balance was maintained of voices from different Christian denominations and other religions with significant UK membership. Speakers were expected to make brief references to their faith and its scriptures, but were not permitted to proselytise, or to disparage other religions.

- Thought for the Day speakers were not questioned or interrupted on air, but their choice of subject and the content of their scripts was subject to careful scrutiny and frequent re-drafting in collaboration with an experienced producer working to strict editorial guidelines on impartiality.
- The mix of regular contributors represented a wide range of theological, social and political views, to ensure further balance over time.
- Non-religious voices were heard extensively across the general output. Occasional programmes gave voice to atheist and humanist viewpoints. The vast swathe of general programmes made little reference to religion, but approached the world from an overwhelmingly secular perspective.
- Outside Thought for the Day, the BBC’s Religion and Ethics output maintained a balance of religious and non-religious voices, through programmes such as Sunday, Something Understood, Beyond Belief and The Moral Maze. In these, atheists, humanists and secularists were regularly heard, the religious world was scrutinised, its leaders and proponents were questioned, and the harm done in the name of religion was explored.
- The BBC did not suggest that the only people with anything worthwhile to say about morals or ethics were religious – but that did not mean that the Thought for the Day brief was not a legitimate one for listeners of all faiths and those of none. Some of the programme’s strongest support and most positive feedback came from people who began, “I am not a religious person but I do enjoy Thought for the Day ...”.

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 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.

The Head of Editorial Standards noted that, under the current transitional arrangements, the appeal was to be considered against the Royal Charter that was in force until 31 December 2016 ("the previous Royal Charter")\(^\text{27}\). The Adviser noted that the previous Royal Charter stated that the Trust must not exercise or seek to exercise the Executive Board’s functions\(^\text{28}\), which included responsibility for the direction of the BBC's editorial

\(^{27}\) [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf)

\(^{28}\) Previous Royal Charter, art 9(3).
and creative output. The Trust would therefore not concern itself with any matter that fell within that area, unless (for example) it appeared that a potential breach of BBC guidelines had arisen.

The Head of Editorial Standards took the view that decisions relating to the remit and content of BBC output and the selection of contributors were decisions concerning the editorial and creative direction of the BBC, and were therefore not matters with which the Trust would concern itself (Royal Charter 2006, article 38(1)(b)).

The Head of Editorial Standards then considered whether a potential breach of the BBC’s guidelines had arisen. She noted that this appeal concerned the allegedly biased selection of contributors, rather than the content of any specific item of output.

The Head of Editorial Standards noted that the issue of due impartiality, with reference to the selection of contributors to Thought for the Day, had previously been considered by the Trust’s Editorial Standards Committee (‘ESC’) in November 2009. Paragraph 3.12 of the ESC’s decision stated:

“The ESC found that, given due impartiality is assessed on the content rather than contributor, the fact that the choice of contributors to Thought for the Day is limited to those of religious faith does not amount, in itself, to a breach of the BBC Editorial Guideline on impartiality. Accordingly, the BBC need not necessarily ensure a balance of contributors to Thought for the Day in order to achieve due impartiality provided that any perspectives offered on controversial subjects meet the requirements of due impartiality.” (emphasis added)

The Head of Editorial Standards noted the complainant’s argument that circumstances had changed since the ESC’s decision, in that the High Court had ordered that humanism be included in the RE curriculum of all state schools. However, the complainant had not explained why he believed that Warby J’s decision was relevant to the question of whether the BBC’s exercise of its editorial discretion had resulted in a breach of BBC guidelines. The ruling of the High Court involved the Equality Act but the Head of Editorial Standards noted that the BBC was not covered by the Equality Act “in respect of functions relating to the provision of a content service”, i.e. any of the BBC’s TV, radio or online content services. Therefore, the Head of Editorial Standards did not consider the ruling to be relevant to a complaint regarding Radio 4’s Thought for the Day.

The Head of Editorial Standards noted the complainant’s argument that, on the basis of the figures he quoted from a recent YouGov poll, the majority of speakers on Thought for the Day represented only a small fraction of the population. She noted Audience Services’ counter-argument that around 70% of the UK population claimed a belief in God or described themselves as “spiritual”, and that attendance in religious activities was higher among Radio 4 listeners than the national average.

The Head of Editorial Standards noted that the ESC had decided in November 2009 that the BBC was entitled as a matter of editorial discretion to feature religious programming in the UK Public Services. In her view, arguments predicated on the decline in religious observance and church attendance, and on the rise in the popularity of humanism, were irrelevant to the question of whether Thought for the Day was duly impartial. Even if, as the complainant claimed, the majority of speakers on Thought for the Day represented

29 Previous Royal Charter, art 38(1)(b).
only a small fraction of the population, the BBC was nevertheless entitled to use its editorial discretion to create output for a minority audience – provided that the wide variety of religious and non-religious perspectives was reflected across a range of BBC output. The Head of Editorial Standards was satisfied that this had been achieved.

In the Adviser’s view, neither the High Court’s decision, nor the alleged decline in overt religious practice, nor the alleged rise in the popularity of humanism since the ESC’s previous decision, had undermined or invalidated that decision. She therefore believed it remained the case that the BBC need not necessarily ensure a balance of contributors to Thought for the Day in order to achieve due impartiality.

The Head of Editorial Standards noted the complainant’s argument that Audience Services had violated their own argument that humanists were excluded because they did not believe in God, given that Buddhists (who also did not believe in God) were included. She noted that Audience Services had explained that:

“...the BBC judges it appropriate to offer a brief, uninterrupted interlude of spiritual reflection, at a point in the morning when most of the audience are embarking on their day.”

Audience Services had added that:

“... the policy remains in place because a significant majority of the UK population ... claim a belief in God or describe themselves as 'spiritual.'”

It was not a matter for the Trust if the BBC chose to include Buddhist contributors in Thought for the Day. Notwithstanding the Head of Editorial Standards noted listeners might well consider that the metaphysical aspects of Buddhism meant that Buddhist contributors could offer a spiritual reflection.

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 Audience Services not to respond further to a complaint about “Why are cars so expensive in Ethiopia?”, BBC News website, 16 January 2017

The complaint concerned a “promo” headline link for the story Why are cars so expensive in Ethiopia?, which appeared on the index page and said “Are cars a luxury? How Ethiopia is taxing vehicles off the road”.

The complainant made the following points:

- the statement “Are cars a luxury? How Ethiopia is taxing vehicles off the road” was inaccurate
• it was misleading as it bore no relation to the content of the article, which provided no information about cars in Ethiopia being taxed “off the road” nor a discussion of the luxury, or other, status of cars
• “taxing vehicles off the road” was not an accurate description of Ethiopia taxing newly imported vehicles before they are allowed on the road
• the government classifying cars as luxury goods did not equate to a discussion of "Are cars a luxury?", a well-respected point of view held by the Danish Government, the Green Party, and many British ecologists
• this was particularly concerning as viewers would have seen this story link in isolation from the full story.

Audience Services made the following points:

• the BBC was conscious of the need for headlines to be worded carefully so as not to mislead readers or give the wrong impression about a story
• this was frequently a very difficult decision for editors and the BBC appreciated that not all readers would feel it was correct on every occasion
• headlines were short summaries of what could often be extremely detailed stories and it was not always possible to sum up all the various aspects of a story within the space of a single headline
• this report looked at how Ethiopia had the lowest rate of car ownership in the world despite the fact that the country had one of the fastest-growing economies on the planet. One of the primary reasons highlighted for this in the item was the impact of import taxes on vehicles that could be as high as 200%
• index headlines and promos were usually read in isolation, with readers needing to click into the article itself to read more. This point was therefore not materially significant in the context of the complaint
• in terms of the wording of the promo itself, it opened by asking “Are cars a luxury?” This related to the fourth paragraph of the article which explained that a frustrated Girma Desalegn “is looking to buy a second-hand car imported from the Gulf states or Europe - but even they are prohibitively expensive because the government classifies cars as luxury goods”
• the promo also referred to “how Ethiopia is taxing vehicles off the road.” This was referenced in the fifth paragraph of the article, which explained that “this means even if a vehicle is second hand, it will be hit with import taxes of up to 200%.”
• the article then went on to discuss taxation on vehicles imported into the country, including hearing from a car dealer who blamed it for the country having the world’s lowest rate of car ownership.

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:

"I do not understand how “how Ethiopia is taxing vehicles off the road.” could be considered to mean anything other than that vehicles which were on the Ethiopian
road have been removed from the Ethiopian road due to increased taxes. Claiming it means that high Ethiopian taxes are being charged on newly imported vehicles before they are allowed on the road.”

and

“The promo asked "Are cars a luxury?". This is a well respected point of view, held by the Danish Government, the Green party, and many British ecologists. The article did not address this question.”

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 all BBC output was required to meet the standard of “due accuracy” which, under the Editorial Guidelines, was defined as follows:

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

The Head of Editorial Standards noted that the complainant considered the index headline “Are cars a luxury? How Ethiopia is taxing vehicles off the road” were two phrases which did not accurately reflect the content of the article itself.

She noted that the essence of the article was summed up in its title “Why are cars so expensive in Ethiopia?”. She noted the opening line of the article which said that “Owning a car for many Ethiopians - even those with ready cash to spend in one of the world's fastest-growing economies - remains a pipe dream.” The article went on to say that “the government classifies cars as luxury goods” suggesting why “Ethiopia has the world's lowest rate of car ownership, with only two cars per 1,000 inhabitants”.

The Head of Editorial Standards appreciated that the complainant believed the phrase “taxing vehicles off the road” was inaccurate because the article was not about vehicles which were on the Ethiopian road having been removed due to increased taxes. She noted the article itself which examined in some detail the various ways in which taxation meant imported cars were often “prohibitively expensive” in Ethiopia and looked at the experiences of one man, Girma Desalegn, who was struggling to find an affordable family car. The article went on to look at ways in which the Ethiopian government were giving incentives such as tax breaks to foreign car manufacturers in a bid to encourage more production of new vehicles in the country so people would buy cheaper, locally made cars.

Given this context and taken together she considered that the phrases “Are cars a luxury? How Ethiopia is taxing vehicles off the road” suggested that taxation and the classification by the Ethiopian government of cars as “luxury goods” was one of the reasons fewer cars were being used and would not have been misleading to readers. Although she noted that the complainant had put a different interpretation on the two phrases she considered in
the context of the article as a whole, Trustees would conclude that they were duly accurate.

In addition the Head of Editorial Standards noted that Audience Services had explained to the complainant that the BBC appreciated the need for accuracy in its headlines and that every effort was made to ensure that headlines did not mislead. However she noted that they understood not everyone would agree that the BBC had got it right on every occasion. By their nature she considered that headlines were designed to capture the essence of a story and could not therefore be expected to summarise all aspects of what could often be detailed issues or events, and she considered that this was understood by readers.

Taking this into account, the Head of Editorial Standards, BBC Trust, considered Trustees would be likely to conclude that BBC Audience Services had provided a reasoned and reasonable response and 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 Audience Services not to respond further to a complaint about More or Less, BBC Radio Four, 13 June 2016

The complaint concerned an item on More or Less, the series on Radio Four which unpacks and fact-checks statistics and numbers used in public debate. This edition was broadcast shortly before the EU referendum vote and examined the statistical claims around the economic impact of a possible departure from the EU.

There was a section in which the Spectator’s Fraser Nelson said that the Chancellor George Obsorne’s claim that households would be £4300 a year worse off was “economic nonsense”.

The complainant said whilst the programme had acknowledged that Mr Nelson had a point, it had then misled viewers in stating that “the number isn’t false” The complainant noted the figure was derived from GDP projections 15 years hence. He said:

- the calculation was mathematically inept; the number of households used in the calculation being a constant not a variable
- it was also economically illiterate: “GDP has four components none of which is household income. It is comparing apples with pears”
- based on the 2015 GDP figure of £2.849 trillion nominal and the 27 million households (ONS) you get an average income per household of £105,519. This is three to four times the true figure
- any loss of household income based on reduction in GDP was grotesquely overstated and thus a statistical nonsense

Audience Services said:
In programme 1 we included a clip from George Osborne that says “In the long run…. Britain would be worse off by £4300 per household”. We then explain how this figure is derived:

“Let’s deal with those numbers one by one. In the long run GDP would be 6% smaller. What that means is that treasury models suggest that after 15 years the UK economy would be 6% smaller – not smaller than it is today, but smaller than it would be if we stayed in the EU. To put that into pounds that means after 15 years the economy each year would be around £115 billion smaller. (For those of you who want to compare that number to the current EU membership fee, the GDP loss is more than ten times bigger, £2200m a week.)

The Treasury produced the £4,300 per household figure by dividing that big GDP loss figure by the number of households. That is not a piece of mathematics that impressed the editor of the Spectator, Fraser Nelson:

Fraser then criticised the division of GDP by households and then we say:

“Fraser Nelson is criticising how the number has been spun and we think he has a point – but the number is not false.”

If the original Osborne claim had said household income would fall by £4300 per household that would not be true. But he says GDP would fall by £4300 per household which is true because the two figures used to get that figure - £115 billion and the number of households are correct. We criticise whether it is sensible to do that sum but the sum is correct.”

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 expanded on the point he had made in his original complaint, that the calculation was mathematically inept because the number of households used in the calculation were a constant not a variable. He said:

“the BBC continues to assert that the “true” comment was justified as the figure (GDP loss per household) was correct. Leaving aside the nonsensical nature of the claim (GDP is an amalgam of many things and bears no meaningful relationship to anything per household) the figure was, as Andrew Neil pointed out in his Daily Politics show, actually incorrect as future GDP was divided by the current number of households rather than the future number of households thus wrongly inflating the resultant number.”

**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.
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 noted that the original focus of the complainant’s appeal, that the calculation was nonsensical because it was not comparing like with like, had shifted in his appeal to the Trust. She nevertheless noted that the complainant’s concerns on that point were reflected in Mr Nelson’s contribution and acknowledged by More or Less:

NELSON FRASER, The Spectator
You could tell what the deceits were pretty easily. For a start they conflated GDP with household incomes. They were trying to say the economy is going to be this much smaller if we leave the EU therefore you’re going to be worse off per household by this amount. But those are obviously two fundamentally different things; household income is not the same as GDP. Now GDP is what an entire economy produces. Household income is simply what you earn in a household. To divide GDP by households is economic nonsense.

MORE OR LESS PRESENTER
Fraser Nelson is criticising how the number has been spun and we think he has a point. But the number isn’t false.”

The Head of Editorial Standards noted it was the presenter’s final sentence which the Trust was being asked to consider on appeal. She therefore turned to the numbers on which the calculation was based, and which the programme had suggested were not false. She acknowledged the complainant’s assertion: that the numbers in the calculation used by the Treasury were based on a GDP figure 15 years hence, and an assumption that it was projected to fall by £115bn a year after 15 years, whereas the figure of there being an impact equivalent to £4300 per household was based on the number of households in 2015.

The Head of Editorial Standards acknowledged that the forecast for the number of households in 2030 is expected to be higher, by up to around three million. The Head of Editorial Standards, noted, as had the complainant, that this had been reflected elsewhere in the BBC coverage. The complainant had cited Andrew Neil; she noted where BBC Online covered the issue in some detail a few days later.31 The BBC Online article pointed out that it was odd that the modelling had not reflected any negative impact on population growth from leaving the EU. The article went on to discuss the issue raised by the complainant:

“There has also been criticism of the decision to base part of the calculation on the number of households today rather than a forecast for the number of households in 2030, which is expected to be considerably higher.

“The Treasury explained that the reason this was done was to provide an illustration of what 6% lower GDP would look like to households today. So they took 2015 GDP in 2015 prices and divided by the number of households in 2015. Had they decided to use forecasts for 2030, the number of households would have been higher, but so would the level of GDP.”

She agreed that it would have added to the audience’s knowledge had the programme chosen to unpack that part of the calculation. But not every aspect of a story has to be covered in order that an item is duly accurate and duly impartial. As the BBC Online article pointed out, whilst the population would have increased by 2030, so would GDP (albeit by less on the Treasury’s calculations than if the UK did not leave the EU). She noted that regardless of which population figure had been used, the equivalent loss per household figure would nevertheless still have been more – on the Treasury’s modelling – than any savings from leaving the EU. This was the context in which the figure was discussed in More or Less. The Head of Editorial Standards reflected that the programme was entitled to choose which aspects of the figure to analyse; it was evident that their analysis and the contribution from Fraser Nelson reflected the more significant of the criticisms which been levelled at the Chancellor’s headline figure.

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 Audience Services not to respond further to a complaint

The initial contact with the BBC was a letter to Lord hall about the BBC’s decision making process. As an example the complainant referred to the decision to give what, in his view was, a disproportionately large amount of air time given the support for UKIP to the story that Nigel Farage should be appointed ambassador to Washington. He also raised other issues such as the coverage of Jeremy Clarkson and the amount of coverage given to the death of David Bowie. He wanted to know how news established its priorities. He felt the BBC gave too much time to those who argued that climate change was not connected to human activity.

He asked for information on the amount of air time Mr Farage had received over the last five years compared to the leaders of other political parties and the air time given to business leaders as opposed to the trade unions.

Audience Services made the following points:

- As president-elect, and soon to hold the most powerful political office in the world, we believe not only is it legitimate to report on Donald Trump’s actions, but that this is also of interest to our audience. The future leader of one country telling
another country who they should appoint as ambassador is held to be an extraordinary intervention, as it breaches normal diplomatic protocol, and could have implications for relations with the USA.

- This tweet provoked reaction from a number of senior British politicians, including the Foreign Secretary, Boris Johnson, who addressed the issue in the House of Commons.
- Downing Street also made a statement in response. As the tweet was about Nigel Farage, it was obviously an important part of the story to report on his reaction.
- While Mr Farage may be perceived by some as being controversial, he has undoubtedly had a huge impact on British and European politics over recent years. The dynamic between these men is not only interesting, but also significant given the changes that are occurring in politics across the western world.
- there is widespread interest across our audience in the new Jeremy Clarkson Show which the BBC reflects in its coverage.
- David Bowie was by common consent one of the UK’s greatest pop stars who attracted a global following. He appealed across the ages and was one of the most influential musicians of his time. His death was both sudden and unexpected, his illness not revealed to anyone but a tight circle of friends. The BBC’s coverage tried to reflect his stature as a musician whose capacity for invention changed the shape of the industry, and the shock at his death around the world.
- We try to serve the whole of the diverse United Kingdom and we are a general broadcaster so by definition our approach has to be general and broad, so there needs to be a degree of compromise.

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

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 the complainant’s appeal did not have a reasonable prospect of success.

The BBC had not replied directly to his questions about air time. Whilst it was not feasible to attempt to measure the amount of air time given to Mr Farage over five years compared to other party leaders the Head of Editorial Standards could point him to work by the BBC Trust on impartiality which he might find interesting. It included looking at air time given to business leaders/ trade unionists:

http://www.bbc.co.uk/bbctrust/our_work/editorial_standards/impartiality/breadth_opinion.html

The Head of Editorial Standards noted that the choice of stories and how much time should be spent on them was a matter for the BBC editorial staff. This is because the
Royal Charter (2007) article 38(1)(b) sets out that the editorial and creative direction of the BBC is matter for the Executive and not the Trust.

Audience Services had explained why they had devoted the time they had to the coverage of Nigel Farage, David Bowie and Jeremy Clarkson. They had also said that:

“We try to serve the whole of the diverse United Kingdom and we are a general broadcaster so by definition our approach has to be general and broad, so there needs to be a degree of compromise. With that in mind, there's no way that we can realistically match every single individual viewer's or listener's own personal and subjective expectations, demands, preferences or tastes, but we hope that our audiences generally are comfortable and happy with our general approach - research and feedback suggests to us that this is indeed the case.”

The replies from Audience Services seemed reasonable and reasoned.

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.

**Newsday, BBC World Service, 28 September 2016**

The complaint concerned an interview on BBC World Service following the death of the former Israeli President Shimon Peres. The interviewee was journalist and author, Ben White, who specialises in writing about the Israel/Palestinian conflict and is a long-standing critic of Israeli policy. The complainant considered that the item was not impartial because it failed to inform listeners that Mr White was associated with a particular viewpoint.

The story was leading the news bulletins that day and listeners to the World Service would have heard interviews and reporter-led items which reflected Mr Peres’ role in the region since the formation of Israel in 1948. This was the introduction and first reply to the interview with Mr White:

Now, more on the death of the former Israeli President and Prime Minister Shimon Peres. He’s died aged 93. Tributes have come in from leaders around the world including former President Bill Clinton who signed the Oslo Accord with him. The first significant peace agreement with the Palestinians. Mr Peres, he said, was a genius with a big heart who used his gifts to imagine a future of reconciliation, not conflict. The warmth hasn't been universal however. Let's get a reaction from Ben White, a journalist who's written extensively on Middle East affairs. He's based in Cambridge and joins us now. We've heard many tributes to Shimon Peres, what's your view? A giant figure? What's his historical record?”

Mr White: ... The historical record shows that his image ... as a hawk turned dove ... is belied by the facts ... he was responsible for... beginning Israel's clandestine nuclear programme in the fifties and sixties, in the seventies he also had an important role in beginning the illegal Israeli settlements in the West Bank including settlements built on privately owned Palestinian land that was
expropriated ... and in 1996 notoriously he was Prime Minister during a particularly brutal Israeli operation in Lebanon that included the massacre at Qana...


The complainant made the following points:

- Ben White’s website, and his author page on the website of Middle East Monitor, appear to consist exclusively of articles attacking Israel
- anyone hearing the introduction to Mr White given in the programme would have no reason to believe that he was not an impartial journalist, who just happened to disagree with the views of others already heard in the programme;
- the programme breached the BBC's guidelines on impartiality which state that where it is not clear what an interviewee's view is on a subject being discussed, the BBC should make it clear
- the interviewer should not have made it appear that Mr White was simply “a journalist who's written extensively on Middle East affairs”
- the circumstances were similar to those in a separate complaint in 2012 ; on that occasion the Editorial Complaint Unit said that
  - “viewers should have been made aware that he (the interviewee) was associated with a particular viewpoint”
  - the Trust said there had been a breach of the Impartiality guideline
  - the complainant noted that the further action recorded in the ECU finding on that occasion was
  - "The production team have been reminded of the importance of clearly summarising the standpoint of any interviewee where it is relevant and not immediately clear from their position or the title of their organisation."

The complainant received responses from Audience Services at Stage 1 of the complainant process and from the Editorial Complaints Unit (ECU) at Stage 2.

At stage 1 it was explained that:

There was in fact a reference in the original script (that was intended to be broadcast) to the stance adopted in Ben White’s writings which, however, the presenter shortened on air. Despite that on-air cut, it was still clear from the presenter’s introduction that Mr White had a particular viewpoint as in it, it is said that the warmth towards Peres has not been universal. Hence, it was clear his approach to this topic is different from the many other contributors to the programme who praised Mr Peres, and the impartiality guideline was not breached.

The Editorial Complaints Unit reasoning for not upholding the complaint, and that of Audience Services were essentially the same. The ECU concluded:

“The introduction to Mr White’s contribution, coupled with what he actually said, will have left the listener in no doubt that his was a critical perspective and not a neutral one. It was the impression of neutrality which was at issue in the findings related to NAME's [the item in 2012] interviews on the BBC News Channel.”
“...there was nothing in the introduction of NAME to suggest that he was partisan. In the case of Mr White, however, I think it was signposted by the words "The warmth hasn’t been universal however. Let’s get a reaction from Ben White". This clearly signals that Mr White would be offering a critical view of Mr Peres.

"Secondly, I think there is a significant difference, in terms of how the audience might view a contributor, between someone being introduced as a journalist and someone being introduced as representing a "neutral-sounding think tank” There is no reasonable expectation that simply because someone is a journalist that they will therefore offer a detached and impartial view.”

**Appeal**

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

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

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

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.”

The Head of Editorial Standards noted also that the complainant considered that the interview with Mr White had breached the following 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.”

The Head of Editorial Standards considered the following in reaching her decision that the complaint should not proceed to appeal:

- the intention of the relevant section of the Editorial Guidelines (as cited above) is to require audiences to be given sufficient information to be able to assess a contributor’s status and thus accord weight to their arguments
- there are inevitably a range of ways that this might be achieved
- on this occasion a combination of the manner of Mr White’s introduction, which clearly indicated he would be likely to be critical of Mr Peres in a way that previous contributors had not been, and then the content of the interview itself, where from very early on it was evident that Mr White was highly critical of Mr Peres, meant the content would have achieved the due impartiality required under the relevant guideline
- it was reasonable for Newsday to introduce him in the way it did, as a writer on Middle East Affairs, and to rely on the wording of the introduction and his
responses throughout the interview to supply sufficient information for audiences to decide what weight to place on his contribution

The Head of Editorial Standards, having noted the full context of the 2012 findings considered that there were differences between the two cases. Mr White’s views had been signalled whereas there had been no signalling in the previous case. In the previous case the interviewee had been introduced as the director of a think tank and the ESC had decided that more context was needed whereas Mr White was introduced as a journalist. There is no expectation in the UK that a journalist will necessarily be neutral.

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.

Newsnight, BBC Two, 3 November 2016

The complaint concerned the final item broadcast on Newsnight on 3 November 2016. Presenter Kirsty Wark said:

“Before we go, you might have seen the demand by the Conservative MP Andy Rossendale that BBC One should play ‘God Save the Queen’ at the end of the day’s programming to mark our departure from the EU.

Well we’re not BBC One and it’s not quite the end of the day but we’re incredibly happy to oblige. Good night.”

The programme’s end-credits were then played out over archive footage of punk band the Sex Pistols performing their hit song ‘God Save the Queen’.

The complainant made the following points:

- he was extremely upset by the disrespect shown to the Queen as Head of State
- the item breached the BBC’s guidelines on editorial integrity and independence, and on harm and offence
- it was obvious that offence was likely to be caused and there was no attempt to warn the audience
- in lampooning the idea that the National Anthem should be broadcast to mark the UK leaving the EU, the BBC’s presenters had shown bias towards republicanism and towards remaining in the EU.

Audience Services made the following points:

- Newsnight regularly ended the programme on a lighter note and the song was included in that spirit
- no disrespect was intended to Her Majesty
- humour was subjective and social media reaction showed that many people had enjoyed the item.
The Editorial Complaints Unit [ECU] made the following points:

- the piece in question did not involve the expression of a political view attributable to the programme so the BBC’s guidelines on editorial integrity and independence were not engaged by the complaint
- similarly, the ECU did not agree that the BBC’s guidelines on impartiality were engaged, as this would unreasonably over-interpret the item
- the complaint was considered in the light of the BBC’s guidelines on harm and offence; these did not require that material which might cause offence should never be broadcast but that it should be justified by its editorial context, the audience expectation of the outlet in question and the time at which it was broadcast. Overall, it should always have regard to generally accepted standards
- the joke did not actually poke fun at or ridicule the Queen, but simply exploited the fact that two highly contrasting songs enjoyed the same title. It was therefore relatively innocuous and was certainly not so offensive as to amount to a breach of generally accepted standards
- if anyone was the butt of the joke it was not the Queen, but the MP who had called for the national anthem to be played
- the editorial justification of the item was that it represented a humorous response to the MP’s call and was consistent with the occasionally irreverently humorous approach adopted by Newsnight, particularly in its closing sequences.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint: that he had found the item deeply offensive.

Decision of the Head of Editorial Standards, BBC Trust

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

She noted that the BBC’s Editorial Guidelines require the BBC to apply “generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.” She noted that the understanding of what constitutes ‘generally accepted standards’ will evolve over time and that applying them is a matter of judgement, “taking account of the content, the context in which it appears and editorial justification.”

The Head of Editorial Standards noted that Newsnight has an adult audience and this item was broadcast at 11pm. She considered that regular viewers would understand that the final item of the programme was frequently light-hearted in nature.

The Head of Editorial Standards noted the complainant’s disappointment that previous responses had failed to acknowledge that any offence was likely to be caused and his concern that they had seemed unable to see his point of view. She also understood that he considered that it had mocked the national anthem and insulted the British.

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32 Paragraph 46 (2) Broadcasting: An Agreement Between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, July 2006
The Head of Editorial Standards was sorry that the complainant found the item offensive. She noted that the guidelines require the BBC to consider the offence which was likely to be caused by the inclusion of the particular content. In this case, whilst she appreciated that the complainant had been very offended she considered that the item was unlikely to cause general offence to the Newsnight audience for the following reasons:

- the presenter’s tone was wryly ironic
- while the Sex Pistols’ song was considered controversial when it was first released forty years ago the song was now likely to be considered a period piece by most viewers, rather than a contemporary comment on the monarchy
- the subject of the joke was the MP who had made the suggestion

The Head of Editorial Standards did not consider this to be ‘difficult or challenging content’ as defined by the guidelines and while she understood that the complainant was offended, she did not agree that his viewpoint would have been widely shared. She therefore considered that Trustees would be likely to decide that the content was suitable for the Newsnight audience, given the expectation of viewers, the nature of the programme and the nature of the content itself, and was editorially justified.

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 Audience Services not to respond further to a complaint about Sherlock, BBC One, 1, 8, and 15 January 2017

The complaint concerned season four of the hit BBC One drama Sherlock, in which Benedict Cumberbatch and Martin Freeman reprised their roles as Sherlock Holmes and Dr John Watson respectively, in the contemporary take on Sir Arthur Conan Doyle’s iconic adventures.

The series consisted of three feature length episodes. Dr Watson became a father, but was also widowed, after his wife Mary was shot protecting Sherlock Holmes. And Sherlock Holmes discovered he had a sister, Eurus, who’d drowned his childhood best friend and had been locked away in a maximum-security prison, by their brother, Mycroft Holmes.

Part one, The Six Thatchers, broadcast on 1 January 2017 at 20.30 was billed as:

Sherlock waits to see where Moriarty will make his posthumous move. One mysterious case in particular baffles Scotland Yard, but Sherlock is more interested in a seemingly trivial detail. Why is someone destroying images of the later Prime Minister Margaret Thatcher? Is there a madman on the loose? Or is there a much darker purpose at work? Something within roots deep in Mary Watson’s past.

Part two, The Lying Detective, broadcast on 8 January 2017 at 21.00 was billed as:
Sherlock faces perhaps the most chilling enemy of his long career - the powerful and seemingly unassailable Culverton Smith – a man with a very dark secret indeed.

Part three, The Final Problem, broadcast on 15 January 2017 at 21.00 was billed as:

Long buried secrets finally catch up with the Baker Street duo. Someone has been playing a very long game indeed and, alone and defenceless Sherlock and Dr Watson face their greatest ever challenge. Is the game finally over?

The complaint

A number of complainants contacted the BBC direct. There were a variety of issues raised. This is a summary of the main points:

- Previous series of Sherlock had included explicit gay jokes and references that heavily implied a slow burn romance between Sherlock Holmes and John Watson, that would move them on from being crime-solving partners and friends, into an open homosexual relationship.
- It was wrong for the fourth series of Sherlock to retreat from this perceived position of queer inclusion so that the previous ‘gay coding’ between the two characters turned out to be nothing more than a joke.
- The series totally missed the opportunity to make a point about acceptance and tolerance and instead Sherlock’s lesbian, gay, bisexual, and transgender viewers (LGBT) were victims of queerbaiting.
- Sherlock was offensive to LGBT viewers because it perpetuated negative stereotypes and harmful portrayals about them.
- Sherlock was a sexist, misogynistic, and white centric show. It mistreated its female characters and mainly just used them as plot devices to develop the story of Holmes and Watson. For example, Sherlock Holmes had an emotionally abusive relationship with Molly Hooper. And John Watson’s wife Mary was a poorly developed character, whose motivations were never properly explained.
- The BBC released misleading promotional material for Series four that teased ‘Sherlock’s back and he’s in love. But who with? And what has he done to his best friends?’ This was misleading because the trail was not about Holmes and Watson but related to a plot line when Sherlock was forced by Eurus, in one of her inhumane challenges, to trick Molly, via a phone call, into telling him she loved him. This scene was a huge let-down for Sherlock’s fans and another example of queerbaiting.
- Mental illness was depicted in a harmful way both in the back-story of Sherlock and his sister, Eurus, and in her portrayal as an emotionally manipulative woman who showed a complete lack of humanity.
- Previously Sherlock had legitimately explored dark topics like murder, suicide and drugs but the final episode of series four was a ‘horror show’. The episode’s content warning, which said: “It may contain elements that some viewers may find upsetting” did not properly signpost that it was a complete departure from the usual style of the show.
Complainants received responses from BBC Audience Services at Stage 1 of the complaints process. Audience Services made the following points:

- Through four series and thirteen episodes, Sherlock and John had never shown any romantic or sexual interest in each other. Furthermore, whenever fans had asked the creators of Sherlock if the relationship might develop in that direction, they had always made it clear that it would not.
- Sherlock’s writers, cast and producers were firm and vocal supporters of LGBT rights.
- The BBC supported the creative freedom of Sherlock’s writers to develop the story as they saw fit.

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.

The appeals to the BBC Trust

Five 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, BBC Trust understood that BBC Audience Services had decided not to correspond further with the complainants 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.

As all of the complainants raised similar substantive issues, their appeals were consolidated in accordance with paragraph 5.6 of the Editorial Complaints and Appeals Procedure http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf

The Head of Editorial Standards read each appeal and considered their respective merits individually before reaching a decision on whether the points raised would have a reasonable prospect of success were the complaint to proceed to appeal. The Head of Editorial Standards, BBC Trust decided that the complainants’ appeals did not have a reasonable prospect of success.

The Head of Editorial Standards noted that a complaint had suggested the guidelines of impartiality and accuracy applied. She disagreed that these were applicable to this fictional series in relation to these complaints. The accuracy and impartiality due to a fictional series was extremely low. The series did not deal with a controversial subject (4.4.6). The subject matter was not the subject of political or public contention and debate. Nor was it a topical. It was sensitive to a set of LGBT viewers but not to viewers of the series as a whole. It was not a matter of intense debate or importance in a particular nation, region or discrete area likely to comprise a significant part of the audience. It was not about fact and although the issue mattered a great deal to those who complained it was not serious – it was fiction.

The Head of Editorial Standards noted that the relevant section from the guidelines related to Harm and Offence:
Harm and Offence

Introduction

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

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

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

Portrayal

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 the following extract from a complainant’s appeal letter, which was representative of one of the key points made across the range of appeals to the Trust:

"Throughout all thirteen episodes, the showrunners continually set up and reinforced the idea of a romantic relationship existing between this modern Sherlock Holmes and John Watson...using universal romantic tropes, classic gay subtext, obvious gay references, and the tools of cinematography, score and even set design. BBC Three extensively tweeted about the suggested romance on their official Twitter account and fans were instructed to read the subtext...Many of us did and found that this looked like a great victory for equal and proper representation in mainstream media...now coding and marketing the show as they did without following through and actually making the story a romance constitutes queerbaiting."

She noted the following extracts from the appeal letters of two other complainants:
“I addressed the issue of queerbaiting and the presentation of queer villains in the BBC show Sherlock that aired this January. The BBC Complaints Team responded to my complaint by not acknowledging the issue and simply telling me I was wrong.”

“The main villains are queercoded sexual predators and murderers. This is harmful because the show doesn’t have textually “good” queer characters as representation that work as a counterweight to this negative portrayal, so the message to the audience is that all queer people are bad.”

The Head of Editorial Standards noted that the Urban Dictionary defines queerbaiting in the following way:

When an author/director/etc. gives hints, and clever twists to paint a character as possibly being queer, to satisfy queer audiences, but never outright says they are so they can keep their heterosexual audience.

The Head of Editorial Standards noted over 4,700 supporters had signed a related petition by 23 March 2017.

The Head of Editorial Standards also noted the reply from Audience Services which said that throughout all four series of Sherlock, not only had the two main characters not shown any romantic or sexual interest in each other but the creators had also made it clear to fans that Sherlock and John’s relationship would not develop in that direction.

The Head of Editorial Standards decided that Trustees would be likely to conclude the content had met the requirements of the Editorial Guidelines – she noted that the introduction to the Guidelines on Harm and Offence stated: “Creative risk-taking is a vital part of the BBC’s mission. However, in all of our output, the greater the risk, the greater the thought, care and planning required to bring creative content to fruition”.

The Head of Editorial Standards also noted that the Harm and Offence guidelines stated: “When our content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted.”

The Head of Editorial Standards noted that there was no requirement not to cause offence – which would be an impossible demand – but that if there was a risk of causing offence, there had to be editorial justification. She noted that Sherlock was pure fiction, described on the BBC website as “Sherlock Holmes and Dr John Watson’s adventure in 21st Century London. A thrilling, funny, fast-paced contemporary reimagining of the Arthur Conan Doyle classic.” Moreover, Sherlock, was an established and popular drama series which, when transmitted, was into its fourth series of programmes. She considered there was strong editorial justification for an updated version of Sherlock.

The Head of Editorial Standards noted that writers of wholly fictional drama were allowed greater licence to develop unrealistic and unrepresentative storylines that were engaging and entertaining and which required audiences to suspend their disbelief and their sense of reality for the sake of their enjoyment. The audience tuning into Sherlock would have had clear expectations about the fictional nature of its content and would have been prepared for highly complicated storylines that bore little or no relation to real life.

The Head of Editorial Standards noted that writers were not required to ensure that equality and diversity are positively portrayed in the characters they develop, as that
would be an inappropriate limitation upon the freedom of expression of the writer. She also noted that the role of a drama was to develop characters with a range of personalities both good and bad. Sherlock is concerned primarily with the narratives of Sherlock Holmes and John Watson and other characters with whom they were associated.

The Head of Editorial Standards considered whether the portrayal of Eurus included harmful or stereotypical assumptions linked to the portrayal of people with a mental illness and if so whether the portrayal was editorially justified. She concluded that the motivations of Eurus's character were clearly ascribed to her character's flaws and they were not portrayed in a stereotypical way. She was also a fictional character and the writers were free to construct her character as they chose.

The Head of Editorial Standards also considered complaints that the female characters were treated poorly. As one complainant said:

"ALL those women were either shown in a very negative light, or treated as if they are unimportant. The only female characters that were not horribly written were Mrs. Hudson and Ella, and Ella was a minor character with few lines, and even she had been accused of incompetence by Mycroft during the first episode.

If I wanted, I could name many more male characters than female, and the ratio of villains to non-villains would be much, much lower."

The Head of Editorial Standards considered whether the portrayal of women included harmful or stereotypical assumptions and if so whether the portrayal was editorially justified. She concluded that the women were individually characterised with good and bad characteristics. They were fictional characters and the writers were free to construct her character as they chose.

The Head of Editorial Standards appreciated that one complainant had been upset by a programme in the series. She considered, however, that the warning “it may contain elements that some viewers may find upsetting” was sufficient to warn those of sensitive disposition to avoid the programme.

The Head of Editorial Standards noted that drama was inevitably extremely subjective and whilst she recognised that the complainants had been offended by Sherlock, she was nevertheless satisfied that the drama, a work of fiction, had not breached guidelines. She noted that “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) of the Royal Charter (2007). As there was no breach of the Editorial Guidelines decisions as to characters, scripts, plotlines etc were therefore a matter for the Executive and its programme makers and not 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 Strictly Come Dancing, BBC One, 19 November 2016

The complaint concerned a surprise appearance by Lancashire comedian Peter Kay on Strictly Come Dancing when the show made its annual visit to Blackpool. Peter Kay turned up dressed as one of the show’s security staff, in a high-vis jacket with a hood pulled down over his eyes, and talked viewers through the voting terms and conditions. His star turn involved him sharing a joke or two with the dancers and celebrity guests and causing chaos as he initially wrongly read out the cost of a Strictly phone. At one point he moved next to celebrity contestant Judge Rinder and said a few words before he used the Eric Morecambe gag of jumping away as if he’d been pinched on the bottom. The following is a transcript of this section of the programme:

Claudia Winkleman: It’s time for the terms and conditions and as it’s Blackpool we’ve decided to take it up a level. Peter what are you wearing? Ladies and gentleman.

Peter Kay: Don’t ask. Don’t ask. Absolute bedlam out there, you’ve caused. You want to see the traffic. You’ve got balls you I’ll tell you that (addressing Ed Balls). Calls cost thirteen pence plus any network...

Claudia Winkleman: Fifteen.

Peter Kay: What?

Claudia Winkleman: Fifteen.

Peter Kay: Put it down, put it down, put it down a bit. Take it down (about autocue). Fifteen, calls cost - I thought it were thirteen. Thirteen. Let’s make it thirteen this week.

Claudia Winkleman: No, No.

Peter Kay: Calls cost thirteen. Oh look at them panicking now, fifteen then, make it fifteen. (Peter Kay walks around Claudia Winkleman and puts his arm around Judge Rinder). Let me say hello to this fella. He’s fantastic this fella. Calls cost (Peter Kay jumps away as if he’s been pinched on the bottom). Heh steady heh, watch it m’lad, watch it m’lad, this case is firmly closed. Calls cost, access charge and please ask the bill payers permission plus you can vote free online at bbc.co.uk get on t’internet, (pointing at Judge Rinder) get it, at bbc.co.uk forward slash slash strictly...

Claudia Winkleman: Strictly.

Peter Kay: The vote – go go go back, you’re going too fast for this. The vote won’t open until all our couples have danced so please don’t vote until we tell you. If you do your vote – can you tell I’m reading it?

Claudia Winkleman: No, no...
Peter Kay: If you vote before your vote won’t be counted and you may be charged.

Claudia Winkleman: That was brilliant. Thank you. Thank you. Thank you so much.

Peter Kay: What do I do now?

Claudia Winkleman: Well we cuddle (Judge Rinder is turning round to engage with another dancer behind him and Peter Kay is looking around at him and jolts forward as if he’s been pinched on the bottom again and then points at him) and we just say the word, just say the word with me, just say the word Tess.

Peter Kay: Tess.

The complainant made the following points:

- Peter Kay made a number of offensive and homophobic gestures and comments about, or in relation to, Judge Rinder.
- Peter Kay made a faux reaction as though Judge Rinder was touching him from behind and said “this case is close” which appeared to be an offensive homophobic reference.
- The joke was offensive the first time and more so because it was repeated. It was wrong for the BBC to consider it acceptable to make a joke about a person’s sexual orientation.
- Claudia Winkleman made no attempt to intervene and did not issue an immediate apology.

Audience Services made the following points:

- The Strictly team work hard to keep the show feeling fresh and Peter Kay was invited to liven up the terms and conditions part of the show for viewers.
- Peter Kay is an established comedian and his style of comedy is well known. His whole skit was live and unscripted and he stayed firmly in character throughout as he pretended to be a Blackpool security guard.
- It appreciated the complainant found some of Peter Kay’s behaviour towards Judge Rinder outmoded but hoped it was clear that viewers were being asked to laugh at Kay’s absurd and exaggerated character and not along with him. It believed his routine was delivered without any malice whatsoever.
- Judge Rinder was visibly highly amused and he took the jokes as they were intended.
- Peter Kay had built up a genuine camaraderie with the show’s celebrities and their reactions suggested that everyone took things the way they were intended.

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

- Strictly Come Dancing is an entertainment show, which frequently includes light-hearted banter and teasing between the presenters, contestants and judges.
- The routine was in keeping with the general tone of the programme, which includes slightly risqué humour from time to time.
• Peter Kay was playing for laughs and to derive humour from the fact of his character displaying a stereotypical homophobic reaction, rather than to give credence to the stereotype of homosexual men being predatory. It was innuendo that was not explicit and which would not have exceeded general audience expectations of the programme.

• The BBC's Harm and Offence guidelines on portrayal aim to guard against the perpetuation of stereotypes that have the capacity to inflame existing prejudice and discrimination that cause actual harm in people’s lives and there was no real risk of the comic stereotyping used in the programme doing so. The guidelines allow for the exaggeration of stereotypes for comic effect and this applied to Peter Kay’s routine, which was comical and was entirely without malice and was therefore editorially justified.

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 all BBC output was required to meet the Editorial Guidelines for Harm and Offence and specifically in this case the guidelines on portrayal which say:

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

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

She also noted the Ofcom research referred to by the complainant in his appeal:

The BBC prominently advertises a link to Ofcom’s latest research on offensive language on the home page of its Editorial Guidelines. Paragraph 5 of section 6 of “Attitudes to potentially offensive language and gestures on TV and radio” (Ofcom, September 2016) says "potentially offensive language related to ... sexuality ... should be treated with the greatest of care" and that "close attention should be paid to avoid normalising, or even encouraging, discrimination against [minority groups]."

The Head of Editorial Standards noted that this programme was week 9 of series 14 of the dancing reality show, which originally launched in May 2004. In this edition the seven remaining couples in the contest took to the world-famous Blackpool Tower Ballroom dance floor. Its presenters were Tess Daly and Claudia Winkleman.

The Head of Editorial Standards noted that the series had seen various famous faces and special guests appear alongside Claudia Winkleman to jazz up the voting terms and
conditions announcement. A Barbers Shop Quartet had joined her and sang the rules and Chas and Dave and a ventriloquist had also appeared on the show.

The Head of Editorial Standards noted that celebrity contestant “Judge” Robert Rinder is a professional criminal barrister and the star of ITV’s daily daytime courtroom show Judge Rinder that has aired since August 2014.

The Head of Editorial Standards noted that Peter Kay’s jokes about Judge Rinder made fun of his daily arbitration show in which he adjudicates over real, small-claims cases within a studio courtroom. In the show Judge Rinder questions the claimant, defendant and witnesses, and assesses the evidence before making his ruling on the real life cases. The Head of Editorial Standards noted that Judge Rinder normally concludes each case by saying, “Your case is dismissed, that’s the order of this court” or “Your claim is dismissed” or some other variation of the wording.

The Head of Editorial Standards noted that Peter Kay had jumped away from the celebrity dancer saying: “Hey steady, watch it m’lud, watch it m’lud”. She considered this was a reference to Robert Rinder’s role as a ‘Judge’ in his TV programme. She also noted that Peter Kay went on to say: "This case is firmly closed” whilst pointing at his own bottom. She considered this was light hearted innuendo referencing Judge Rinder’s reality courtroom show.

She noted that on appeal the complaint had said that:

> .. I would argue that innuendo cannot involve gestures. Even if you conclude that it was not a portrayal of sexual intercourse but was merely a discussion of sexual behaviour (the first sub-paragraph of paragraph 5.4.36 of the Editorial Guidelines) it would have to have been “editorially justified” and I think it would be difficult to argue that it was in the circumstances.

However she disagreed. In a common sense reading of the wording the exchanges were neither a discussion of sexual behaviour nor a portrayal of intercourse.

The Head of Editorial Standards noted that Judge Rinder did not seem to take offence at Peter Kay’s jokes, including the ones directed at him, and laughed throughout the performance. She considered that the jokes made by Peter Kay relating to Judge Rinder were within audience expectations for the very well-known BBC One family entertainment programme and that they were not to be taken seriously. Whilst she accepted that the complainant had been offended she did not consider that the segment would normalise discrimination or perpetuate prejudice or disadvantage. She considered that it 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.**